

# Section 1: Project Overview Details – Open Procedure

## Introduction

By a Contract Notice placed in the Find a Tender Service (**FaTS**) (the **Contract Notice**) and a Contracts Finder notice, The Crown Estate invites tenders from suitably qualified and experienced tenderers to provide an Auction Platform and associated Services for the delivery of an ascending clock auction during the Celtic Sea Floating Offshore Wind Leasing Round 5 (the **Services**).

This is an Open Procedure conducted in accordance with the Public Contracts Regulations 2015 (SI 2015/102) (as amended) (the **Regulations**) as further detailed in this Invitation to Tender (**ITT**).

The Crown Estate invites Tenderers (each a **Tenderer**) to submit a tender (the **Tender**) for the Services for the Project as detailed in this Invitation to Tender (the **ITT**), which comprises the following documents:

## Sections within this Invitation to Tender:

1) This ITT (Sections 1 to 4):

- a) Section 1 and 2 – Project Overview and Instructions to Tenderers
- b) Section 3 and 4 – Evaluation Criteria and Evaluation Methodology

2) List of Appendices:

*Appendices are available via the supplier attachment section of the Tender Portal:*

- Appendix 1 – TCE's Auction Software Requirements
- Appendix 2 - Instruction to Suppliers-Scope of Services
- Appendix 3 - Preliminary Market Engagement
- Appendix 4 - Auction Procurement - Price Schedule
- Appendix 5 – Proposed Contract

a) *Annexes within this ITT:*

- i. Form of Tender (Annex 1)
- ii. Confidentiality Undertaking (Annex 2)
- iii. Certificate of Non-Collusion (Annex 3)
- iv. Schedule of Confidential Information (Annex 4)
- v. Supplier ITT Tender Return Checklist (Annex 5)

Tenderers should read all the documents forming this ITT carefully and the guidance notes within the Tender Portal, and in conjunction with the Contract Notice and Contracts Finder Notice and ensure that they **submit all documents detailed in Annex 5** (Supplier ITT Tender Return Checklist).

## Details of the Project

1.5 The Crown Estate (TCE) manages the seabed off the coasts of England, Wales and Northern Ireland for the benefit of the nation. In December 2023 TCE launched the Celtic Sea Floating Offshore Wind Leasing Round 5 (Round 5), full details of which can be reviewed within the Round 5 information memorandum found at the following location on TCE's website: [https://downloads.ctfassets.net/nv65su7t80y5/5zR4gHuqxjMG9NOK1LI2Av/643bfa91696be32408e5e2646c16bbba/Information\\_Memorandum.pdf](https://downloads.ctfassets.net/nv65su7t80y5/5zR4gHuqxjMG9NOK1LI2Av/643bfa91696be32408e5e2646c16bbba/Information_Memorandum.pdf).

Round 5 is seeking to establish a new floating wind sector in the Celtic Sea off the coasts of south Wales and south-west England with the objectives to:

- Support the development of a new floating wind market in the UK;
- Unlock clean energy in new offshore areas, in support of the UK's net zero targets;
- Support the creation of social, economic and environmental value;
- Balance the needs of the environment, other users of the sea and local communities; and
- Incentivise investment in crucial enabling infrastructure.

In a move away from previous leasing processes for offshore wind rights run by TCE, ITT2 of Round 5 will utilise a price-based ascending clock auction to identify successful Bidders in respect of each PDA. To enable and efficiently deliver the ascending clock auction at ITT2 of Round 5, TCE is procuring an auction platform provider through this Invitation to Tender.

## Form of Contract

1.6 Any contract that The Crown Estate enters into with the successful Tenderer(s) will be on The Crown Estate T&Cs (the **Contract**). The form of Contract is set out on the Tender Portal. As noted at paragraph 2.51 The Crown Estate reserves the right not to enter into a contract or award.

1.7 The Contract will run until completion of the Services (the **Term**), estimated to be 7 months. Please note that we are not expecting any extensions of the contract unless the overall Round 5 is delayed.

