



Instructions to Participants **(ITP)**

Competitive Procedure with Negotiation (FATS)

CONTRACTING AUTHORITY: CABINET OFFICE (GDS)

REF: WP2248.1 & WP2248.2: SMS Provider(s) for GOV.UK Notify x 2

Responses to: GDS-Digital-Buyer@digital.cabinet-office.gov.uk

PUBLIC CONTRACTS REGULATION 2015**CONTENTS**

Definitions

Purpose

Background Information

Procurement Event Scope

Procurement Event Schedule

- Indicative Procurement Event Timetable
- Project Procurement Event

General Instructions

Compliance

Confidentiality

- Rights and disclaimers
- Communication with Cabinet Office (GDS)
- Non-Collusion and Non-Canvassing

SQ/ITT - Specific Instructions

- Submission
- Economic & Financial Standing
- Information about reliance on the capacities of other entities
- Information concerning subcontractors on whose capacity the Candidate does not rely
- Accuracy of information provided and propriety
- Selection
- SQ/ITT Confidentiality

Invitation to Tender - Specific Instructions

- Submission
- Tender Documents
- Site Inspection
- Inspection of Additional Information
- Legal Entities
- Compliant Offers
- Variant Tenders
- Tender Evaluation
- Acceptance of Tenders

PUBLIC CONTRACTS REGULATION 2015

1 Definitions

“Candidate” means an economic operator (or group of economic operators acting in a consortium) that is seeking to pre-qualify for and be invited to tender for this Procurement Event.

“Contract” means the contracts to be entered into by Cabinet Office (GDS) and the successful Tenderers, the draft terms and conditions for which are being issued as part of the Procurement Documents.

“Find a Tender” means the UK’s e-notification service as defined in the Regulations.

“ITT” means Invitation to Tender.

“Notice” means a call for competition by publication of a contract notice in Find a Tender

“Participant” is a collective term for a Candidate or a Tenderer.

“Persons of Significant Control” means beneficial owner.

“SQ” means a Selection Questionnaire.

“Procurement Documents” means these Instructions to Participants, the Criteria and Scoring document, the SQ, the Technical envelope, the Commercial envelope, the Social Value envelope, the draft terms and conditions for the Contract, and any additional documents set out in the Tender Documents section of these Instructions to Participants.

“Procurement Event” means the competitive process for the provision of two SMS providers for GOV.UK Notify, which is being conducted to ensure compliance with the Regulations and that Cabinet Office (GDS) achieve the best value for money through its contracting.

“Procurement Event Timetable” means the timetable showing the key dates and deadlines for the single stage SQ/ITT associated with this Procurement Event.

“Procurement Lead” means the Cabinet Office (GDS) representative who is responsible for managing the Procurement Event.

“Regulations” means the Public Contracts Regulations 2015.

“Relied Upon Sub-Contractor” means a sub-contractor relied upon by the Candidate in order for the Candidate to meet the requirements of this SQ. Relied Upon Sub-Contractors are part of the Candidate’s bid team and are required to complete and respond to certain parts of the SQ and, if the Candidate is invited to tender, contribute to the tender and be involved in the delivery of the Contract.

“Tenderer” means the economic operator (or group of economic operators bidding as a consortium) who has pre-qualified for this Procurement Event and been invited to tender.

PUBLIC CONTRACTS REGULATION 2015

2 Purpose

These Instructions to Participants and the Procurement Documents set out the procedure regarding this Procurement Event. These Instructions to Participants relate to both the SQ stage and the ITT stage and include general and specific instructions for the submission of responses by Participants.

Cabinet Office (GDS) is using a SQ to assess a Participant's eligibility, financial capacity, experience, and capability in order to create a shortlist of Candidates to be invited to tender. Cabinet Office (GDS) is asking Mandatory Exclusion Questions and Discretionary Exclusion Questions to allow the Participants to self-certify that they are not subject to any of the regulatory mandatory and/or discretionary grounds for exclusion referred to in the Regulations and therefore eligible to participate. Cabinet Office (GDS) will however have the right at any time prior to entering into the Contract to require evidence to be supplied to validate the responses. Cabinet Office (GDS) will also assess whether the Participant meets certain economic and financial standing and insurance requirements and assess relevant experience.

This procurement event is conducted by the Cabinet Office (GDS) in accordance with its obligations under the Regulations.

3 Background Information

GOV.UK Notify is a digital communications platform, developed and run by the Government Digital Service (GDS). Notify allows public sector service teams to send notifications (text message, email and post) to their users.

The notifications are typically status updates, requests for action, MFA codes, receipts of applications or supporting information, and reminders. The messages are sent via an API or manually through a web interface.

Currently there are over 8,700 service teams using GOV.UK Notify, from over 1,500 public sector organisations across central and local government and the NHS.

Notify sends an average of 3 million SMS fragments a day, regularly achieving peaks of 7 million.

Current forecasting work indicates that Notify will send 3.8 billion SMS fragments during FY 25/26 and 3.9 billion SMS fragments during FY 26/27, as Notify continues to work closely with the NHS, however this figure may vary significantly due to changes in demand.

Many Notify services send messages that are longer than one fragment and the average message sent via Notify is 2 fragments long. Notify SMS messages have a high average delivery rate of 95.7%.

Notify uses two concurrently integrated SMS suppliers to ensure a resilient service. Typically, traffic is shared between the two based on supplier performance (speed of processing) and load. Ultimately GDS reserves the right to allocate work between suppliers at its absolute discretion and there is no guarantee of volume as it's influenced by both government policy and how the services choose to use Notify.

We're looking to procure SMS suppliers for 2 years, with options for contract extension. The unit price for a single SMS fragment will be fixed throughout the duration of the contract, independent of volume.

To meet Notify's SMS redundancy requirements the suppliers should utilise independent computing and network infrastructures throughout their respective end-end services, avoiding any single points

PUBLIC CONTRACTS REGULATION 2015

of failure that could simultaneously impact both providers. Suppliers are asked to provide sufficient information in their responses to enable GDS to evaluate this.

