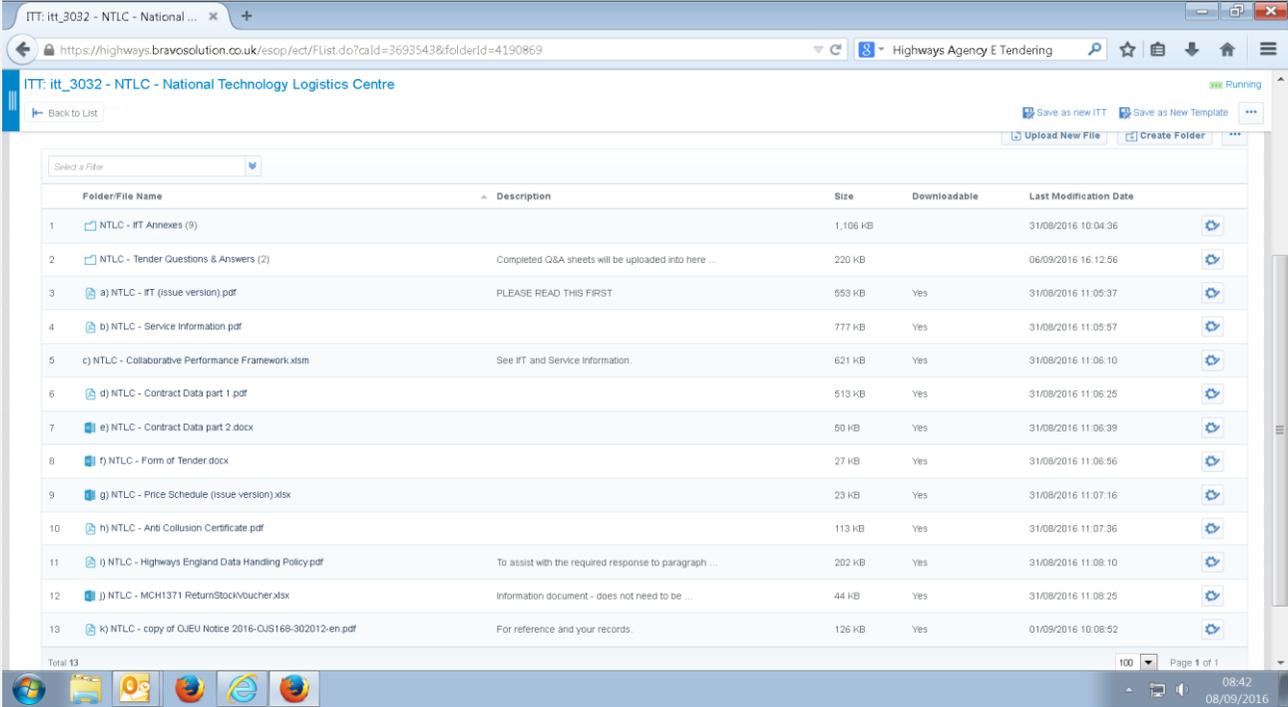


NTLC Tender Questions and Answers Sheet v16 (7 November 2016)

- This sheet will be updated with additional questions and answers as the tender round progresses.
- If any Tender Amendments are required, they will be referenced and summarised on this sheet.
- All questions and answers must be taken into account when completing your tenders.

Q&A no:	Document Reference:	Date Received:	Details:	Date answer issued to tenderers:
1	-	-	<p><u>Highways England Statement:</u> <i>(Updated 6 September)</i></p> <p>TUPE details for the existing “2/1305 - National Distribution Centre” contract <u>are now available on request via the messaging system in Bravo.</u></p> <ul style="list-style-type: none"> • Please be aware that this information is strictly ‘Official Sensitive’ and contains the details of individual XPO members of staff. • When requesting this information, please confirm your understanding of the sensitive nature of this information and your assurance that it will be handled with the appropriate level of care. • The Procurement Officer will then directly message you the details on Bravo. <p><u>Once you have these TUPE details,</u> any questions regarding the these can be made directly to XPO Logistics:</p> <p style="margin-left: 40px;">Nila Patel Supply Chain General Manager - Business Development XPO Logistics Norbert Dentressangle House, Lodge Way, New Duston, Northampton, NN5 7SL</p> <p style="margin-left: 40px;">Nila.Patel@xpologistics.com please carbon copy emma.walker@xpologistics.com</p> <p>This TUPE information must be taken into account when completing your tenders.</p>	<p>31/08/2016</p> <p><i>(Updated 6 September)</i></p>

2	OJEU Notice	-	<p><u>Highways England Statement:</u></p> <p>A copy of the OJEU Notice has been added to the list of documents on Bravo.</p> <p>The OJEU Notice can also be viewed on line here: http://ted.europa.eu/udl?uri=TED:NOTICE:302012-2016:TEXT:EN:HTML&tabId=1</p> <p>The reference number for this is “2016/S 168-302012” and not “2016/S 125-224102” (the PIN reference) as stated in paragraph 1.1.1 of the IfT.</p>	1/09/2016
3		5/09/2016	<p><u>Question:</u></p> <p>Please can you let me know if there is a minimum “balance sheet / assets” requirement for the chosen company?</p>	
	IfT – Annex D		<p><u>Answer:</u></p> <p>Please refer to the Instructions for Tenderers “Annex D - Tender Information Questionnaire (TIQ)”, “Section B - Selection Questionnaire”, sub-section “5. Economic and Financial Standing”.</p>	6/09/2016
4	Q1 above		<p><u>Highways England Statement:</u></p> <ul style="list-style-type: none"> • A reminder to all tenderers that you will need to request the TUPE details of the incumbent Contractor XPO, as per Question 1 above. 	6/09/2016
5	IfT - 1.4.5		<p><u>Tender Presentation & Site Visit</u></p> <p>Further to paragraph 1.4.5 of the IfT (<i>Instructions for Tenderers</i>), please can Tenderers confirm via the Bravo messaging system:</p> <ol style="list-style-type: none"> a) If you would like to attend. b) If so, please also include details of your attendees (up to a maximum of 3 people) <ul style="list-style-type: none"> • Please respond by 17.00 on 13 September 2016* <p><i>*Please still respond if you miss this deadline – and we will see if we can still include you.</i></p> <p>Failure to contact us at all will mean that you will not be able to attend.</p>	6/09/2016