## Key Deadlines

- 1.8 Tenders must be submitted as set out in this ITT and returned to The Crown Estate via the Tender Portal as set out in Section 2 to this ITT and is to be received no later than 04/11/2024 by 12:00 (at midday) (the **Submission Deadline**).
- 1.9 The closing date for clarifications to be raised will be 18/10/2024 by 12:00 (at midday). Any clarification questions raised following this time and date will not be answered. The Crown Estate will seek to respond to all clarification questions within a reasonable time having regard to the nature, extent and availability of the information requested. In any event, The Crown Estate will respond to all clarification questions by no later than 25/10/2024.

## Indicative Procurement Timetable

- 1.10 Tenderers should note the key dates in the following timetable.

Activity	Dates
Publication of Invitation to Tender/ Find a Tender Notice/ Contracts Finder Notice	04/10/2024
Closing date for clarification questions	18/10/2024 by 12:00 (at midday)
The Crown Estate to issues responses to all clarification questions raised by the closing date	25/10/2024 by 12:00 (at midday)
Submission of Online Tenders	04/11/2024 by 12:00 (at midday)
Evaluation of Tender Submissions	Between 04/11/2025 - 15/11/2024
Clarification Presentation / Interview	Between 18/11/2024-21/11/2024
TCE internal governance process	Between 22/11/2024- 26/11/2024
Issue Unsuccessful and Successful Letters	29/11/2024 by 14:00
Mandatory Standstill periods	09/12/2024
Confirmation of selected Tenderer	10/12/2024
Contract start date	11/12/2024

This timetable is subject to amendment by The Crown Estate at its sole discretion. Any changes to the timetable will be communicated to Tenderers by The Crown Estate on the Tender Portal as soon as is practicable.

## Section 2: Instructions to Tenderers

Tenderers must submit their Tender in accordance with the following instructions (the **Instructions**). Tenders that do not comply with these Instructions in any particular way may be rejected by The Crown Estate at its sole discretion and The Crown Estate's decision in the matter shall be final.

### Introduction

- 2.1 In accordance with the Open Procedure, Tenderers are invited to submit Tenders for the Services for the Project, as described in the ITT to which these Instructions are attached. Words and expressions have the meanings used in the ITT.
- 2.2 Interested parties (**Tenderers**) are required to express their interest in the Services for the Project by completing and returning to The Crown Estate a tender proposal. Tenderers expressing an interest are required to satisfy minimum standards as specified in the SQ, the Evaluation Criteria and Evaluation Methodology Schedule. Tenderers who satisfy those minimum standards will have their tenders evaluated in accordance with the rules set out in this ITT. The Crown Estate does not warrant the fitness of any Tenderer to carry out the Services for the Project.
- 2.3 Tenders should be prepared under the same headings and in the same sequence as set out in the ITT. Tenderers should include full details of their Tender in addition to the other information requested.
- 2.4 Tenderers are responsible for obtaining all information necessary for the preparation of their Tenders. All costs, expenses and liabilities incurred by any Tenderer in connection with the preparation and submission of a Tender or in connection with the execution of all and any contract documents, are to be borne by that Tenderer. Neither The Crown Estate nor any of its representatives (including its officers, members, employees and advisors) shall, under any circumstances, be liable in any way to any Tenderer for any costs, expenses or losses incurred by any Tenderer or other person in relation to their participation in this procurement or otherwise.
- 2.5 The Crown Estate in no way warrants the information given to Tenderers by The Crown Estate and Tenderers must satisfy themselves of the accuracy of any information provided by The Crown Estate. Save in the case of fraud, under no circumstances will The Crown Estate, its officers, members, employees, agents or advisers accept any responsibility or liability whatsoever for any loss or damage of whatever kind and howsoever caused arising from or in consequence of the use by Tenderers of such information.
- 2.6 Tenderers' attention is drawn to the Contract set out at **Appendix 5** of the ITT. It is essential that Tenderers are completely familiar with the contents of the Contract before compiling their Tender. Tenderers considering entering into a contractual relationship with The Crown Estate should make their own enquires and investigations of The Crown Estate's requirements beforehand. The subject matter of this ITT shall only have contractual effect when it is contained in the express terms of an executed form of

Contract on such or such other agreement properly entered into and executed by The Crown Estate.

