



Maritime & Coastguard Agency

INSTRUCTIONS FOR TENDERERS

1. The Department looks forward to receiving your tender for the work described in the attached documents. To ensure fairness all tenderers are required to submit their tenders in accordance with these instructions. **Failure to comply could invalidate your tender.**
2. The decision not to submit a Tender should be indicated to the Contract Officer by **e-mail** (contracts@mca.gov.uk). If you are willing to state your reasons this would be appreciated and may help to inform us on future procurement exercises.

SUBMISSION OF TENDERS

3. You should send your tender in a plain envelope, to the address notified in the Invitation to Tender documents. It is your responsibility to ensure your tender arrives, at the address shown no later than the time and date stated in the attached letter (unless the date is subsequently amended in writing by the Department). Your tender may be submitted before the due date.
4. Tenders (including any electronic copies that have been requested) **must not** be submitted by e-mail. The legal status of documents submitted by e-mail has yet to be clarified sufficiently to satisfy the Department's needs to ensure the integrity and probity of the Tender process.
5. **All** late tenders will be rejected. It is your responsibility to ensure that your tender is received on time.
6. The envelope and any other packaging or labelling **should not identify the tenderer**. (You should note that courier firms often put the sender's name and address on their outer envelopes).
7. You must ensure that your tender is completed legibly, in ink or typed, in English, with all prices in Sterling (exclusive of VAT), and is signed and dated where required. Any manuscript amendments you make to your tender, prior to submission, must be initialled and preferably also noted separately. Correction fluid must not be used.
8. The Department will safeguard all tenders received and open them once the tender deadline has expired.

9. You must not alter any of the Department's Invitation to Tender documents.
10. You must ensure that you include as part of your tender all documents requested in the Specification or Invitation to Tender letter. Tenders may not be considered if any of the information requested is not supplied with the tender or the tender is otherwise non-compliant or incomplete.
11. You must not tell anyone else, even approximately, what your tender price is or will be, before the date of contract award. The only exception is if you need an insurance quotation to calculate your tender price - in which case you may give your insurance company or brokers any essential information they ask for, provided that you do so in strict confidence.
12. You must not try to obtain any information about anyone else's tender or proposed tender before the date of contract award.
13. You must not make any arrangements with anyone else about whether or not they should tender, or about their or your tender price. The only exception is where tenderers are considering joint or team bids, which will be allowed providing all participants to the discussions surrounding the bid are clearly stated in the tender response. (See also 'Group Bids' below).
14. Tender documents must not be transferred to anyone (other than the firm named in the Invitation to Tender) without the prior specific approval of the Department in writing.

TENDER VALIDITY

15. The Department will assume that your tender will remain open for acceptance for a minimum of 60 calendar days from the Tender Deadline or for such other period as may be specified by the Department.

GROUP BIDS

16. In the event of a group of suppliers submitting an acceptable offer, the group will be required to nominate a lead partner with whom the Department can contract. Alternatively the group will need to form themselves into a single legal entity before the contract is awarded. An undertaking that the group will so form themselves, if required by the Department, must be provided when the tender is submitted.

ALTERNATIVE TENDERS

17. If you wish you may tender on the basis of an alternative specification but if you do this then you must also submit a separate, primary, tender based strictly on the enclosed specification. Alternative tenders must be fully priced to show clearly how and where costs differ from the primary tender. You should also note that the Department reserves the right to accept an alternative tender without recourse to re-tendering.

ACCESS TO GOVERNMENT INFORMATION

18. Under the Freedom of Information Act 2000 (“FOIA”) and the Environmental Information Regulations 2004 (“EIRs”), the Department is obliged (subject to the application of any relevant exemptions and, where applicable, the public interest test) to disclose information in response to requests for information.
19. You need to be aware that the Department could receive requests for *any* information relating to this contract. The contract will include provisions to reflect the Department’s obligations under those disclosure regimes. The Department cannot contract out of its obligations in this respect and will only accept confidentiality clauses in very exceptional and narrowly defined circumstances. In this regard, your attention is drawn to the Code of Practice (in particular, section V thereof) issued by the Lord Chancellor under section 45 of the FOIA (section IX of the Code of Practice issued under regulation 16 of the EIRs includes similar guidance).

SPECIFICATION OF STANDARDS

20. Where reference is made to an International, European or British Standard then you may offer an equivalent to any of these, provided that your Standard offers equivalent guarantees of safety, suitability and fitness for purpose to the one specified.

GREEN CLAIMS CODE

21. You must ensure that any environmental claim you make related to your tender is fully in accordance with the Green Claims Code - this is available on the sustainable development website:

<http://www.defra.gov.uk/environment/business/marketing/glc/code.htm>

TENDER COSTS

22. You should note that any expenditure, work or effort undertaken by you prior to the award of a contract is a matter solely for your own commercial judgement. The Department reserves the right to withdraw this tender invitation at any time or to re-invite tenders on the same or any alternative basis. In such circumstances, and in any event, the Department and/or its advisers shall not be liable for any costs or loss of expenses whatsoever incurred by the bidder or any company, agent, subsidiary or organisation who may have contributed to the proposals submitted by the bidder in response to this tender invitation.

ACCEPTANCE OF OFFERS

23. You should note that:-
 - i The Department reserves the right not to accept the lowest, or any, tender.
 - ii The Department reserves the right to accept any part of the tender without accepting the remainder.

- iii Acceptance of a tender/award of contract will be by written communication from the Department.
- iv) Where the tender process has been subject to the full EU Procurement Process, a mandatory 10 day standstill period must be applied between communicating the award decision to tenderers and awarding the contract.
- v) Complaints arising from the tender process should be directed in the first instance to the Procurement Team (contracts@mcga.gov.uk). If you are still aggrieved by the outcome then please refer your complaint to the OGC Service Desk (ServiceDesk@ogc.gsi.gov.uk).

TRADING NAMES/INVOICING

- 24. If your tender is submitted in the name of one organisation but you intend submitting invoices in the name of another, or require payments to be made to another, please give full details. Otherwise there may be delay in payment.

ORDERS

- 25. All orders under the contract will either be placed by means of the Department's official Purchase Forms, examples of which will be supplied to the successful tenderer(s), or as otherwise stated by the Department. Urgent orders may be given orally in accordance with the contract, and will be confirmed in writing.

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS

- 26. The attention of Tenderers is drawn to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (referred to as TUPE 2006). In some cases, where work awarded to a contractor is subsequently awarded to another organisation, such a transfer of work may constitute a "transfer of an undertaking" for the purposes of TUPE.
- 27. TUPE provides that where there is a transfer of an undertaking (or possibly part of one), 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. As a successful tenderer may be a potential transferee for the purposes of TUPE, tenderers should seek legal advice as to whether TUPE will be likely to apply to the proposed contract, and if so, to reflect the financial implications of such a transfer in their tender. In such cases, as the Department will be neither transferee nor transferor for the purposes of TUPE, the application of TUPE is a matter for each tenderer to clarify with their legal advisers. If TUPE is deemed to apply then the financial implications are a matter for discussion between the prospective tenderer and the existing contractor, rather than for the Department.

LEGISLATION ON LATE PAYMENT

- 28. The Department will comply fully with statutory legislation on Late Payment on the basis of claims submitted by the successful tenderer.