In the event the top 'two' scoring suppliers share the same sub-processors, The Contracting Authority reserve the right to either;

(a) Withdraw the second contract from this competition and re-tender, or

(b) Award the second contract to the next best scoring supplier that uses a different sub-processor.

This is to ensure service resilience is maintained through use of different sub-processors to the top scoring tenderer.

4 Procurement Event Scope

4.1 This Procurement Event relates to the scope of the Contract as set out in the Notice.

4.2 Cabinet Office (GDS) intends to award the following:

Description		Type of Award	If Type of Award is 'Framework' state the number of Suppliers
Two contracts for the provision of SMS Providers for GOV.UK Notify. Reference; <ul style="list-style-type: none"> WP2248.1 WP2248.2 	SMS Providers for GOV.UK Notify x 2 Term: 24 months Extension options: 24 + 12 + 12 months Value: £184,333,082 to be split between the 2 contracts dependant on volume split (tbc)	Contract	n/a

4.3. Cabinet Office (GDS) [is conducting this Procurement Event using the competitive procedure with negotiation as set out in the Regulations.

5 Procurement Event Schedule

5.1 Indicative Procurement Event Timetable

5.1.1 Cabinet Office (GDS) intends to undertake this Procurement Event in accordance with the following indicative Procurement Event Timetable. Cabinet Office (GDS) reserves the right to amend the timetable at any time during the Procurement Event and, if it does so, will notify all relevant Participants of any amendments to the Procurement Event Timetable through Find A Tender Service (FATS) and/or email, dependant on the stage of procurement:

Activity	Date
Publish Procurement Documents	21/08/2024
Deadline for submission of supplier clarification questions relating to the SQ/ITT	23.59hrs on 29/08/2024
Responses to clarification questions	17.00hrs on 05/09/2024
SQ/ITT response deadline	17.00hrs on 25/09/2024
Notification of SQ/ITT outcome	08/11/2024
Standstill Period	08/11/2024 - 18/11/2024
Contract award	19/11/2024

PUBLIC CONTRACTS REGULATION 2015

Earliest Contract Commencement Date	03/12/2024
End of Contract	2 year term

5.2 Overview of the Procurement Event

- 5.2.1 Cabinet Office (GDS) is undertaking a single stage SQ/ITT, and will evaluate all Candidates for ITT that provide SQ compliant responses and successfully “pass” all of the pass/fail questions.
- 5.2.2 Cabinet Office (GDS) will carry out a single stage tender process.
- 5.2.3 Should (i) the Participant find omissions, discrepancies or inconsistencies in the Procurement Documents; (ii) the meaning or intent of the Procurement Documents be unclear or illegible; or (iii) the Participant otherwise wishes to raise any question or assumption in respect of these Instructions to Participants or associated Procurement Documents, the Participant shall promptly seek clarification from Cabinet Office (GDS) in accordance with these Instructions to Participants.
- 5.2.4 SQ responses and all tender responses must be submitted by the dates and times stated in the Procurement Event Timetable. Participants are advised that they should leave sufficient time to answer all questions and email any documents, in each case as required by these Instructions to Participants, to the email address specified, prior to the relevant deadline date and time. Responses which are received after the dates and times stated in the Procurement Event Timetable may be rejected by the Cabinet Office (GDS).
- 5.2.5 All responses shall be evaluated in accordance with the methodology described in these Instructions to Participants and the Criteria and Scoring Document.
- 5.2.6 All responses to the SQ will be used in the selection of prospective Tenderers – detailed instructions in relation to the SQ/ITT stage are set out in the attached, ‘WP2248.1 & WP2248.2 Scoring Guidance.’
- 5.2.8 All Tenderers shall be notified in writing of the outcome of the tender process once the evaluation of tenders has been concluded.
- 5.2.9 The Participant’s attention is drawn to the fact that, by issuing the Procurement Documents, Cabinet Office (GDS) is not entering into any contract with the Participant (express or implied) and is in no way committed to awarding any contract and reserves the right to cancel the Procurement Event at any point. Cabinet Office (GDS) shall not be liable for any costs resulting from any cancellation of this Procurement Event nor for any other costs incurred by those expressing an interest in, submitting an SQ/ITT response or negotiating or tendering for this opportunity.
- 5.2.10 All costs and expenses incurred by the Participant in the preparation and submission of its responses, including any inspections and attendance at meetings, or otherwise incurred up to the date of any Contract award (whether or not successful) shall, without exception, be borne by the Participant.
- 5.2.11 The Participant must not commit to any investment in either assets or labour until the Contract is formally executed by both parties. Any such costs or investments (howsoever arising) which are incurred before the formal execution of the Contract shall be at the Participant’s sole risk and responsibility and Cabinet Office (GDS) shall have no liability for any such costs or investments.

PUBLIC CONTRACTS REGULATION 2015

5.2.12 FAILURE TO COMPLY WITH THE TIMESCALES, FULLY COMPLETE THE DOCUMENTS, PROVIDE ALL THE INFORMATION REQUIRED OR MEET ANY OF THE REQUIREMENTS IN THE PROCUREMENT DOCUMENTS, OR ANY MISREPRESENTATION OF INFORMATION BY THE PARTICIPANT OR FAILURE TO COMPLY WITH Cabinet Office (GDS)' CONFIDENTIALITY REQUIREMENTS FOR WHATEVER REASON, MAY RESULT IN THE PARTICIPANT'S EXCLUSION FROM THIS PROCUREMENT AND THEIR RESPONSE NOT BEING CONSIDERED BY Cabinet Office (GDS).

6 General Instructions

6.1 Compliance

All responses must be completed in English using the appropriate response boxes provided and they must be submitted as described in these Instructions to Participants.

6.2 If you are intending to use acronyms (other than those already used by Cabinet Office (GDS) in the Procurement Documents) you must, in the first instance in your response to each question, define the acronym in that response.