6	Service Information	<i>*a pre ITT question</i>	<p>Question:</p> <p>Please can you let me know where I can find the location graphic?</p>																																																																							
			<p>Answer:</p> <p>The Location Graphic (showing the area where the NTLC must be in) can be found in Annex C of the Service Information.</p> <ul style="list-style-type: none"> Please can all tenderers double check that they have downloaded all of the Tender Documents from Bravo:  <p>The screenshot shows a web browser window with the URL https://highways.bravosolution.co.uk/esop/ect/FList.do?caId=3693543&folderId=4190869. The page title is 'ITT: itt_3032 - NTLC - National Technology Logistics Centre'. Below the title is a table of files:</p> <table border="1"> <thead> <tr> <th>Folder/File Name</th> <th>Description</th> <th>Size</th> <th>Downloadable</th> <th>Last Modification Date</th> </tr> </thead> <tbody> <tr> <td>1 NTLC - ITT Annexes (9)</td> <td></td> <td>1,106 kB</td> <td></td> <td>31/08/2016 10:04:38</td> </tr> <tr> <td>2 NTLC - Tender Questions & Answers (2)</td> <td>Completed Q&A sheets will be uploaded into here ...</td> <td>220 kB</td> <td></td> <td>06/09/2016 16:12:56</td> </tr> <tr> <td>3 a) NTLC - ITT (issue version).pdf</td> <td>PLEASE READ THIS FIRST</td> <td>553 kB</td> <td>Yes</td> <td>31/08/2016 11:05:37</td> </tr> <tr> <td>4 b) NTLC - Service Information.pdf</td> <td></td> <td>777 kB</td> <td>Yes</td> <td>31/08/2016 11:05:57</td> </tr> <tr> <td>5 c) NTLC - Collaborative Performance Framework.xism</td> <td>See ITT and Service Information.</td> <td>621 kB</td> <td>Yes</td> <td>31/08/2016 11:06:10</td> </tr> <tr> <td>6 d) NTLC - Contract Data part 1.pdf</td> <td></td> <td>513 kB</td> <td>Yes</td> <td>31/08/2016 11:06:25</td> </tr> <tr> <td>7 e) NTLC - Contract Data part 2.docx</td> <td></td> <td>50 kB</td> <td>Yes</td> <td>31/08/2016 11:06:39</td> </tr> <tr> <td>8 f) NTLC - Form of Tender.docx</td> <td></td> <td>27 kB</td> <td>Yes</td> <td>31/08/2016 11:06:56</td> </tr> <tr> <td>9 g) NTLC - Price Schedule (issue version).xlsx</td> <td></td> <td>23 kB</td> <td>Yes</td> <td>31/08/2016 11:07:16</td> </tr> <tr> <td>10 h) NTLC - Anti Collusion Certificate.pdf</td> <td></td> <td>113 kB</td> <td>Yes</td> <td>31/08/2016 11:07:36</td> </tr> <tr> <td>11 i) NTLC - Highways England Data Handling Policy.pdf</td> <td>To assist with the required response to paragraph ...</td> <td>202 kB</td> <td>Yes</td> <td>31/08/2016 11:08:10</td> </tr> <tr> <td>12 j) NTLC - MCH1371 ReturnStockVoucher.xlsx</td> <td>Information document - does not need to be ...</td> <td>44 kB</td> <td>Yes</td> <td>31/08/2016 11:08:25</td> </tr> <tr> <td>13 k) NTLC - copy of OJEU Notice 2016-OJ5168-302012-en.pdf</td> <td>For reference and your records.</td> <td>126 kB</td> <td>Yes</td> <td>01/09/2016 10:08:52</td> </tr> </tbody> </table>	Folder/File Name	Description	Size	Downloadable	Last Modification Date	1 NTLC - ITT Annexes (9)		1,106 kB		31/08/2016 10:04:38	2 NTLC - Tender Questions & Answers (2)	Completed Q&A sheets will be uploaded into here ...	220 kB		06/09/2016 16:12:56	3 a) NTLC - ITT (issue version).pdf	PLEASE READ THIS FIRST	553 kB	Yes	31/08/2016 11:05:37	4 b) NTLC - Service Information.pdf		777 kB	Yes	31/08/2016 11:05:57	5 c) NTLC - Collaborative Performance Framework.xism	See ITT and Service Information.	621 kB	Yes	31/08/2016 11:06:10	6 d) NTLC - Contract Data part 1.pdf		513 kB	Yes	31/08/2016 11:06:25	7 e) NTLC - Contract Data part 2.docx		50 kB	Yes	31/08/2016 11:06:39	8 f) NTLC - Form of Tender.docx		27 kB	Yes	31/08/2016 11:06:56	9 g) NTLC - Price Schedule (issue version).xlsx		23 kB	Yes	31/08/2016 11:07:16	10 h) NTLC - Anti Collusion Certificate.pdf		113 kB	Yes	31/08/2016 11:07:36	11 i) NTLC - Highways England Data Handling Policy.pdf	To assist with the required response to paragraph ...	202 kB	Yes	31/08/2016 11:08:10	12 j) NTLC - MCH1371 ReturnStockVoucher.xlsx	Information document - does not need to be ...	44 kB	Yes	31/08/2016 11:08:25	13 k) NTLC - copy of OJEU Notice 2016-OJ5168-302012-en.pdf	For reference and your records.	126 kB	Yes	01/09/2016 10:08:52	9/09/2016
Folder/File Name	Description	Size	Downloadable	Last Modification Date																																																																						
1 NTLC - ITT Annexes (9)		1,106 kB		31/08/2016 10:04:38																																																																						
2 NTLC - Tender Questions & Answers (2)	Completed Q&A sheets will be uploaded into here ...	220 kB		06/09/2016 16:12:56																																																																						
3 a) NTLC - ITT (issue version).pdf	PLEASE READ THIS FIRST	553 kB	Yes	31/08/2016 11:05:37																																																																						
4 b) NTLC - Service Information.pdf		777 kB	Yes	31/08/2016 11:05:57																																																																						
5 c) NTLC - Collaborative Performance Framework.xism	See ITT and Service Information.	621 kB	Yes	31/08/2016 11:06:10																																																																						
6 d) NTLC - Contract Data part 1.pdf		513 kB	Yes	31/08/2016 11:06:25																																																																						
7 e) NTLC - Contract Data part 2.docx		50 kB	Yes	31/08/2016 11:06:39																																																																						
8 f) NTLC - Form of Tender.docx		27 kB	Yes	31/08/2016 11:06:56																																																																						
9 g) NTLC - Price Schedule (issue version).xlsx		23 kB	Yes	31/08/2016 11:07:16																																																																						
10 h) NTLC - Anti Collusion Certificate.pdf		113 kB	Yes	31/08/2016 11:07:36																																																																						
11 i) NTLC - Highways England Data Handling Policy.pdf	To assist with the required response to paragraph ...	202 kB	Yes	31/08/2016 11:08:10																																																																						
12 j) NTLC - MCH1371 ReturnStockVoucher.xlsx	Information document - does not need to be ...	44 kB	Yes	31/08/2016 11:08:25																																																																						
13 k) NTLC - copy of OJEU Notice 2016-OJ5168-302012-en.pdf	For reference and your records.	126 kB	Yes	01/09/2016 10:08:52																																																																						
7		8/9/2016	<p>Question:</p> <p>“Is this just benchmark and are you happy with your current provider?”</p>																																																																							