## Portal

- 2.7 All tender documents will be made available via the Tender Portal.
- 2.8 Tenderers are instructed not to include in their response anything other than the requested documents. Marketing material will be discarded and will not be read.
- 2.9 Tenderers are required to submit their completed Tenders through the Tender Portal. Tenderers are advised to complete their Tenders in advance of the Submission Deadline to allow time to understand and incorporate the responses to any clarifications that have been requested. It is the responsibility of Tenderers to ensure they are familiar with the system and allow sufficient time for finalising and submitting their Tenders.
- 2.10 The Crown Estate is not responsible for inaccurate or incomplete contact information input into the Tender Portal by Tenderers. It is the responsibility of a Tenderer to ensure that the contact information they have entered for their organisation on the Tender Portal is accurate and kept up to date. Important notification messages relevant to this procurement may not be received by a Tenderer should the contact information be inaccurate. If at any stage a Tenderer needs to update the contact information held for their organisation this can be achieved by submitting it via the Tender Portal. The Crown Estate is under no obligation to respond/follow up on 'out of the office' responses received from a Tenderer and so Tenderers will need to make appropriate arrangements to deal with absences. For any technical advice or assistance relating to the Tender Portal if for any reason the Tender Portal is not available, please contact the Tender Portal helpdesk between 8.00am and 6.00pm Monday to Friday on 0800 069 8620 (or +442036084013 if outside the UK) or email [[help@SourceDogg.com](mailto:help@SourceDogg.com)]. This email address should only be used where there are technical issues with the Tender Portal. Otherwise, all questions and queries relating to this procurement should be submitted via the Tender Portal.
- 2.11 **The Tenderer is not permitted to return by email, or by any means other than via the Tender Portal, any part of the Tender. Any attempt to email, or return otherwise than via the Tender Portal, any part of the Tender may result in the Tender being excluded.**
- 2.12 All Tenders must be submitted via the Tender Portal by the Submission Deadline unless alternative tender submission instructions are stated in paragraph 1.8 (above). Tenderers are advised to allow plenty of time to submit their completed Tenders onto the Tender Portal as this will take some time to complete and The Crown Estate will not

accept any documents, including any completed Tenders that are submitted after the Submission Deadline.

- 2.13 All Forms of Tender must remain valid and open for acceptance by The Crown Estate for a period of ninety (90) calendar days from the Submission Deadline.

### **Communications Protocol**

- 2.14 During the Tender period, a Tenderer is able to submit clarification questions through the Messages feature within the Tender Portal. This should be used for all queries and requests for clarification regarding the procurement as it provides an effective and auditable trail. A Tenderer's queries will be secure and cannot be seen by any other Tenderers. The Crown Estate will publish the questions and the response, in a suitably anonymous form, via the Messages feature to all Tenderers before the closing date for the submission of Tenders.
- 2.15 Any questions about this procurement should be submitted in writing via the Tender Portal. The Crown Estate will endeavour to answer all queries about the procurement provided that such queries are received by 18/101/2024. Tenderers must clearly indicate, when submitting a question, which (if any) part of their question they view as confidential and applicable only to the Tenderer submitting the question. If The Crown Estate does not agree that the question is confidential and applicable only to the Tenderer, the Tenderer will be given an opportunity to withdraw the question within two (2) days. If the question is not withdrawn by the Tenderer, The Crown Estate may publish the question and response.
- 2.16 Any communication or attempt to contact any member of The Crown Estate's staff and/or officers, may result in your organisation being excluded from the procurement process and not considered further.
- 2.17 All information about this procurement will be made freely available to Tenderers via the Tender Portal set out in paragraph 2.7 of this Section 2 of the ITT . Tenderers should check the Tender Portal regularly for any updated information relating to the procurement.
- 2.18 The Crown Estate may have clarifications that they wish to raise with the individual Tenderers during the tender process. These will be raised by The Crown Estate, in writing, to the individual Tenderers via the Messages feature in the Tender Portal.