6.3 Participants are required to limit the number of characters/words/ A4 pages (including spaces) per answer as detailed in the attached, 'WP2248.1 & WP2248.2 Scoring Guidance,' unless instructed otherwise, in writing or approved to do so via tender clarification by Cabinet Office (GDS), for a given question. Any narrative in excess of the stated limits or which otherwise contravenes the instructions from Cabinet Office (GDS) will be disregarded and will not be considered as part of your response. Any supporting information submitted by the Participant, where explicitly requested within the question, should be attached and presented in the same sequence order as and referenced to the relevant question. Any words within figures must be legible when printed.

6.4 The contents of any supporting information will count towards the specified limitation on characters/words/pages unless Cabinet Office (GDS) expressly states otherwise. In calculating the response against any specified limit, the Participants response shall be considered in the order set out below, unless instructed otherwise by Cabinet Office (GDS):

- Provided text field response; followed by
- Attachments
- The character/word count shall be carried out using MS Word 2010 to verify the number of words used.

6.5 Supporting documents may be provided by the Participant only if requested by the question to support their answer for specific questions and shall be clearly numbered to reference the relevant question that it is supporting. It is the supplier's responsibility to ensure the attachments are correct for each question. Cabinet Office (GDS) are not responsible for checking the attachments submitted. Please ensure the attachments are named clearly (Supplier and question number) both as the document title and within the document text.

6.6 Where multiple attachments are submitted in response to a specific question, the Participant must reference the order in which the attachments should be considered by numbering them sequentially. In the absence of any numbering applied by the Participant, the supporting information attached shall be reviewed, and character count/word/page limit applied, based on the order in which the attachments were uploaded by the Participant.

6.7 For the avoidance of doubt, the use of pictures or charts or diagrams outside of the character count/word/page limit will not be accepted as supporting information, and will be disregarded, unless explicitly requested by the Cabinet Office (GDS).

PUBLIC CONTRACTS REGULATION 2015

6.8

Participants may respond to this call for competition published in Find a Tender as a single supplier or group of suppliers (whether a consortium (including joint venture) or a prime contractor relying on sub-contractors to meet the SQ requirements) – each type of bid team is referred to as a Candidate and any Candidate may also rely on the capacity of other third parties (e.g. parent companies) to meet the requirements of the SQ and be shortlisted to tender. Candidates must read all instructions carefully as where a bid team comprises multiple parties, certain questions within the SQ require an individual response (which may be multiple individual responses where more than one party is involved in the bid team) whereas other questions require single composite responses from the team as a whole. All Participants are required to immediately inform Cabinet Office (GDS) of any changes to information it provided at SQ stage, including to parties within the bid team or which are relied upon, at any time during this Procurement Event.

6.9

Participants should answer all questions as accurately and concisely as possible.

6.10

Participants are required to submit all communication, including clarifications and responses and all submissions as part of this Procurement Event, via email to GDS-Digital-Buyer@digital.cabinet-office.gov.uk and, if using attachments, in a format capable of being reviewed in Google docs.

6.11

The Participant shall not contact Cabinet Office (GDS) (including any of its advisors) in connection with this Procurement Event other than via email unless instructed otherwise in writing by Cabinet Office (GDS).

6.12

The Participants shall be solely responsible for ensuring their responses are correctly submitted. It will not be possible to submit a response after the deadlines stated in the Procurement Event Timetable unless all Participants have been notified otherwise in writing by Cabinet Office (GDS).

6.13

All financial data is to be provided in pounds sterling (exclusive of Value Added Tax) unless otherwise requested.

7 Confidentiality

7.1

The Procurement Documents, any addenda thereto, any clarifications issued by Cabinet Office (GDS) and any contact details provided by Cabinet Office (GDS) are confidential, contain proprietary information and intellectual property belonging to Cabinet Office (GDS), and may not be wholly or partially reproduced or disclosed to third parties (including incorporation within any mailing lists) without the prior permission of Cabinet Office (GDS), other than for the purposes of preparing a response to this Procurement Event, in which case such third party shall be made subject to the same confidentiality obligation. The Procurement Documents shall remain the property of the Cabinet Office (GDS).

7.2

By electing to submit a response and accepting these Instructions to Participants, the Participant (including all entities which are being relied upon to meet the requirements of the SQ/ITT and, where the Participant is a group of suppliers, all entities that make up that group, as applicable) signifies its agreement to keep and maintain the information contained in the Procurement Documents (including any addenda thereto, any clarifications or contact details issued by Cabinet Office (GDS)) confidential. This obligation shall survive the Procurement Event and shall apply whether the Participant is successful or not. Any Participant which does not intend to submit a response shall be subject to the same confidentiality obligations hereunder. Cabinet Office (GDS) reserves the right to require Participants to enter into a confidentiality agreement.

PUBLIC CONTRACTS REGULATION 2015

7.3

Any public announcement concerning the Procurement Event or award of the Contract shall only be made by Cabinet Office (GDS). No Participant will undertake any publicity activities with any part of the media in relation to this procurement or any Contract awarded related to this Procurement Event without the prior written agreement of Cabinet Office (GDS), including agreement on the format and content of any publicity.

7.4

In the event of any breach of confidentiality, Cabinet Office (GDS) reserves its rights at law to seek to recover its losses arising from such breach and to exclude the relevant Participant responsible for the breach (with each Participant being deemed to be responsible for any breach of confidentiality by any entity being relied upon or which forms part of its bid team, as described above) from continuation in the Procurement Event.

8 Conflicts of interest

8.1

Cabinet Office (GDS) requires that conflicts of interest (where there is a known or perceived conflict or potential conflict, commercial, professional or personal, between the interests of Cabinet Office (GDS) and any party engaged by Cabinet Office (GDS) whether direct (supplier or contractor) or indirect (e.g. sub-contractor or another supplier within the same group structure) are avoided.

8.2

It is the responsibility of the Participant to ensure that any person or company engaged directly or indirectly in connection with the preparation of any response to these Instructions to Participants does not have, and could not reasonably be seen to have, any conflict of interest in connection with Cabinet Office (GDS) and this Procurement Event or the proposed Contract.