			<p><u>Answer:</u> <i>(Updated 19 September)</i></p> <p>This is not a “benchmark”. We can confirm the following:</p> <p style="padding-left: 40px;">This is a replacement Tender/ competition for the National Distribution Centre.</p> <p>Highways England is a government department. As we are spending public money, the Procurement Officer’s role is to sit between the Project Team who requires this (or other services) to ensure that the competition is run in a fair way. Any requirement over a certain value has to be competitively tendered in this way.</p> <p>Additionally, when an existing contract comes to an end, regardless of good performance (or not) by any Supplier, we have to go out to competition again.</p> <p>Our tender process means that we have to follow EU Procurement Rules & Regulations, Government Rules & Regulations, including our own, so that the ‘most economically advantageous tender’ can be selected.</p> <p>At the same time, the Procurement Officer will try to ensure that there is a good level competition/ several tenders to assess (ie not just be limited to one or two submissions).</p>	19/09/2016
8	IfT	9/09/2016	<p><u>Question:</u></p> <p>Further to paragraph 1.4 of the IfT, are you able to confirm which day this is to be (either the 22nd or 23rd)?</p>	
			<p><u>Answer:</u></p> <p>The Tender Presentation & Site visit days will now be on either 21 September or 22 September.</p> <ul style="list-style-type: none"> • I will write to confirm the date with all Tenderers on Wednesday 14 September next week. 	9/09/2016
9	Service Information Page 7 Stockholding	9/09/2016	<p><u>Question:</u></p> <p>Please clarify, what it meant by “bulk stock transactions of assets”? Is this what is coming into stock AND going out? How is this phased across the month?</p>	
			<p><u>Answer:</u></p> <p>Yes this term refers to all inbound and outbound stock movement and this could be at any point</p>	13/09/2016

			during the month.	
10	Service Information Page 9. Site Access Requirements	9/09/2016	Question: What are the site operating hours?	
			Answer: Normal operating hours for this service will be Monday to Friday 7am to 4pm excluding public holidays.	13/09/2016
11	Service Information Page 9. Distribution Requirements	9/09/2016	Question: What percentage of the distribution requirements are for Sameday?	
			Answer: No more than 2 same day deliveries per month are expected.	13/09/2016
12	Service Information Page 11. Material and NTLC Quality Standards	9/09/2016	Question: It is stated that clear traceability of stock by Asset Number, Order Number and Warehouse Location is a requirement, is this functionality available within the WMS provided by the <i>Employer</i> ?	
			Answer: Yes these are functions of the Employer's WMS.	13/09/2016
13	Service Information Page 12. Traffic Planning	9/09/2016	Question: Please provide the specification of the crane; make, model, age etc.	
			Answer: Atlas 240.2e-a5, 1 year old, October 2015 build	13/09/2016
14	Service Information Page 15. Mobilisation	9/09/2016	Question: Please provide a detailed breakdown of the stock (or assumptions) that the contractor is expected	

			to transfer and expected to redirect during mobilisation.	
			<p><u>Answer:</u> <i>(Updated 19 September)</i></p> <p>We have just uploaded to Bravo a spreadsheet titled "NTLC - Current Stock Holding - Sept 2016". This provides an up to date view of our stockholding. This can be manipulated to suit your requirements.</p> <p>The current stock holding can also be seen on the scheduled supplier days.</p>	19/09/2016
15	Service Information Page 16. Contractors Additional Obligations	9/09/2016	<p><u>Question:</u></p> <p>Please provide details of stock throughput in a 12month period? (this is for insurance valuation purposes)</p>	
			<p><u>Answer:</u></p> <p>The expected stock holding value at any one time is currently between £25m and £35m. As of September 2016 the value is £33m.</p>	13/09/2016
16	Service Information Page 18. Waste materials	9/09/2016	<p><u>Question:</u></p> <p>How much waste is being disposed of on a monthly basis and what are the waste materials?</p>	
			<p><u>Answer:</u></p> <p>Between one and two articulated lorry loads per month containing mostly metals such as old roadside cabinets and electrical circuit boards.</p>	13/09/2016
17	Service Information Page 24 & 25. Third Line & Test Centre Requirements	9/09/2016	<p><u>Question:</u></p> <p>Please provide an estimate of power usage for the 30 x 13 Amp electrical points to be provided in the two areas. In regards to the High speed internet provision, is this to be connected to the Employer's system, the Contractors systems or standalone?</p>	
			<p><u>Answer:</u> <i>(Updated 19 September)</i></p> <p>Our current service does not have a dedicated meter reading, but the annual cost is currently £13,971.00. This is inclusive of the current warehousing and Third Line requirements.</p>	19/09/2016

			<p><i>*Note that the Test and Innovation Centre is not included in this as it is not yet in existence.</i></p> <p>The high speed internet provision needs to be standalone for this service.</p>													
18	Service Information	9/09/2016	<p><u>Question:</u></p> <p>Please provide a breakdown, by month (for seasonality analysis), of the expected minimum and maximum requirements for both the indoor facilities and the outdoor facilities.</p>													
			<p><u>Answer:</u></p> <p>The summary table below contain the low and peak values seen between September 15 and September 2016, however as stated within the Service Information this is to be fully flexible with no contracted minima or maxima.</p> <p>The most likely peak period is between February and April as new equipment arrives for schemes starting in the next financial year.</p> <table border="1"> <thead> <tr> <th></th> <th>Outdoor (Sq Ft)</th> <th>Indoor (Sq Ft)</th> <th>Pallets (No.)</th> </tr> </thead> <tbody> <tr> <td>Low</td> <td>105000</td> <td>40000</td> <td>1797</td> </tr> <tr> <td>Peak</td> <td>168700</td> <td>50000</td> <td>2258</td> </tr> </tbody> </table>		Outdoor (Sq Ft)	Indoor (Sq Ft)	Pallets (No.)	Low	105000	40000	1797	Peak	168700	50000	2258	13/09/2016
	Outdoor (Sq Ft)	Indoor (Sq Ft)	Pallets (No.)													
Low	105000	40000	1797													
Peak	168700	50000	2258													
19	<p>Service Specification, Annex A. Transport</p> <p>AND</p> <p>Price Schedule Sheet 1</p>	9/09/2016	<p><u>Question:</u></p> <p>The information under Transport in Annex A and listed under row 36 & row 44 of the Pricing sheet does not correlate, please can this be clarified?</p> <p>ie Where is the information for the volumes/delivery points for the LWB vans, listed as mileage on the Pricing sheet? Are the crane deliveries the same as the tractor unit with flatbed? Etc. etc.</p> <p>Parcels don't add up either. Pallet network numbers are not in transport volumes.</p> <p>The information needs to be clearer and in more detail – see also Q&A 20 below.</p>													

			<p><u>Answer:</u></p> <p>The current service volumes listed within Annex A are indicative as are the numbers used within the price schedule in order for us to assess each tender on the same basis, they are not guaranteed volumes.</p> <p>All delivery points for this contract will be within England.</p> <p>The Contractor is required to distribute all orders through the most appropriate and efficient method, the price schedule is our indicative pricing model.</p> <p>Tractor Unit with flatbed includes the likely crane deliveries.</p> <p>Pallet numbers are again indicative, we are not able to offer transport volumes at present but they will be within the tolerances of a standard UK pallet.</p>	13/09/2016
20	<p>Service Specification, Annex B. Pallet Network, Parcelforce & Couriers Total</p> <p>AND</p> <p>Price Schedule Sheet 1</p>	9/09/2016	<p><u>Question:</u></p> <p>a) Is the new Contractor expected to take over the existing Pallet & Courier contracts or new contracts be formed?</p> <p>b) What are the delivery SLA's against these movements? (ie sameday, 24 hrs. 48 hrs. etc.) If variable, please provide a breakdown.</p>	
			<p><u>Answer:</u></p> <p>The Contractor must provide these services as part of the overall service using any suitable means to each the service requirements.</p> <p>The SLAs for these services are the same stated in the Service Information Section 115 Distribution Requirements.</p>	13/09/2016
21	Q&A 3 above	12/09/2016	<p><u>Question:</u></p> <p>I still cannot find specific details as to the financial status required for a chosen company?</p>	