### **Confidentiality**

- 2.19 Tenderers must sign and return a completed confidentiality undertaking in the form provided in Annex 2 of this ITT. Where the Tenderer is a consortium, only the Lead Member is required to sign and return a completed copy of the confidentiality undertaking on behalf of all members of the consortium. The Lead Member must have consent and authority to submit a confidentiality undertaking on behalf of the consortium.
- 2.20 Tenderers may only make use of any information provided by The Crown Estate relating to or in connection with this procurement for the purposes of preparing and submitting their Tender. Tenderers shall not, without the prior written consent of The Crown Estate,

at any time make use of such information for any other purpose or disclose such information to any person, except:

(a) where the disclosure is required by law or any court, regulatory or government authority competent to require the same;

b) to the extent where such information is brought within the public domain otherwise than by the breach of this paragraph 2.21 by the relevant Tenderer; or

(c) where such information is disclosed for the purposes of obtaining sign-off from insurers and legal advisers on the Contract, or for obtaining sureties, guarantees or commitments from proposed sub-contractors or suppliers and other information required to be submitted with their Tender.

2.21 Tenderers must treat this ITT (and all the documents forming part of or appended or scheduled to this ITT) and all other information provided by or on behalf of The Crown Estate as private and confidential (and shall procure that their employees, consultants, subcontractors, advisers, insurers and funders shall treat documentation supplied in relation to this ITT as confidential). No Tenderer shall disclose that it has been invited to submit a Tender to The Crown Estate or release details of this ITT (and all the documents forming part of or appended or scheduled to this ITT) other than on a strictly confidential basis and to the extent strictly necessary to such parties as the Tenderer needs to consult in order to submit a Tender.

2.22 Tenderers shall not at any time release any information concerning the ITT and/or their Tender and/or any related documents and/or discussion with The Crown Estate in connection to this procurement for publication in the press or on radio, television, screen or any other medium.

2.23 This ITT is issued in confidence and remains the property of The Crown Estate. The copyright in this ITT is vested in The Crown Estate and may not be reproduced, copied or stored on any medium without the prior consent of The Crown Estate except in relation to the preparation of the Tender.

### **Conflicts of interest**

2.24 The Crown Estate may exclude any Tenderer if there is an actual and/or potential conflict of interest which cannot be effectively remedied. The concept of a conflict of interest as set out in Regulation 24 of the Regulations, includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

2.25 Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Tenderer to inform The Crown Estate and provide details of the actual or potential conflict(s) and any measures taken or to be taken to remedy the actual or potential conflict(s).

## **Consortia**

- 2.26 Where a consortium is proposed, all members of the consortium will be required to provide the information required in all sections of the ITT as part of a single composite response. Responses must enable The Crown Estate to assess the overall provision of Services proposed. The evaluation will take place on the information from the Lead Member.
- 2.27 Where the Lead Member is a special purpose vehicle or holding company, information should be provided of the extent to which it will call upon the resources and expertise of its members.
- 2.28 Where a consortium or other grouping of economic operators is proposed each member of the consortium (or grouping) shall provide a written undertaking addressed to The Crown Estate that it, together with the other members, shall make available to the consortium (or grouping) the resources necessary to perform the contract. Where such an undertaking is not received the Tender shall be considered failed and excluded from further consideration.
- 2.29 The Crown Estate recognises that arrangements in relation to the consortia may be subject to future change. Tenderers should therefore respond in the light of such arrangements as are currently envisaged. Tenderers are reminded that The Crown Estate must be immediately notified of any changes, or proposed changes, in relation to the bidding model so that a further assessment can be carried out by applying the selection criteria to the new information provided. Any change in consortium membership may lead to subsequent exclusion from the tender process. The Crown Estate also reserves the right to deselect any Tenderer prior to any award of contract, based on an assessment of any updated information supplied. Such assessment being carried out in line with the evaluation criteria and methodology identified.
- 2.30 The Crown Estate will only enter into a contract with a consortium which is a separate legal entity from those of its members. Any unincorporated consortium which is successful will be required to adopt a separate legal entity prior to, and as a condition to, entry into the contract.
- 2.31 Where Tenderers are proposing to create a separate legal entity, such as a special purpose vehicle, Tenderers should provide details of the actual or proposed percentage shareholding of the constituent members within the new legal entity.