8.3

Steps should be taken by the Participant to identify all such persons, companies or other entities assisting the Participant and/or engaged or proposed to be engaged in its proposals and/or submissions in connection with this Procurement Event who:

- (a) have knowledge of the subject matter of this Procurement Event (including the content of any of the procurement documentation) and/or responses required, which has or will have been acquired through previous or concurrent roles or otherwise and/or
- (b) possess or are able to access information relevant to the Procurement Event and/or any responses required,

where such knowledge, possession or access may be regarded as providing a potential unfair advantage over other Participants or may otherwise distort competition. Any such persons or entities shall be regarded to have a potential conflict of interest for the purpose of the provisions of this ITP.

8.4

Participants are required to notify Cabinet Office (GDS) immediately of any actual, potential or perceived conflicts of interest (including without limitation all such cases mentioned in this Section 6.3) that arise at any stage during the Procurement Event and on an ongoing basis. If an actual, potential or perceived conflict is identified, the Participant will be required to demonstrate to Cabinet Office (GDS)'s satisfaction that it is able to manage the risk or potential or perceived risk without prejudice to this Procurement Event or the proposed Contract. This will include the Participant providing details of appropriate measures implemented or to be put in place by the Participant such as information barriers and ring-fencing of teams for Cabinet Office (GDS) to consider.

8.5

The Participant (and (i) all entities relied upon to meet the requirements of the pre-qualification stage and forming part of the Participant's group; and (ii) where the Participant is a consortium, all members of the consortium, as applicable) are required to

PUBLIC CONTRACTS REGULATION 2015

certify that there are no actual, potential or perceived conflicts of interest and undertake to notify Cabinet Office (GDS) immediately on becoming aware of such.

8.6

Cabinet Office (GDS) may require any Participant to provide evidence to confirm compliance and a Participant shall comply with such requirement promptly.

8.7

Cabinet Office (GDS) reserves the right at its sole discretion to disqualify or reject Participants (or require the exclusion of the relevant organisation as appropriate in the circumstances) where:

- (c) there is an actual, potential or perceived conflict of interest involving the Participant (and/or any person or company engaged directly or indirectly in connection with the preparation of the relevant response); and/or
- (d) there is a failure to meet the obligations set out in this Section 6.3 including, for the avoidance of doubt, a failure to notify Cabinet Office (GDS) of any actual, potential or perceived conflicts of interest and/or a failure to provide evidence of compliance with this Section 6.3 where requested by Cabinet Office (GDS).

9 Rights and disclaimers

9.1

Whilst reasonable endeavours have been made to provide accurate information, Cabinet Office (GDS) does not give any warranty as to the accuracy or completeness of the information provided as part of the Procurement Event.

9.2

Cabinet Office (GDS) has the right to change any aspect of or terminate the Procurement Event at any time and reserves the right to abandon all or part of the Procurement Event or consider alternative procurement options. Under no circumstances shall Cabinet Office (GDS) incur any liability in respect of the SQ/ITT or arising from participating in this Procurement Event regardless of whether any Contract is awarded or otherwise nor any liability arising from amendments to, suspension or any cancellation of this Procurement Event.

9.3

The responses to the SQ/ITT will be used in the selection of Candidates for award of contract. However, the invitation for Candidates to participate in the SQ/ITT does not imply any acceptance by Cabinet Office (GDS) of the Participant's financial stability, technical competence or ability in any way to carry out the requirements. Cabinet Office (GDS) reserves the right to return to these matters at any stage of the Procurement Event.

9.4

When responding to the SQ/ITT, the Participant (including all entities which are being relied upon to meet the requirements of the SQ/ITT, as the case may be, and, where the Participant is a group of suppliers, all entities that make up that group, as applicable), grants Cabinet Office (GDS) and Cabinet Office (GDS)'s advisers a licence to copy, distribute and make available the information in its responses for the purposes of evaluating their suitability to participate in the subsequent tender process stage(s) and/or be awarded the Contract. Cabinet Office (GDS) and Cabinet Office (GDS)'s advisors do not intend to use the information supplied for any other purpose (but reserves its rights expressly set out in this ITP).

9.5

Participants are advised that nothing within the Procurement Documents, nor any communication made between them and Cabinet Office (GDS) or Cabinet Office (GDS)'s representatives shall be taken as constituting an offer to contract, or a contract or agreement.

9.6

The notices, reservations and conditions set out in these Instructions to Participants shall apply equally to any third party consulted by the Participant, and it is the Participant's responsibility to ensure that such third party abides by the terms of the Procurement Documents.

PUBLIC CONTRACTS REGULATION 2015

9.7

Where any of the Procurement Documents are provided in electronic form, Cabinet Office (GDS) does not warrant that the files are suitable for use on the Participant's computer system.

9.8

Cabinet Office (GDS) reserves the right to revise these Instructions to Participants and/or any associated Procurement Documents and, should Cabinet Office (GDS) choose to do so, all Participants will be notified at any time during the Procurement Event via FATS or email, dependant on the stage of tender, of any such revision, by way of addendum and/or revised documentation. Cabinet Office (GDS) may also issue written amendments/clarifications to the Procurement Documents by means of consecutively numbered amendments, through FATS or via email.

9.9

Cabinet Office (GDS) reserves the right to accept any tender in whole or in part, reject any or all tenders, and to negotiate with any or none of the Tenderers. Cabinet Office (GDS) does not bind itself to accept the lowest or any tender.

9.10

Participants are reminded that Cabinet Office (GDS) must be notified immediately of any changes, or proposed changes, in relation to information provided by a Participant in their responses (including in relation to the bidding entity e.g. consortia members or any entity permitted to be relied upon to meet SQ/ITT requirements) so that a further assessment (including, where relevant, an assessment against the selection criteria) can be carried out. Cabinet Office (GDS) reserves the right at any time to (1) eliminate a Participant or (2) require replacement of any entity on whom the Participant is relying, prior to any award of contract, either based on an assessment of the updated information where that assessment is carried out in accordance with the criteria originally set out in the Procurement Event or where a Participant fails to disclose any such change.

9.11

The Contract will also contain a right for Cabinet Office (GDS) to terminate where the contractor has, at the time of contract award, been in one of the situations covered by Mandatory Exclusion Questions set out in the SQ.