			There is a lot of information around it but nothing that states the specifics of the balance sheet required.	
			<p><u>Answer:</u></p> <p>Section B, Paragraph 5.1 of the TIQ (page 13) states the following:</p> <p>“Please provide one of the following to demonstrate your economic/financial standing:</p> <p>(a) A copy of the audited accounts for the most recent two years</p> <p>(b) A statement of the turnover, profit & loss account, current liabilities and assets, and cash flow for the most recent year of trading for this organisation</p> <p>(c) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position</p> <p>(d) Alternative means of demonstrating financial status if any of the above are not available (e.g. Forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).”</p> <p>Please also refer to Section D paragraphs D3.7 and D3.10 (<i>pages 24, 25 and 26 of the TIQ</i>) for further information on the assessment itself.</p>	19/09/2016
22	TIQ and Q&A 3 above	12/09/2016	<p><u>Question:</u></p> <p>We note that there is some compliance questions “Where Highways England has specified a minimum level of economic and financial standing and/or a minimum financial threshold within the evaluation criteria for this TIQ, please self-certify by answering ‘Yes’ or ‘No’ that you meet the requirements set out here.”</p> <p>But cannot see any areas where this is a requirement – can you shed any light please?</p>	
			<p><u>Answer:</u></p> <p>You are referring to Section B, Paragraph 5.2 of the TIQ on page 13. We have not specified a “minimum level of economic and financial standing and/ or a minimum financial threshold”, so tenderers do not need to answer this particular question.</p> <p>However, note that in the Financial Assessment, Tenderers will be will be measured against the</p>	19/09/2016

			annualised contract value (which is low + high/3years or £1.066m).	
23	NTLC - Contract Data part 1	13/9/2016	<p><u>Question:</u></p> <p>In this contract document it references the NEC3 Term Service Contract (April 2013). Please could we have a copy of this contract?</p>	
			<p><u>Answer:</u></p> <p>The NEC3 Term Service Contract (TSC) is available from NEC direct, as advised in the OJEU Notice:</p> <p>“ The Contracting Authority is using the ”NEC3: Term Service Contract (TSC)’ for this contract: https://www.neccontract.com/Products/Contracts/Term-Service-Contract/NEC3-Term-Service-Contract-TSC ”</p>	14/9/2016
24			<p><u>Highways England Statement:</u></p> <p>Please note that the Procurement Officer/ Team will not be available after Wednesday 14 September 2016 until Monday 19 September 2016.</p> <p>Tender Questions will be dealt with on our return on Monday.</p>	14/9/2016
25			<p><u>Highways England Statement:</u></p> <p>For reference, at present, it looks like there are four to five interested Tenderers (including the incumbent). Being OPEN Procedure, this may of course change.</p>	19/9/2016
26			<p><u>Highways England Statement:</u></p> <p>Following on from the Tender Presentation & Site Visit day, copies of the Tender Presentation power point slides have been uploaded to Bravo for reference/ information.</p>	23/9/2016
27			<p><u>Highways England Statement:</u></p> <p>Following on from the Tender Presentation & Site Visit day, the document “NTLC - Sign and Signal Dimensions.pdf” has been uploaded to Bravo for reference/ information.</p>	26/9/2016

28

IfT

Highways England Statement:

We refer to the IfT at Annex A, specifically:

- Section 2 - List of Documents to be returned with the Tender
- Volume 2
- **Document 4: “Small and Medium Enterprises (SME) Subcontracting Statement”**

We have not stated in the IfT what we require.

Paragraph 2.7.3 in the main body of the IfT (regarding SME Participation) should read as follows:

“Highways England is committed to removing barriers to SME participation in its contracts and this includes sub-contracting opportunities.

If you are proposing to subcontract part of this contract, you should provide assurance that you have considered how SMEs could play a part and details of the measures you have put in place to encourage and enable their participation as your subcontractors.

If you are awarded the contract, we will ask you to provide regular information about your spend with SMEs under the contract and may publicise good practice on our websites and report such expenditure to the Department for Transport and other Government Departments.”

Therefore Tenderers must do the following:

- **If** you are proposing to subcontract part of this contract, please provide assurance that you have considered how SMEs could play a part and details of the measures you have put in place to encourage and enable their participation as your subcontractors.

There is no set format or length for this assurance/ ‘SME subcontracting statement’ that reflects the above.

Care must be taken that this statement does not contradict anything stated in your Quality Statement.

- If you are **not** proposing to subcontract any part of this contract, please just simply state this on a separate sheet of A4.

In either case, this response does not form part of the Quality Statement page/ side count.

29	Price List & Option A	13/10/2016	<p><u>Question:</u></p> <p>The agreement is a priced contract with a price list. Prices are fixed. Currently the arrangement is open book (ie Cost plus, nearer Option E of the NEC contract, rather than Option A).</p> <p>Is the intention of the relevant HE department who manages this agreement to deviate so significantly from the current way of working?</p>	
			<p><u>Answer:</u></p> <p>We are not sure what you mean by “is this the intention of the relevant HE department”. Please can you re-word and re-submit your question by 11.00 tomorrow 14 October 2016.</p>	13/10/2016
		14/10/2016	<p><u>Re-worded question:</u></p> <p>Please can you confirm what organisational and operational mechanisms are in place with the current persons managing the day to day finances and operations of the existing contract to administer a contract that differs so significantly from what has been operating for such a long time?</p>	
			<p><u>Answer:</u></p> <p>We are aware that the use of the NEC3 Term Service model is new to this type of service but it does bring consistency and a continued need for collaboration which is of significant benefit across all contracts.</p> <p>Option A is a priced contract based on the achievement of activities. Our price schedule lists these activities principally in the form of providing space and transport along with other facilities and requirements.</p> <p>As such by the beginning of each month the Service Manager and Contractor will have a forecast ahead of expected activities in month and at the end of the month the application from the Contractor shall reflect the activities actually achieved in terms for instance of the amount of stock successfully stored and the number of deliveries successfully undertaken.</p> <p>We believe this approach offers the flexibility required on both sides.</p>	17/10/2016
30	Terms and Conditions	13/10/2016	<p><u>Question:</u></p> <p>As CPI is not necessarily a true reflection of how actual costs increase, in reality changes are usually a lot more significant. If we are constrained to CPI for cost increases, we may not be</p>	