## **Sub-contracting**

- 2.32 Where the Tenderer proposes to use one (1) or more sub-contractors to deliver some or all of the contract requirements, they should provide details of the proposed bidding model that includes members of the supply chain and the percentage of work proposed to be delivered by each sub-contractor.
- 2.33 The Crown Estate recognises that arrangements in relation to sub-contracting may be subject to future change and may not be finalised until a later date. However, Tenderers should be aware that where information provided to The Crown Estate indicates that sub-contractors are to play a significant role in delivery, any changes to those sub-contracting arrangements may affect the ability of the Tenderer to proceed with the

procurement process or to provide the supplies and/or Services required. Tenderers should therefore notify The Crown Estate immediately of any change in the proposed sub-contractor arrangements. The Crown Estate reserves the right to deselect any Tenderer prior to any award of contract, based on an assessment of the updated information. Such assessment to be done in line with the Evaluation Criteria and Methodology as laid out.

### **Submission of Tenders**

- 2.34 No unauthorised alteration or addition (save for the inclusion of the relevant information) should be made to the Tender or to any part of the ITT. Tenders must not be qualified in any way apart from as allowed under the ITT and must be submitted strictly in accordance with the ITT, including these Instructions. Tenders must not be accompanied by any covering letter or any statement that could be construed as rendering the Tender equivocal and/or placing it on a different footing from other Tenders.
- 2.35 Any failure to comply with these requirements for the submission of the Tender and other requirements regarding time of receipt and submission of signed documents may cause the Tender to be excluded.
- 2.36 Any Tender or other supporting documents received after the Submission Deadline will not be considered for acceptance by The Crown Estate.
- 2.37 The Tender, Delivery Proposals and other supporting documents shall be completed in black ink or type in Arial font, size 11, in the English language and state all monetary amounts in British Pounds Sterling. Supporting information should be presented in the same order as and referenced to, the relevant question.
- 2.38 The Form of Tender must be signed:
- 2.38.1 where the Tenderer is an individual, by that individual; or
  - 2.38.2 where the Tenderer is a partnership, by all the partners or by at least two (2) partners signing under a power of attorney (a copy of which is to be provided with the Tender on behalf of the other partners); or
  - 2.38.3 where the Tenderer is a company, by two (2) directors or by a director and the company secretary, such persons being duly authorised for that purpose;
  - 2.38.4 where the Tenderer is a Consortia bid, by the Lead Consortia member.
- 2.39 Each Tenderer shall produce forthwith upon request by The Crown Estate documentary evidence of any authorisation referred to in this ITT.
- 2.40 Tenderers should note that the Contract and its formation, interpretation and performance shall be subject to and interpreted in accordance with the laws of England.
- 2.41 Tenderers should include in their Tender all information required by the Price Schedule and should include in the proposals all information required by the ITT and all costs necessary to undertake the Services for the Project safely and in compliance with all statutory provisions and other rules or regulations relating to the Contract.

- 2.42 The ITT and all other documents provided to Tenderers will remain the property of The Crown Estate. Tenderers are advised to retain for themselves details of their submissions. The Crown Estate reserves the right to make a charge if a Tenderer requests a copy of its submitted tender.
- 2.43 Where any Tenderer falls within one (1) of the exclusion grounds set out in the SQ, The Crown Estate will consider any evidence that the Tenderer is able to put forward to demonstrate that it has "self-cleaned".
- 2.44 Where a Tenderer is providing evidence of "self-cleaning", it must demonstrate that it has taken remedial action, to the satisfaction of The Crown Estate in each case. In order for the evidence to be sufficient it must, prove the Tenderer has "self-cleaned" as follows:
- 2.44.1 Paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;
  - 2.44.2 Clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
  - 2.44.3 Taken technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.
- 2.45 The actions agreed on deferred prosecution agreement (DPAs) may be submitted as evidence of "self-cleaning" and evaluated by The Crown Estate.
- 2.46 The measures taken shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. If such evidence is considered by The Crown Estate (whose decision shall be final) as sufficient, the Tenderer shall be allowed to continue in the procurement process.
- 2.47 If the Tenderer cannot provide evidence of "self-cleaning" that is acceptable to The Crown Estate, the Tenderer will be excluded from further participation in the procurement and provided with a statement of reasons for that decision.