10 Communication with Cabinet Office (GDS)

10.1

All responses and/or communications received from the Participant will be treated in the strictest confidence in accordance with these Instructions to Participants. However, in the interests of transparency, Cabinet Office (GDS) intends to disclose, in a suitably anonymised form to all relevant Participants, all queries received from Participants and Cabinet Office (GDS)'s responses. Queries received and Cabinet Office (GDS)'s responses provided during the pre-qualification stage will (other than being shared with those engaged by Cabinet Office (GDS) in assessment of the Participant's SQ/ITT) only be shared with Candidates. Queries received and Cabinet Office (GDS)'s responses provided during the tender stage will (other than being shared with those engaged by Cabinet Office (GDS) in assessment of the Participant's Tender, negotiations and/or conclusion of the Contract) only be shared with Tenderers.

10.2

All requests for clarification or further information in respect of the SQ/ITT should be submitted via email to GDS-Digital-Buyer@digital.cabinet-office.gov.uk by the relevant date outlined in the Procurement Event Timetable. No approach of any other kind in connection with the SQ/ITT may be made to any person within, or associated with Cabinet Office (GDS).

10.3

Where a Participant considers that its query is commercially sensitive then this must be clearly highlighted in the submission of the query. If the Cabinet Office (GDS) considers, in its absolute discretion, that it is able to treat a query as confidential then it will do so. However, if the Cabinet Office (GDS) considers, in its absolute discretion, that it is unable to treat the query on a confidential basis (whether in whole or part), then it will notify the Participant and provide the Participant with an opportunity to withdraw its query. If the Participant does not

PUBLIC CONTRACTS REGULATION 2015

withdraw its query Cabinet Office (GDS) will respond and where appropriate disclose that response to all Participants.

10.4

Any queries received by Cabinet Office (GDS) after the clarification deadlines defined in the Procurement Event Timetable may not be answered and may be disregarded.

10.5

Cabinet Office (GDS) may also issue written amendments/clarifications to the procurement documentation by means of consecutively numbered amendments.

10.6

Cabinet Office (GDS) may be required to disclose information connected to the Procurement Event (which may include information submitted by the Participants) pursuant to the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR) and/or the Regulations:

- (e) where a Participant considers that any of the information provided in its response is commercially sensitive then this should be clearly marked as **“Commercially Sensitive – Not for Disclosure”** together with a valid justification in support of the information being exempt from disclosure pursuant to the FOIA or EIR or should be withheld from disclosure pursuant to the Regulations. Information designated by a Participant pursuant to this paragraph should be limited to information which may be genuinely exempt under FOIA and/or the EIR and/or should be withheld under the Regulations (as the case may be). Cabinet Office (GDS) will not accept blanket designations of documents as commercially sensitive;
- (f) if a request is made under FOIA or the EIR or the Regulations, Cabinet Office (GDS) will endeavour to consult with the Participant and have regard to the Participant's comments and any objections before it releases information. However, Cabinet Office (GDS) will determine in its absolute discretion whether any information (in whole or part) is exempt from the FOIA or EIR or should be withheld under the Regulations. Accordingly, Cabinet Office (GDS) cannot guarantee that it will withhold information marked **“Commercially Sensitive – Not for Disclosure”**; and
- (g) Cabinet Office (GDS) will not be held liable for any loss or prejudice caused by any disclosure of information where (i) the information has not been designated by the Participant as commercially sensitive in accordance with paragraph 6.5.6 (a); (ii) the information is not (or Cabinet Office (GDS) has a bond fide belief that it is not) exempt from disclosure under the FOIA or EIR or where it is in the public interest to disclose the information; or (iii) the information does not (or Cabinet Office (GDS) has a bond fide belief that it does not) fall under one of the grounds within the Regulations for withholding information.

10.7

The Participant must only rely on communication conducted in accordance with these Instructions to Participants. Unless instructed otherwise by Cabinet Office (GDS)'s Procurement Lead in writing, the Participant must not rely on any other communication with Cabinet Office (GDS) (or its advisors) whether written or verbal.

11 Non-Collusion and Non-Canvassing

11.1

In submitting a response to the SQ/ITT, the Participant (including, all entities which are being relied upon to meet the requirements of the SQ/ITT, each sub-contractor that is identified and intended to have a Significant Role in delivering key contract requirements and, where the Participant is group of suppliers, all entities that make up that group, as applicable) confirms that it has done so in accordance with these instructions and subject to the following conditions:

- (h) the response shall be a bona fide response and shall not be fixed or adjusted by or in accordance with any agreement or arrangement with any other person;

PUBLIC CONTRACTS REGULATION 2015

- (i) the Participant shall not communicate to any person the amount, or approximate amount, of the tender, or proposed tender, except where the disclosure in confidence of the approximate amount of the tender is necessary to obtain insurance premium or bond quotations required for the purpose of the tender;
- (j) the Participant shall not enter into any agreement or arrangement with any other person so that the other person shall refrain from responding or as to the amount of any other tender to be submitted; and
- (k) the Participant shall not offer to pay or agree to pay or give any sum of money or consideration directly or indirectly to any person for doing or having done or causing in relation to the Procurement Event any act or thing of a nature described in the preceding conditions.

11.2

In the event of any non-compliance with the above, Cabinet Office (GDS) will be entitled at its discretion to disqualify the Participant from any further participation in this Procurement Event or (as the case may be) terminate any contract or agreement entered into by Cabinet Office (GDS) pursuant to this Procurement Event and to claim damages from the Participant.

11.3

Any Participant (including any person employed or engaged by the Participant, whether or not acting with the Participant's knowledge) who, in connection with this Contract:

- offers any inducement, fee or reward to any member, director or employee of Cabinet Office (GDS) or to any person acting as an agent, consultant or advisor to Cabinet Office (GDS); or
- does anything which would constitute a breach of the Bribery Act 2010,

will be disqualified from this Procurement Event (without prejudice to any other civil remedies available to Cabinet Office (GDS) and without prejudice to any criminal liability which such conduct by a Participant may attract).