			<p>actually recovering our true cost increases.</p> <p>In this case, please can you confirm that we would not be subject to further detriment by having to reduce our price if CPI drops compared to the last review?</p>	
			<p><u>Answer:</u></p> <p>The purpose of this option is to largely transfer the risk of inflation during the period of the contract to the <u>Employer</u> using CPI.</p> <p>In the rare event that the annual CPI rate is a 'negative', this would be reviewed between the Contractor and Employer to agree whether this was representative of the costs for delivering the service.</p>	19/10/2016
31	Price Schedule & Terms and Conditions	13/10/2016	<p><u>Question:</u></p> <p>If a proposal were to include a dedicated site, there will invariably be costs that will increase over the term of the lease and costs that will impossible to quantify up front so as to give a fixed cost. For example, rent reviews will not be based on CPI and repair and maintenance requirements/ dilapidations cannot be predicted with any degree of certainty so as to give you value for money.</p> <p>Please can you clarify whether or not such items can be managed on a cost plus basis?</p> <p>We note that there is not a line item in your pricing schedule that deals with these issues either.</p>	
			<p><u>Answer:</u></p> <p>We confirm that CPI will apply for this contract.</p> <p>The Service Information confirms that a dedicated site is not required to deliver this service.</p> <p>In any case we expect Tenderers to take account of the required service period when considering any elements such as property and would expect the terms of any lease etc. to be known and accounted for.</p> <p>If an event occurs that is covered by the reasons for Compensation Events then this process would apply.</p>	19/10/2016
32	Price Schedule & Terms and Conditions	13/10/2016	<p><u>Question:</u></p> <p>Please can you clarify how you anticipate the annual and monthly spend forecasts set out in the</p>	

			Service Information document will tie in with your pricing schedule and also the CPI adjustment mechanism? They seem to be in conflict.	
			<p><u>Answer:</u></p> <p>This is a priced contract with the price schedule indicating the annual cost to deliver the activities stated in the service information. However, in line with the response to Q&A 29 above, we expect the Service Manager and Contractor to look at the likely level of activities to be completed within each month to forecast the expected spend and for this to be subsequently reviewed at the end of the month as part of the application for payment. Annual forecasts can be updated on the same basis.</p> <p>Adjustment for CPI is applied from the anniversary of the contract date to all priced elements and this can then be reflected across all future forecasts.</p>	19/10/2016
33	Terms and Conditions	13/10/2016	<p><u>Question:</u></p> <p>Please can you clarify the need for clause Z22.3? This seems awfully draconian and has the potential for abuse.</p> <p>Ultimately the current way of working (ie open book, cost plus) gives you certainty and visibility that you will not be charged more than cost, plus a margin.</p> <p>Is the existing way of working not more preferable?</p> <p>In this instance, you are asking us to take all the risks on a fixed price contract and then requiring us to reduce our price, by potentially an arbitrary amount and if we cannot manage it, you can terminate the contract.</p>	
			<p><u>Answer:</u></p> <p>This clause is added as a requirement from the Cabinet Office to all of our contracts but the chance of its use is remote.</p> <p>The intent is that this gives a legitimate contractual route to look at staff rates and aligns with the Cabinet Office's desire to be able to undertake such actions, as they did in 2010-12 with suppliers. Before this clause there was no contractual route to undertake this if we were directed by Cabinet Office or to conclude a contract if a supplier was not willing to co-operate in such an action.</p>	19/10/2016
34	Terms and Conditions	13/10/2016	<u>Question:</u>	

			<p>Change of law risk sits with the Contractor for the whole term.</p> <p>As we are providing a service for your benefit, please can you confirm that if we have to comply with a change in law in order to continue to provide the service (which, if you were doing the service in house, you would need to incur), this can be passed up to you on an open book and transparent basis?</p> <p>Perhaps optional clause X2 that makes it a compensation event, could be used?</p> <p>Please can you also confirm that if we need to comply with a change in law, this will be taken into account so we are not in breach of the contract by having to comply with a legal requirement?</p>	
			<p><u>Answer:</u> (Updated 20 October)</p> <p>Tender Amendment 1</p> <p>We agree to the inclusion of X2 for this contract.</p> <p>A new version of the Contract Data will be uploaded to Bravo when Q&A 35 is resolved and clause X18 is confirmed.</p>	20/10/2016
35	Works Information (insurance)	13/10/2016	<p><u>Question:</u></p> <p>i) Please can you confirm that where we are liable for any indemnities, these will not include indirect or consequential losses and will be subject to the principles of remoteness and mitigation? This would ordinarily be the case in damages claims and the principle of the common law is that a person should not be liable for loss or damages that are too remote.</p> <p>ii) In addition, please can you confirm that we are not liable for third party contractual claims (as we have had no control over negotiating your third party contracts and are unable to account for these in our pricing).</p> <p>iii) Please would you also confirm whether you are happy to have a cap on liability at £1m per annum?</p>	
			<p><u>Answer:</u> (Updated 3 November)</p> <p>The purpose of this update is to re-clarify the insurance requirements in the Service Information & Contract Data Part One documents.</p>	3/11/2016

Previously we had stated:

“The Service Information correctly details the requirements placed on the Contractor, but Section 8 Insurance element of the Contract Data Part One does not reflect this.

Tender Amendment 4

In order to make the contract an accurate reflection of the Service Information we will remove the following from Contract Data Part One:

- *Section 8 Risks and Insurance (Page 2)*
- *First bullet point on Page 3 related to insurance of Employers Plant and Materials*

This will be replaced by a Z Clause (an additional contract clause) that will link directly to the requirements of the Service Information and will cover:

- *insurance of Stock in Storage in line with SI200 Contractors Additional Obligations;*
- *Third Party Insurance/Indemnity for SI115 Satellite Warehouse Requirements, and;*
- *Insurance required by law.*

We plan to produce/ issue the Z clause at some point next week, which is after the tender return date.”

However, we have decided that we will **not** ask the Contractor to insure our stock. As such:

Tender Amendment 6

Contract Data Part 1 has been updated as follows:

- 1) Clause X2 has been added as per Q&A 34 above.
- 2) Section 8 Risks & Insurance (page 2) **is** still included, but has been updated.
- 3) The first bullet point on Page 3 related to insurance of Employers Plant and Materials **is** still included, but has been updated.
- 4) Clause X18 has been added.
- 5) There is no need for an additional Z clause now.

The Service Information has been updated as follows:

- 1) Annex D regarding insurance has now been added.
- 2) Paragraphs regarding insurance have been updated in the main document.