## **Rejection of Tenderers**

- 2.48 In addition to any other ground for exclusion that may arise as is otherwise set out in this ITT, any Tender submitted by any Tenderer in respect of which the Tenderer does any of the following may not be considered for acceptance and may, accordingly, be rejected by The Crown Estate and the relevant Tenderer excluded from further participation:
- 2.48.1 in accordance with Regulation 69 of the Regulations, where a Tenderer submits an abnormally low bid; or
  - 2.48.2 fixes or adjusts the amount, prices, charges, and rates shown:
  - 2.48.3 by or in connection with any agreement or arrangement with any other person; or

- 2.48.4 by reference to any other Tender; or
  - 2.48.5 communicates to any person other than The Crown Estate any information except in accordance with this ITT; or
  - 2.48.6 enters into any agreement or arrangement with any other person that such other person shall refrain from submitting Tender or shall limit or restrict the amounts, prices, charges, and rates to be shown by any other Tenderer in its Tender and other documents; or
  - 2.48.7 offers or agrees to pay or give, or does pay or give, any sum of money, inducement or valuable consideration, directly or indirectly, to any person for doing, or having done, or causing, or having caused, to be done in relation to any other Tenderer, or any other proposed Tender or other documents, any act or omission; or
  - 2.48.8 it contains any significant omissions or qualifications; or
  - 2.48.9 fails to comply with these Instructions.
- 2.49 Such non-acceptance or rejection by The Crown Estate shall be without prejudice to any other civil remedies available to The Crown Estate in respect thereof or to any criminal liability that such conduct by a Tenderer may attract.

### **Evaluation of Tenders**

- 2.50 In regard to the tender process, The Crown Estate reserves the right at any time at its absolute discretion:
- 2.50.1 The Crown Estate is not obliged to accept the lowest Tender submitted;
  - 2.50.2 to accept or not accept any Tender submitted pursuant to the ITT in accordance with the evaluation criteria and grounds for exclusion set out in the ITT;
  - 2.50.3 not to award a contract and to withdraw from, suspend or terminate the procurement procedure, any part of the procurement procedure and/or this ITT and to procure the Contract of a supplier by any alternative means within the legal requirements which The Crown Estate is subject to (including by way of undertaking a new procurement process). In accordance with paragraph 2.4, The Crown Estate shall not be liable for any costs incurred by tenderers; and
  - 2.50.4 The Crown Estate may without limitation undertake site visits, seek references, require presentations to be given and undertake interviews as part of the evaluation process.
- 2.51 Tenderers should note that:
- 2.51.1 any information provided by or on behalf of The Crown Estate including, without limitation, the particulars of their properties are a general outline, for

the guidance of the Tenderers and do not constitute the whole or any part of an offer or contract; and

2.51.2 neither The Crown Estate nor their professional advisers guarantee the accuracy of any description, dimensions, references to condition, necessary permissions for use and occupation and other details forming part of or appended to this ITT and Tenderers must not rely on them as statements of fact or representations and must satisfy themselves as to their accuracy; and

2.51.3 to the fullest extent permitted by law, neither The Crown Estate nor their professional advisers, officers and employees will be liable, in negligence or otherwise, for any loss arising from the use of the relevant information.

2.52 The Crown Estate gives notice that:

2.52.1 this ITT is set out as a general outline only for the guidance of intended Tenderers and does not constitute, nor constitute any part of, an offer or contract; and

2.52.2 all descriptions, dimensions, references to condition and necessary permissions for use and occupation, and other details are given without responsibility and any intending Tenderer should not rely on them as statements or representations of fact but must satisfy themselves by inspection or otherwise as to the correctness of each of them.