11.4

Cabinet Office (GDS) will treat all Participants equally during this Procurement Event and will not provide information in a discriminatory manner which may give some participants in the Procurement Event an advantage over others. Therefore, any Participant (including any person employed or engaged by the Participant, whether or not acting with the Participant's knowledge) who, in connection with this Contract contacts any member, director or employee of Cabinet Office (GDS) or any person acting as agent, advisor or consultant to Cabinet Office (GDS) prior to the contract being awarded about any aspect of the Procurement Event (including without limitation a contact for the purposes of discussing the possible transfer to the employment of the Participant of such employee) where such contact is not permitted by the Procurement Documents may be disqualified from this Procurement Event. This is without prejudice to any other civil remedies available to Cabinet Office (GDS) and without prejudice to any criminal liability which such conduct by a Participant may attract.

PUBLIC CONTRACTS REGULATION 2015

12 TUPE

- 12.1 TUPE provides that where there is a transfer of an undertaking, the new employer takes over any employment liabilities and the responsibility for the employment contracts of the employees, who then transfer on their previous terms and conditions of service. A successful Tenderer may be a potential transferee for the purposes of TUPE. For more information please see [TUPE: guide to 2006 regulations - GOV.UK \(www.gov.uk\)](http://www.gov.uk/guidance/tupe-guide-to-2006-regulations)
- 12.2 Tenderers are advised to seek independent professional advice on the Tenderer's liabilities under the TUPE Regulations.
- 12.3 Tenderers should note that the current staff of the incumbent supplier may be eligible for transfer to the employment of any successful tenderer, under the provisions of Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 (as amended). More information on this matter, including details of workforce data shall be provided at the tender Stage.
- 12.4 Information is confidential and commercially sensitive. It is provided by the incumbent suppliers to Cabinet Office (GDS) and shared in good faith as part of the ITT. This information must not be shared with any third parties at any time. The data represents a fixed point in time and may be subject to amendment. Cabinet Office (GDS) are not responsible for the accuracy of this information. Cabinet Office (GDS) is not responsible for running the TUPE process, it is the responsibility of the incoming or outgoing suppliers.

13 Assessment and Scoring

- 13.1 In the first instance, each of the evaluators will assess whether the response submitted contains the information to show a Pass or a Fail or where the question is scored, assess the response and allocate a score to be awarded in accordance with the relevant scoring methodology for that question (as indicated in the Scoring Guidance Document) and provide a rationale for each response independently. Following completion of the independent evaluation by each evaluator, a process of moderation will take place.
- 13.2 In applying the scoring methodology set out in the Criteria & Scoring document for each response, each evaluator will score the response to the question on the basis of allocating the highest score for which they consider the response meets all the elements required to be satisfied in the description for that score. For example, where the response does not meet all those elements required to satisfy the description for the score of 3 (exceeded), then the evaluator will continue the process of considering the response against the description of the next lower score and so on until they are satisfied that all the elements required to satisfy the description of the relevant score are met by the response.
- 13.3 The moderation process, facilitated by a moderator and attended by every evaluator for the relevant question, will result in a consensus opinion on whether the relevant response has passed or failed the relevant SQ/ITT requirement or the score that the response is assessed as achieving (as relevant to the question) and rationale being agreed between all evaluators for each opinion or score. Where a response is deemed to have failed a relevant SQ/ITT requirement then Cabinet Office (GDS) shall be entitled to discontinue evaluation of that SQ response and exclude the Candidate.
- 13.4 Each agreed score and rationale for the scored questions in the SQ/ITT will be used in the scoring of that Candidate's SQ/ITT responses. Scores will be weighted according to the weighting of the question provided in the Criteria & Scoring Document and the weighted scores will be rounded to two decimal places.

PUBLIC CONTRACTS REGULATION 2015

- 13.5 In evaluating the Tenderers' responses, Cabinet Office (GDS) will seek the most economically advantageous tender or tenders, having regard to the award criteria and weightings set out in the Criteria and Scoring Document.
- 13.6 All tender prices and rates shall be submitted to the level of detail required by the pricing document, in pounds sterling, exclusive of Value Added Tax.
- 13.7 Tenderers may be required to answer queries, provide further information regarding their submissions and attend clarification and negotiation meetings as necessary to enable Cabinet Office (GDS) to identify the most economically advantageous offers. Tenderers should note that they are responsible for ensuring they submit a complete, accurate and compliant tender. Tenderers should avoid including assumptions and are encouraged to raise any clarification questions in relation to any proposed assumptions via the process in Section 6.5 of this ITP. Cabinet Office (GDS) reserves the right to reject any Tenders that are incomplete, do not comply with the requirements of this ITP, are not submitted in accordance with the instructions in this ITP and/or are submitted after the deadline for submission.
- 13.8 Should a genuine error be discovered in the Tenderer's pricing during the evaluation period, Cabinet Office (GDS) may, but will not be obliged to, give the Tenderer the opportunity of confirming its offer or amending it to correct the error but it is the responsibility of each Tenderer to avoid errors. Cabinet Office (GDS) shall not have any responsibility for identifying errors in the Tenders nor should any Tenderer make any assumption that it shall have any opportunity to confirm or amend its offer nor will it have any entitlement to require such opportunity.
- 13.9 When considering which tender is the most economically advantageous, Cabinet Office (GDS) will take into account any costs it reasonably expects to incur in association with the Tenderer's proposal, including, without limitation, any Cabinet Office (GDS) supplied resources, facilities, accommodation, railway possessions or additional management.
- 13.10 Where there is a need to normalise tenders for comparison purposes, Cabinet Office (GDS) will provide details of the proposed adjustment to the Tenderer prior to the relevant Tender being adjusted.
- 13.11 All Tenders which are complete, compliant and submitted on time shall be evaluated (unless it becomes apparent that the Participant does not satisfy the relevant selection criteria or grounds for exclusion are found to exist) in accordance with the relevant evaluation criteria set out in the Criteria & Scoring document.
- 13.12 Each Tender response to a question set out in the SQ and ITT, including Technical Envelope, Commercial Envelope and Social Value Envelope will be evaluated by a team of evaluators. The same team will evaluate each Tenderer's response to a specific question but there will be a variety of evaluation teams with the specific team being chosen by Cabinet Office (GDS) based on their knowledge and expertise in the area being tested by the specific question. The evaluation teams will only have regard to the information supplied by a Tenderer in relation to the specific question which they are evaluating (unless otherwise expressly stated to the contrary in the Criteria & Scoring document). Each evaluator within the relevant team will initially review the response from a Tenderer and evaluate and provide an initial score for the response independently. The evaluator may raise clarification questions to be raised with the Tenderer which will be communicated by Cabinet Office (GDS) to the relevant Tenderer, who must respond within the time indicated by Cabinet Office (GDS).