			<ul style="list-style-type: none"> Both the new Service Information and Contract Data Part 1 have been uploaded to Bravo today. 	
36	Terms and Conditions & Works Information (Task Orders)	13/10/2016	<p>Question:</p> <p>Optional clause X19 seems to be a very unwieldy process for you to instruct us to perform a task forming part of the Services. The contract provides that you determine what is to be done and by when, by issuing a Task Order. The Task Order also includes the price for the works, taken from the price list.</p> <p>Please can you clarify how this would work given that the pricing schedule is an annual costed matrix and therefore it may be hard to unpick this on an activity based Task Order? The drafting envisages more of an itemised task based price list.</p>	
			<p>Answer:</p> <p>A Task Order should be priced from elements within the service price list. Where this is not possible should, it should be priced in the <u>same way</u> as a Compensation Event* as defined cost + fee.</p> <p>*Note that a Task Order is not a Compensation Event.</p>	19/10/2016
37	Terms and Conditions & Works Information (Task Orders)	13/10/2016	<p>Question:</p> <p>Part of the contract provides that you can set delay damages for failing to complete the task set out in the Task Order. How do you reconcile this when you appear to set the timescales in which a task has to be done?</p> <p>In addition, this is a rather subjective level - being the cost to you of late completion.</p> <p>There is no visibility as to what this is to enable pricing in of this risk.</p> <p>Also, what happens if you delay the start date for the task? Would the completion date also move and would it also be a compensation event?</p> <p>If it did not, rather perversely we would be liable to pay you delay damages for a delay caused by you.</p>	

			<p><u>Answer:</u></p> <p>Any Task Order will be for activities that are in addition to the core service. We will produce a requirement to which the Contractor can suggest an appropriate plan, duration and cost to achieve it which may then become an accepted compensation event.</p> <p>All elements of the task order and Compensation Event processes are undertaken with mutual agreement.</p> <p>Delay damages are only applicable if they are agreed and defined as part of the individual Task Order and don't automatically apply.</p>	19/10/2016
38	Works Information (Task Orders)	13/10/2016	<p><u>Question:</u></p> <p>We then have to go into significant detail about how we would perform the required task requested in your Task Order by submitting a task order programme. We do have a concern that if this amount of detail needs to be gone into for any orders, then it may be administratively unworkable for both sides. For example if we get an instruction to transport a sign to location A, do you really want to have to go through the burden of issuing Task Orders or do you just want to tell us to deliver the sign to location A on this day?</p> <p>Further, if we get such an instruction, do we (or you) want to have to go through these lengthy procedures- especially as the time limit for us to submit a task order programme in response to your Task Order is 21 days from receipt of your Task Order - the service may be faster paced than this!</p>	
			<p><u>Answer:</u></p> <p>A Task Order would not apply in the scenario given as storage and delivery of goods sit within the core service.</p> <p>Task Orders are mainly to be used for larger requirements such as the optional satellite stores requirement within the Service Information. In any case the effort required for an order should be proportionate to its scale and therefore small requirements will be less onerous to submit.</p>	19/10/2016
39	Terms and Conditions	13/10/2016	<p><u>Question:</u></p> <p>Optional clause Y(UK)1 has been used, amended by additional clause Z9.2 of the Contract Data.</p> <p>This is another administratively burdensome provision and is not really appropriate for a simple logistics contract. We feel that this will confuse all parties concerned as it is more for complex FM</p>	

		<p>arrangements- for example, the nuclear industry, where it is essential to protect key suppliers into the project.</p> <p>Most of our suppliers are contracted to our standard T&C (where we have already agreed payment terms) or we have a lot of choice of their appointment (eg hauliers), who contract on RHA, which is standard industry practice.</p> <p>These are not sophisticated suppliers and this will likely confuse them- especially as we have to flow down all these cumbersome provisions into subcontracts. Essentially we have to set up a separate bank account used to receive payments from you and us and pay out monies to us and our named suppliers (widely drafted as being any person/organisation who provides any part of the Services, provides any services that are incidental to us providing the services or who supply plant and materials for the Services).</p> <p>This could include haulier subcontractors and any supplier to us for the purposes of our providing the services. Essentially named suppliers have to sign a joining deed and trust deed under which it is agreed that we hold funds paid into the account on trust for ourselves and the named suppliers. The risk of all this is that we are so burdened by red tape and administration that we cannot get on with providing the services.</p> <p>Each month we submit our application for payment to you showing the amounts due to us and the element attributable to the named suppliers. However it is not clear how the mechanism then works for the funding of the account and how payments are reconciled. On the one hand the drafting could be interpreted as you paying the whole amount into the account (including the amount due to the named supplies) and we have to pay an extra amount equal to the sums due to the named suppliers; and on the other, we pay into the account the named supplier amounts and you only pay in the balance.</p> <p>Also, it is not clear as to whether your payment that is “due” is as per the definition of clause 50.2 (which means that you can deduct a retention from us- ie that under clause Z12 for amounts due to subcontractors unless we have paid them at the date of assessment) which you do not pay into the account. This does not work with how our industry subcontracts.</p> <p>The drafting suggests that the bank pays the amount in the instruction we produce which is for the amount due to the named suppliers and the balance of the assessed amount to us. It makes no reference as to any refund to us of any extra amounts we put in to cover the named suppliers OR for you to pay into the account an amount equal to the sum due to the nominated suppliers where this was not paid into the account originally by you, nor for the balance of the account to be paid to us. Nor does it seem to deal with the payment of any retention made pursuant to clause 50.2.</p> <p>I think this is very burdensome and unclear.</p>	
--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

			<p>Clause Z9.3 of the Contract Data does allow for you to abandon this process and I think it would be far simpler if you exercised this right now and we simply invoice you for services, you pay us and we then pay our subcontractors and suppliers, as we would in the ordinary course of our business.</p> <p>It is also not clear how additional clause Z12 of the Contract Data works in the context of Optional clause Y(UK)1 unless we are permitted to add such amount on to our application for payment in the relevant month which then becomes a due payment?</p>	
			<p><u>Answer:</u></p> <p>Project Bank Accounts (PBAs) are a standard requirement for the majority of our contracts.</p> <p>Only 'Subcontractors' as defined with NEC3 (described in the response to Q&A 45 below) will need to be named.</p> <p>If however a Tenderer can evidence within their response that there are no main 'Subcontractors' (as defined) involved, this will be checked by us at the Tender Assessment Stages.</p>	19/10/2016
40	Works Information (goods)	13/10/2016	<p><u>Question:</u></p> <p>i) Please can you confirm that our obligation to insure in respect of the Goods is only to insure the goods against loss or damage that we cause?</p> <p>ii) Please can you clarify the values of stock by SKU for insurance purposes and the levels to be held by us at any one time?</p>	
			<p><u>Answer: (Updated 18 October)</u></p> <p>i) Yes your liability is to cover actions and/ or negligence on your part that leads to damage and/or loss of the Employers property.</p> <p>ii) We have previously published the stock holding at September 2016 and have stated the likely value ranges. An average price schedule called "NTLC - Current Stock Unit Prices" has now been uploaded to Bravo that lists each item by Oracle number with its current unit value.</p>	18/10/2016
41	Works Information (stock loss)	13/10/2016	<p><u>Question:</u></p> <p>Please can you confirm whether you would want to be bogged down with small claims for loss or damage or would you want some sort of threshold to apply under which you are not concerned</p>	

			about the loss and over which we become responsible for payment?	
			<u>Answer:</u> Any claims for loss or damage would be reviewed by the Service Manager on a case by case basis.	19/10/2016
42	Works Information (stock loss)	13/10/2016	<u>Question:</u> In relation to stock loss, there is no concept about what the value of the stock is. Is this just invoice price to you? This would probably be the simplest way to evidence value of stock.	
			<u>Answer:</u> Yes it would be derived from the price list, an example of which is attached on response to Q&A 40.	18/10/2016
43		13/10/2016	<u>Question:</u> Service Information seems to include a wide array of obligations for you us provide (example Si 400) which does not appear to be capable of being priced in the payment schedule. There are a number of examples of this, which are too subjective for a closed book contract, which would require firm and fixed obligations to avoid scope creep where we would bear the cost risk of it. This level of flexibility is fine under the current open book arrangement. Do you want this to continue?	
			<u>Answer:</u> SI 400 doesn't have any elements that require pricing outside of the current listed items. Any support given to the Third Line supplier for instance will be in terms of transport or stock handling at the NTLC and will be covered in activities achieved in line with the response to Query 29. Any new requirements that emerge can be costed through the task order process.	18/10/2016
44	IFT	13/10/2016	<u>Question:</u> Please can you clarify why you are requesting a Parent Company Guarantee?	
			At this stage we are not requesting one. A Tenderer may include one with their submission if they "know" they may need one.	14/10/2016