### **Tenderers' Warranties**

2.53 In submitting any Tender, each Tenderer warrants, represents and undertakes to The Crown Estate that:

2.54 it has not done any of the matters referred to in paragraph 2.48 of this Instructions to Tenderers to the ITT and has complied in all respects with these Instructions; and

2.54.1 all information, representations and other matters of fact communicated (whether in writing or otherwise) to The Crown Estate by the Tenderer, its employees or agents in connection with or arising out of the Tender are true, complete and accurate in all respects; and

2.54.2 it has made its own investigations and research and has satisfied itself in respect of all matters (whether actual or contingent) relating to the Tender; and

2.54.3 it has satisfied itself as to the correctness and sufficiency of the information it has inserted in the Price Schedule and included in its Delivery Proposals; and

2.54.4 it has full power and authority to enter into the Contract and undertake the Services for the Project; and

2.54.5 it is of sound financial standing and has and will have sufficient premises, working capital, skilled personnel, vehicles, plant, goods and materials; and

- 2.54.6 other resources available to it to carry out the Services for the Project; and
- 2.54.7 it will obtain all necessary consents, licences and permissions to enable it to carry out the Services for the Project and will from time to time obtain and maintain all further and other necessary consents, licences and permissions to enable it to continue to do so; and
- 2.54.8 it will not at any time claim or seek to enforce any lien, charge, or other encumbrances over property of whatever nature owned by The Crown Estate and that is for the time being in the possession of the Tenderer.

## Data Protection

- 2.55 To the extent applicable, Tenderers shall comply with their obligations under Data Protection Legislation and acknowledge that in processing any Personal Data pursuant to this procurement, they do so as an independent Data Controller. References in this ITT to the “**Data Protection Legislation**” shall be references to the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) as defined in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 as amended from time to time) and the Data Protection Act 2018, along with any associated guidance and Codes of Practice as issued from time to time. For the purposes of this ITT, the terms Data Controller, Data Subject, Personal Data, Process and Processing shall have the meaning prescribed under the Data Protection Legislation.

## Freedom of Information

- 2.56 Tenderers are to note that The Crown Estate is subject to the Freedom of Information Act 2000 (the **FOIA**) and the Environmental Information Regulations 2004 (the **EIR**). Under the FOIA and EIR, members of the public or any interested party may make a request for information held by The Crown Estate at the time of the request.
- 2.57 Following such a request, The Crown Estate will consider the disclosure of any relevant information, including price quotes, contained in Tenders both successful and unsuccessful, subject to the exemptions of the FOIA or EIR as applicable. Tenderers should be aware that attaching a blanket label of 'private and confidential', 'commercially confidential' or similar to Tenders may not exempt those Tenders from disclosure under the FOIA/EIR.
- 2.58 If a Tenderer considers that all or any part of its Tender and/or any specific information contained therein constitute a “trade secret”, or that the Tender or information is commercially sensitive information disclosure of which would be likely to prejudice the commercial interests of any party, believes that a duty of confidentiality applies or otherwise considers that such documents and/or information falls within any other exemption set out in the FOIA/EIR, the Tenderer should:
  - 2.58.1 attach information it considers to be commercially sensitive e.g. costing or trade secrets in a separate Annex 4 Schedule of Confidential Information marked 'commercially sensitive information' or 'trade secret' and include a time limit for the sensitivity of the information; and

- 2.58.2 in respect of such schedule and/or specific information, identify the particular exemption that the Tenderer considers should apply in the particular circumstances.
- 2.59 For the avoidance of doubt, Annex 4 of this ITT is a mandatory document which **must** be submitted to the Tender Portal. If a Tenderer considers that its Tender and/or specific information contained therein does not constitute a “trade secret” or commercially sensitive information as described at paragraph 2.58 above, the Tenderer is still required to submit Annex 4 and will need to mark table 2 as “not applicable”.
- 2.60 Tenderers should be aware that, even when they have identified relevant documents and/or information and considered an exemption applies in a completed version of the Annex 4 Schedule of Confidential Information of these Instructions, The Crown Estate will have sole discretion in deciding whether such documents and/or information should be disclosed under the FOIA/EIR.

### **Business Enterprise and Employment Act 2015**

- 2.61 Tenderers acknowledge and understand that The Crown Estate may be required to disclose information relating to its procurements (including but not limited to information contained in any Tenders) to support investigations made under the Small Business Enterprise and Employment Act 2015.