PUBLIC CONTRACTS REGULATION 2015

13.13

Once each Tenderer's response to the question has been initially evaluated by each member of the evaluation team chosen for that question, the evaluators will attend a moderation meeting arranged by Cabinet Office (GDS) which will be managed by a person appointed by Cabinet Office (GDS) for the purpose of performing the role of moderator.

13.14

The purpose of the moderation will be to reach a consensus view on the scoring of each Tender which means that when the evaluators have different views on the score a response to a question should achieve, these will be discussed in the moderation meeting with the intention of achieving a consensus.

13.15

The commercial submission from a Tenderer will be evaluated in accordance with the Criteria & Scoring Document by a separate team.

13.16

The moderated scores achieved by a Tenderer will have the appropriate weighting applied and then a total technical (Pass/Fail), commercial and social value score determined in accordance with the weightings applied to each envelope. The aggregated score for each Tender will be rounded to two decimal places. By way of example only:

- a score of 6.342 will be rounded to 6.34;
- a score of 6.348 will be rounded to 6.35; and
- a score of 6.355 will be rounded to 6.36.

13.17

The aggregate scores of each Tender will be used to rank the Tenders in numerical order in accordance with the Criteria & Scoring document.

13.18

In the event of two or more Tenderers achieving identical total ITT scores for their tender to two decimal places, the following tests shall be applied (in descending order) until the successful tenderer is identified:

- a. The Tenderer with the highest Commercial score shall be deemed to be the successful tenderer. Where there is still a tie;
- b. The Tenderer with the highest Social Value score shall be deemed the successful tenderer. Where there is still a tie;
- c. The Tenderers will be invited to a presentation stage that will be scored in isolation. The scores achieved by the participating tenderers at the presentation stage will be the decisive factor in subsequent award of contract.
 - Tenders will be scored on Functionality (10%), Performance (30%), Infrastructure (20%), Information Security (20%) and Resilience (20%) should this situation arise.

13.19

Where the pricing of a Tender appears to be abnormally low, Cabinet Office (GDS) shall require the relevant Tenderer to explain the price or costs proposed in the Tender pursuant to and in accordance with the Regulations. Where the evidence supplied by the Tenderer does not satisfactorily account for the low level of price or costs proposed, Cabinet Office (GDS) reserves the right to reject the Tender.

PUBLIC CONTRACTS REGULATION 2015

13.20

No zero value bids will be accepted for the total of any section of the Commercial Envelope which is evaluated on a proportional Vs best basis. Any zero value bids submitted by a Tenderer will be by default changed to a nominal £1 value.

13.21

Due Diligence

Cabinet Office (GDS) intends to:

- undertake checks to ensure that the successful Tenderer (and all relevant entities required to complete the SQ/ITT as part of the Tenderer bid team) continues to meet the selection criteria set out in the SQ/ITT. Cabinet Office (GDS) reserves the right, in its sole discretion, to exclude a Tenderer prior to award where it fails to meet the selection criteria or, if as a result of changes occurred, the Tenderer would not have been selected to submit a Tender; and
- undertake checks, where a successful Tenderer comprises a group of entities (including consortia, joint ventures or other group and/or any subcontractors relied upon for the purposes of meeting the SQ criteria), to ensure that there is evidence of written agreements or other inter-party arrangements between the parties that confirm commitments to deliver the relevant services under the Contract.

14 SQ/ITT Confidentiality

14.1

When providing details of contracts in answering SQ/ITT questions regarding technical and professional ability, the Candidate agrees to waive any contractual or other confidentiality rights and obligations associated with these contracts.

Cabinet Office (GDS) reserves the right to contact each customer named in a Candidate's SQ/ITT response regarding technical and professional ability. The named customer does not owe Cabinet Office (GDS) any duty of care or have any legal liability, except for any deceitful or maliciously false statements of fact.

Cabinet Office (GDS) confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer, other than to its employees, contractors, agents and professional advisers, the Department for Transport, the Cabinet Office and/ or contracting authorities defined by the Regulations and/or as required by law.

PUBLIC CONTRACTS REGULATION 2015**Invitation to Tender Specific Instructions****15 Submission**

15.1

This section of the Instructions to Participants sets out detailed instructions in relation to the tender stage of this Procurement Event and the submission of tenders. The instructions in this Section 8 must be read in conjunction with the remainder of the Instructions to Participants document.

15.2

The Tenderers must respond, in full, to the Tender Documents as required by Cabinet Office (GDS) by the deadline specified in the Procurement Event Timetable or communicated through Find A Tender Service (FATS) (if these dates are not the same, the dates communicated through Find A Tender Service (FATS) shall take precedence).

15.3

By preparing and submitting a tender, the Tenderer represents that it has read, fully understands and agrees to abide by the requirements of these Instructions to Participants and associated Procurement Documents, has familiarised itself with the Procurement Event and any particular conditions under which the Contract is to be performed and has allowed for all such conditions within its tender.

16 Tender Documents

16.1

The Invitation to Tender comprises the following documents:

- (a) Instructions to Participants (ITP)
- (b) Scoring Guidance
- (c) Selection Questionnaire
- (d) Technical Envelope
- (e) Commercial Envelope
- (f) Social Value Envelope
- (g) Draft Contract

16.2

The completed tender should comprise the following submission documents:

- (a) Selection Questionnaire (including signed declaration(s))
- (b) Technical Envelope
- (c) Commercial Value Envelope
- (d) Social Value Envelope

17 Compliant Tenders and Negotiations

17.1

Cabinet Office (GDS) requires receipt of fully compliant tenders without qualification and strictly in accordance with the terms and conditions of the Procurement Documents. Cabinet Office (GDS) reserves the right to reject the Tenderer's offer if it is determined by Cabinet Office (GDS) to be non-compliant.