			<p>However, as per the TIQ (<i>Tender Information Questionnaire</i>), the team carrying out the Financial Assessment of your company might request one depending upon results of that assessment.</p> <p>There is no way of us knowing if one will be needed or not at this stage. Individual tenderers may have an idea if one will be needed or not.</p>	
45	Terms and Conditions & Works Information (<i>subcontracting</i>)	13/10/2016	<p>Question:</p> <p>With regard to subcontracting, the agreement is very inflexible, especially given that to get the best value to you, we may at points need to subcontract (as we do now). We should be able to subcontract if we need to in order to provide you a good service. The price you pay is the one we quote and also we are responsible for our subcontractors actions, so you have the comfort here.</p> <p>As mentioned previously, the subcontractors envisaged are not sophisticated and therefore all the obligations to ensure flow down of these complex contract terms or procure ESPD (<i>European Single Procurement Document</i>) will be impossible to agree - especially as a lot of the subcontracting may be spot and we may not have the time to negotiate full flow down contracts.</p> <p>Please can you confirm that we can subcontract on these terms and not have to work about flowing down these complex contract terms to subcontractors who trade on industry standard contracts or requiring them to provide ESPD which is not a strict procurement requirement?</p>	
			<p>Answer:</p> <p>'Subcontractor' is a defined term within NEC3 and is a party with whom you have contracted in order to deliver a substantial part of the service and/ or related equipment and materials.</p> <p>Based on your example smaller subcontractors used on spot rates or to deliver minor elements are not seen as Subcontractors and therefore can work under the Contractors standard terms and conditions.</p>	19/10/2016
46	Works Information (<i>stock flexing</i>)	13/10/2016	<p>Question:</p> <p>We note your ability to reduce the services and that you do not guarantee any level of works.</p> <p>We will have engaged significant resource to fulfil the agreement at the level you have requested. If we need to make redundancies or terminate agreements early because you have reduced services voluntarily, then it would not be unreasonable for you to take on any unavoidable liabilities that flow from your decisions.</p> <p>We are happy to mitigate our losses as per usual contractual principles so your risk is decreased.</p>	

			<p>Also, if we are writing down any investment which we have incurred in good faith based on your estimate of service requirements and doing so through the activity based price schedule based on assumed levels of activities, it would seem unfair that we would not be able to recover the outstanding investment merely because our activity is decreased and consequently our revenues decrease.</p>	
			<p><u>Answer:</u></p> <p>We cannot see a question here. Please can you re-word and re-submit by 11.00 tomorrow 14 October 2016.</p>	13/10/2016
		14/10/2016	<p><u>Re-worded question:</u></p> <p>We note your ability to reduce the services and that you do not guarantee any level of works. We will have engaged significant resource to fulfil the agreement at the level you have requested.</p> <p>If we need to make redundancies or terminate agreements early because you have reduced services voluntarily, then it would not be unreasonable for you to take on any unavoidable liabilities that flow from your decisions.</p> <p>We are happy to mitigate our losses as per usual contractual principles so your risk is decreased. Also, if we are writing down any investment which we have incurred in good faith based on your estimate of service requirements, and doing so through the activity based price schedule based on assumed levels of activities, it would seem unfair that we would not be able to recover the outstanding investment merely because our activity is decreased and consequently our revenues decrease.</p> <p>Please can you confirm that in these instances, HE will reimburse us in such instances, in good faith?</p>	
			<p><u>Answer:</u></p> <p>The expected service volumes are based on current National Distribution Centre averages which are felt to be representative of the expected requirements throughout this contract. However any changes required to the service information will be undertaken via the early warning and compensation event mechanisms to ensure mutual agreement of any cost changes flowing from these decisions.</p>	18/10/2016

47	Terms and Conditions	13/10/2016	<p><u>Question:</u></p> <p>Please can you confirm that on termination for any reason we would recover site costs going forward or that you would take an assignment of the lease (if using a dedicated site) and that all investments dedicated to you would be recovered?</p> <p>If we terminate due to your breach, please confirm that you would also be responsible for any redundancy costs (if TUPE does not apply, which it likely would), take assignments of equipment leases (or procure our replacement contractor does), and be responsible for any unavoidable subcontractor/supplier breakage costs?</p> <p>This would ordinarily be recoverable as damages, so is a normally accepted level of risk under established common law.</p>	
			<p><u>Answer:</u></p> <p>A dedicated site is not a specific requirement of this service as stated in the Service Information.</p> <p>Please refer to Clause 90.2 of the NEC3 Term Service Contract. This clearly sets out the calculations to be used for any final payment due as a consequence of contract termination.</p>	19/10/2016
48	Terms and Conditions	13/10/2016	<p><u>Question:</u></p> <p>There are some rather draconian and unreasonable termination triggers.</p> <p>Please can you confirm that you will not voluntarily terminate the agreement before the natural expiration on no fault grounds? Or if you do, compensate us so we are no worse off than as we would have been had the contract continued?</p> <p>There is also a very subjective provision that allows you to terminate if we “substantially hinder the HA or others”. This is very wide and subjective and includes a long list of issues within the Z clauses in the Contract Data (many of which would not ordinarily constitute material breach- which is what they are trying to achieve) and includes failures by subcontractors.</p> <p>Without very clear guidelines on what it means to substantially hinder you or others, this is far too wide a risk- especially as it would constitute termination based on our default. This has to be a fair and balanced relationship and it seems to be heavily imbalanced for a contract in which relationships are fundamental.</p>	

			<p><u>Answer:</u></p> <p>We would not expect to terminate a contract that is performing as expected.</p> <p>Please refer to Clause 90.2 of the NEC3 Term Service Contract. This clearly sets out the calculations to be used for any final payment due as a consequence of contract termination.</p>	19/10/2016
49	Terms and Conditions	13/10/2016	<p><u>Question:</u></p> <p>On termination the contract suggests you can use any of our plant and materials and equipment to continue to provide the services. This would be fine where you pay for the same or where you take an assignment of any agreement or lease relating to them and or where we would not be liable if you were to use them. There would also need to be constraints around how long this would be for.</p>	
			<p><u>Answer:</u></p> <p>We cannot see a question here. Please can you re-word and re-submit by 11.00 tomorrow 14 October 2016.</p>	13/10/2016
		14/10/2016	<p><u>Re-worded question:</u></p> <p>On termination the contract suggests you can use any of our plant and materials and equipment to continue to provide the services. This would be fine where you pay for the same or where you take an assignment of any agreement or lease relating to them and or where we would not be liable if you were to use them. There would also need to be constraints around how long this would be for.</p> <p>Please can you confirm that payment will be made and that the ongoing use will only be short term?</p>	
			<p><u>Answer: (Updated 19 October)</u></p> <p>Please refer to Clause 90 of the NEC3 Term Service Contract.</p> <p>The continued use of equipment on termination is most relevant to instances where the Employer has to take control of the service or the Contractor is no longer trading. This relates only to plant, materials and equipment specifically required for this service.</p>	19/10/2016