17.2

As with any procurement exercise, a bidder in submitting its price for evaluation does so in acceptance of all business risks and circumstances arising from time to time.

17.3

The tender period provides Tenderers with the opportunity to raise any questions of Cabinet Office (GDS) via email. Where the Tenderer feels unable to comply with the requirements of Cabinet Office (GDS) (including the terms and conditions of the Contract (the "Contractual

PUBLIC CONTRACTS REGULATION 2015

Terms")) under any circumstances, or at any price, Tenderers are advised to promptly seek clarification in accordance with the requirements in Section 6.5 prior to the relevant deadline specified in the Procurement Event Timetable.

17.4

Cabinet Office (GDS) will only consider questions raised by Tenderers in accordance with Section 6.5 above during the tender period, and reserves the right (in its discretion) to maintain its documentation as drafted or to issue amendments or updates to its documentation or this procurement process.

17.5

Where qualifications are made within a Tenderer's submission (whether it relates to a new issue which was not raised by the Tenderer during the tender period or arises from an issue which was raised but has not been addressed by an amendment or update issued by Cabinet Office (GDS)), Cabinet Office (GDS) reserves the right to treat the Tenderer's offer as non-compliant.

17.6

Tenderers should note that issues raised after Tender submission (at any time up to signature of the Contract in response to a clarification question from Cabinet Office (GDS) or otherwise may also result in Cabinet Office (GDS) taking such information into account in its evaluation of the Tenderer's submission, revisiting the evaluation of the Tenderer's submission and the overall evaluation outcome (including implementation of any consequences of that reviewed outcome) and/or may result in a Tenderer being disqualified from the procurement process.

18 Contractual Terms:

18.1

The Contractual Terms have been carefully developed and Cabinet Office (GDS) does not therefore expect comments or requests for amendments to, or a mark-up of the Contractual Terms and the Tenderer will be expected to sign up to the Contractual Terms in the same form as included as part of the Procurement Documents.

18.2

Cabinet Office (GDS) may hold clarification meetings with Tenderers to discuss any issues raised prior to tender submission.

18.3

Where Tenderers raise questions or issues in relation to the Contractual Terms, Cabinet Office (GDS) will consider these and reserves the right (in its discretion) to maintain its documentation as drafted or to amend or update the Contractual Terms and reissue these to all Tenderers prior to the tender deadline.

18.4

The Tenderer is required to confirm as part of its tender submission, the Tenderer's acceptance of the Contractual Terms (as issued with the Procurement Documents or as may be updated by Cabinet Office (GDS) as described above) and its acceptance to enter into a contractual relationship on such terms.

18.5

If the tender submission qualifies or marks up the Contractual Terms (as issued with the Procurement Documents or as may be updated by Cabinet Office (GDS) as described above), such submission may be deemed to be non-compliant resulting in disqualification of that Tender from this Procurement Event.

18.6

Cabinet Office (GDS) is conducting this procurement pursuant to the competitive procedure with negotiation as provided for by the Regulations. Cabinet Office (GDS) may elect to hold one or more negotiation stages following the receipt and the evaluation of tenders. The objective of these negotiations is to allow Tenderers to develop and/or improve the content of their Tender and develop their best solution for delivering the services which form the subject matter of the Contract.

18.7

Cabinet Office (GDS) intends to keep any negotiations narrowly focused on specific areas of the commercial proposals.

18.8

PUBLIC CONTRACTS REGULATION 2015

As part of any negotiation stage, Cabinet Office (GDS) may require the Tenderers to submit an interim updated Tender for Cabinet Office (GDS) to understand the current position in relation to the proposed solution. Separate instructions in relation to such interim submission will be issued at the time of the request and the Tenderers will be required to comply with such instructions with regards to the resubmission of all or parts of their Tender.

18.9

Nothing said or intimated by or on behalf of Cabinet Office (GDS) at any negotiation meeting with Tenderers will be deemed to constitute approval of any proposal, or an acceptance of its adequacy in meeting Cabinet Office (GDS)'s requirements or represent an indication of how the proposal will score. Cabinet Office (GDS) will endeavour to indicate through this feedback approach if it believes that the proposals are unlikely to meet Cabinet Office (GDS)'s requirements but any failure to do so will not constitute or be deemed to constitute approval of any proposal or an acceptance of its adequacy in meeting Cabinet Office (GDS)'s requirements. Formal evaluation will only take place following the final Tender submission when Cabinet Office (GDS) is in a position to fully understand and assess the technical and commercial submission as a whole.

18.10

Tenderers are reminded that Cabinet Office (GDS) reserves the right to award a contract on the basis of tenders received without conducting negotiations.

19 Variant Tenders

Variant Tenders

- o Variant tenders are only permitted if a Tenderer also submits a compliant tender
- o In addition to providing a compliant tender, the Tenderer is permitted to put forward variant tenders for Cabinet Office (GDS)'s consideration where it can be demonstrated that significant benefits in terms of time, cost (including whole-life costs), are offered. Variant tenders must meet the minimum requirements set out in the Procurement Documents.
- o Variant tenders must clearly state what the modifications are and what their significance is compared with a compliant tender. Variant tenders should be clearly labelled as such and, for ease of reference, submitted separately to your compliant tender documents.
- o Any compliant variant tender will be assessed on its own merits applying the same evaluation criteria as will be applied to any other bid.

20 Acceptance of Tenders

20.1

No tender shall be deemed to have been awarded until the execution of a formal written contract.

20.2

If awarded, the Contract will be executed as an Agreement (not as a Deed).

20.3

The Tenderer shall keep its tender open for acceptance by Cabinet Office (GDS) for 6 months from the tender return date.