50	IfT		<p><u>Highways England Statement</u></p> <p>Tender Amendment 3</p> <p>We are not able to provide a full response to Q&A 35 just yet.</p> <p>As such, we have today extended the Tender Return Date until 11.00 am on 28 October 2016.</p>	24/10/2016
51			<p><u>Highways England Statement</u></p> <p>For reference/ audit, there was a typo in an earlier answer version to Q&A 35. Tender Amendment 2 said that the tender period was extended by “two working days to 1 November”. This was incorrect and should have said “two working days to 25 October”.</p>	26/10/2016
52			<p><u>Highways England Statement</u></p> <p>Tender Amendment 5</p> <p>Further to the release of Tender Questions and Answers version 13 yesterday, in particular the response to Q&A 35:</p> <p>We have decided extend the tender return date again to 11am Friday 4 November 2016.</p> <p>This is to enable us to be clear on insurance (& associated issues). If required, we will make any further changes to tender documentation in good time.</p>	27/10/2016
53			<p><u>Highways England Statement</u></p> <p>Tender Amendment summary</p> <p>TA 1: see Q&A 34 – contract data change TA 2: first tender extension TA 3: second tender extension TA 4: see Q&A 35 - insurance, service information and contract data change (<i>superseded by TA 6</i>) TA 5: third tender extension TA 6: see Q&A 35 - insurance, service information and contract data change (<i>supersedes TA 4</i>)</p>	3/11/2016

54	Q&A 33	4/11/2016	<p><u>Question:</u></p> <p>Please note our comments regarding the following clauses. Could you clarify further on these points please?</p> <p>i) Following on from the clarifications provided, regarding Z22.3. Where the Employer has a legitimate need to look at staff rates of the Contractor, the Contractor will work with the Employer in good faith to see what (if any) costs could be saved and will use reasonable endeavours to make savings on staffing rates to the extent that it will not affect the ability of the Contractor to provide the Services and provided that the Contractor would not incur any liability as a result of making such savings that would not be passed on to the Employer.</p> <p>The Employer will not have a right to terminate the Agreement where the Contractor cannot find savings or implement them as described.</p> <p>ii) Clause X18 shall be incorporated into the contract. In absence of the ability to state limitations, we would work with the Employer acting reasonably and in good faith to agree the limitations envisaged under clause X18 post award.</p>	
			<p><u>Answer:</u></p> <p>i) This is regarding Q&A 33 which we answered some time ago on 19 October.</p> <p>Z clause Z22.3 will remain.</p> <p>I can give further explanation to its inclusion. Z clauses are additional conditions used to accommodate special needs such as the Cabinet Office requirements on changes to rates and prices. We have no authority to change the Cabinet Office instruction. The expectation is the Contract will be run in accordance with clauses Z22.1 & 22.2 with 22.3 used only in exceptional circumstances.</p> <p>ii) Clause X18 has been incorporated into the contract as per the answer to Q&A 35 and Tender Amendment 6 issued yesterday.</p> <p>Limits have now been set: please refer to the answer and also Contract Data Part 1 version 2 (page 3) issued as part of Tenderer Amendment 6.</p>	4/11/2016

55	Q&Av15		<p><u>Highways England Statement</u></p> <p>Tender Amendment 7:</p> <p>A short Tender Extension has been requested and agreed to digest the content of Q&A v15 and also to update the Form of Tender.</p> <p>The tender will now close at 14.00.</p>	4/11/2016
56	Contact Data Part 1		<p><u>Highways England Statement</u></p> <p>Tender Amendment 8:</p> <p>We have some questions around insurance still that we want to check (links to next question).</p> <p>The tender will now close next Wednesday 9 November 2016 at 14.00.</p>	4/11/2016
57	Contact Data Part 1 & Service Information v2	4/11/2016	<p><u>Question:</u></p> <p>We have two outstanding concerns:</p> <p>a) CD part 1: 8 - Insurance @ £10million</p> <p>b) Service Information Annex D "Third Party Public and Products Liability Insurance" & "Property Damage 'All Risks' Insurance (including Terrorism)".</p> <p>Under a claim for contractual damages, heads of loss that equate to indirect or consequential loss are excluded as they are too remote. The equitable principle is that a person should only be liable for losses that he can reasonably foresee his actions/inactions would cause and that he should be entitled to understand his liabilities in sufficient detail so as to be able to price in any risks.</p> <p>Under the proposed contract, we are being asked to accept liability for such losses, up to £5m- more than 5x the annual contract value. As this is a fixed price contract, the result of this is that we would potentially be accepting liability for losses suffered by Highways England that we could never have contemplated would be the case and incur liability that is not commensurate with the commercial value of the contract.</p> <p>Can we find middle ground and define the types of losses that Highways England consider would fall under this category so we know what they are, can effectively manage these operationally and that we can price in any associated risk; and agree a cap on such liability at say £50,000 per annum?</p>	

		<p>Annex D – Item 3 & 4, Any co insured agreement would need to be agreed with required wording sent to our broker/insurers to agree but it would remain subject to agreement – we are not able to provide notice of cancellation protection.</p> <p>Service Information Supplementary Table –We cannot confirm this wording is actual policy wording XPO have in place as all insurances are arranged on a global level and we cannot disclose this under our European policies - we would provide Certificates of Insurance/Evidence as we generally do when requested which contain basic information of insurer, limit and period of insurance.</p>	
		<p><u>Answer:</u></p> <p>Our advisors are surprised and have stated that a level of £500,000 wouldn't cover a single employed tradesman.</p> <p>We had previously agreed to remove reference to insuring our stock and so have reverted to a plain NEC TSC contract and its insurances, which includes Third Party Liability, along with any required by law. The value of the contract has no bearing on the levels of insurances requested.</p> <p>Further, the levels are standard and are easily acquired by any Contractor. In return, we would expect the policy costs to be reflected in the returned Tender Submission.</p> <p>Lastly, to clarify, we only require “evidence of insurance” (usually we are provided with a certificate and/ or letter from an insurance company) when a Tenderer is confirmed as Preferred Bidder, as per paragraph 4.1.4 of the IFT.</p>	7/11/2016
58		<p><u>Highways England Statement</u></p> <p>Tender Amendment summary</p> <p>TA 1: see Q&A 34 – contract data change TA 2: first tender extension TA 3: second tender extension TA 4: see Q&A 35 - insurance, service information and contract data change (<i>superseded by TA 6</i>) TA 5: third tender extension TA 6: see Q&A 35 - insurance, service information and contract data change (<i>supersedes TA 4</i>) TA 7: fourth tender extension TA 8: fifth tender extension</p>	7/11/2016