



**HM Revenue & Customs (HMRC)  
Tendering Instructions**

**2016/06/28  
Version 5.0**

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# 1. INTRODUCTION

## Interpretations

In this document

Award	means the award process used to evaluate tenders using pre-defined criteria compatible with those described in Regulation 67 of the Public Contracts Regulations.
Award Criteria	means the criteria which will be used to evaluate the Tender against, which will lead to the Award of the Contract.
Bid Field	means the area within an ITT type eSourcing Event where pricing information is requested and provided.
Candidate	means an Economic Operator that has sought an invitation or has been invited to take part in a restricted procedure, a competitive procedure with negotiation, a negotiated procedure without prior publication, a competitive dialogue or an innovation partnership
Call Off	means the process used to establish the exact terms, for the provision of goods and/or services as outlined in an existing Framework Agreement in relation to quantity, quality, schedule, place of delivery and, when not previously determined, price.
Client Organisation	means a Public Sector organisation, other than the Contracting Authority, enabled to make use of any resulting contract/agreement
Close Time	means the time shown on the clock in the eSourcing Event when the event will close.
Competitive Procurement Exercise	means an exercise carried out to allow Economic Operators to compete for a contract for the supply of goods and/or services in open and transparent manner.
Conditions of Contract	means the conditions under which the Contract will be awarded.
Contract	means the document used to specify the types, terms and conditions for the provision of goods and/or services pursuant of the Contract and as established during the Competitive Procurement Exercise.
Contract Notice	means the notice sent to the Official Journal of the European Union (OJEU) or to Contracts Finder as may be applicable to comply with the Public Contracts Regulations.
Contract Start Date	means the date the service and/or provision of goods commences.
Contracting Authority	means HM Revenue and Customs (HMRC) or any contracting body represented by HMRC.
Contracts Finder	means the website provided by Business Link where Public Sector Competitive Procurement Exercise Contract Notices are displayed.
Economic Operator	means any person or public entity or group of such persons and entities, including any temporary association of undertakings, which offers the execution of works or a work, the supply of products or the provision of services on the market
eSourcing Event	means an event set up within the eSourcing Portal that allows Candidates/Tenderers to make an Expression of Interest or provide a Tender.
eSourcing Portal	means the computer application, provided by SAP Ariba, that is used by HMRC to manage the Competitive Procurement Exercise.
Expression of Interest	means the stage in the Competitive Procurement Exercise where an initial expression is made by an Economic Operator that they would be interested in tendering for a contract, as described in a Contract Notice, if selected.

Framework Agreement	means the agreement between the Client and the Candidate/Tenderer referred to in the Contract.
Lots	means a dividing of the requirements into more specialist sub-category 'lots' such as the provision of regional service.
Open Type Procedure	means a procedure where Candidates/Tenderers are provided with the opportunity to provide a Tender in respect of both Selection and Award Criteria at the outset of a Competitive Procurement Exercise.
Parent Company Guarantee	means the deed of guarantee as set out by any company which is the ultimate Holding Company of the Economic Operator and which is directly or indirectly responsible for the activities of the Economic Operator.
Public Contracts Regulations (PCR 2015)	means the Regulations laid down in statute in the Public Contracts Regulations 2015 and any subsequent amendments.
Pre-Qualification Questionnaire (PQQ)	means the questions contained within questionnaires in an eSourcing Event, which Economic Operators are required to complete to provide an Expression of Interest response when requested to do so in a Contract Notice
Regulation	means the applicable regulation numerically identified within the Public Contracts Regulations.
Restricted Type Procedure	means a procedure where Candidates are provided with the opportunity to make an Expression of Interest, by providing information in respect of the Selection Criteria only, which will be evaluated to select which Candidates should be invited to tender.
Service Order	means the Contract document used to specify the types, terms and conditions, as established during the Call Off process, for goods and/or services to be provided from a Framework Agreement.
Selection	means the process used to select which Economic Operators are capable of providing the goods and/or services required for further consideration at the Award stage.
Selection Criteria	means the pre-determined criteria compatible with the Selection Criteria (Regulation 58) including Exclusion Grounds (Regulation 57) stated in the Public Contracts Regulations by which the information provided by an Economic Operator will be evaluated against to establish whether the Economic Operator meets the necessary criteria to be allowed to be further considered in the procurement procedure for contract award.
SME's	means Small and Medium sized Enterprises which are defined as having up to 249 employees, a turnover of less than £50M and balance sheet total assets of less than £5.6M
Tender	means the tender submitted by the Tenderer in response to the Client's invitation for formal offers to supply it with the goods and/or services pursuant to the Framework Agreement/Contract.
Tenderer	means an economic operator that has submitted a tender
Tender Clarification	means a clarification that can be requested by either the Client, in respect of a response received or the Tenderer, in respect of the specification provided at any stage of the Competitive Procurement Exercise.

## General

- 1.1 HM Revenue & Customs (HMRC) uses web-based eSourcing Portal, provided by SAP Ariba to routinely manage its Competitive Procurement Exercises.
- 1.2 The eSourcing Portal allows all Candidates/Tenderers to prepare Tenders in a standardised format, with the aim of ensuring a simpler, more consistent approach to tendering, removing some of the barriers which make it difficult for businesses, in particular SME's, to access public sector contracts.
- 1.3 The eSourcing Portal allows HMRC to:
  - a. invite a Candidate/Tenderer to take part in a Competitive Procurement Exercise, referred to as an eSourcing Event, across a secure web link;
  - b. use the eSourcing Event to provide a Candidate/Tenderer with access to Contract documents;
  - c. request a Candidate/Tenderer to answer a series of questions contained in questionnaires within the eSourcing Event to obtain a standardised e-format Tender;
  - d. evaluate Tenders using inbuilt scoring functionality; and
  - e. optionally conduct electronic reverse e-auctions as part of the evaluation process.
- 1.4 The eSourcing Portal will not be used to process purchase orders and pay invoices, this will be done using the separate HMRC ERP system.

### Accessing a HMRC eSourcing Event

- 1.5 Prior to being given access to an eSourcing Event the Candidate/Tenderer will have to obtain an Ariba Supplier Network registration number by accessing the following HMRC registration home page accessed using the following link:  
<http://hmrc.supplier-eu.ariba.com/ad/register/SSOActions?type=full>
- 1.6 The Tenderer/Candidate will only be able to be provided with access to the eSourcing Event once registration has been completed.
- 1.7 When accessing an eSourcing Event for the first time the Tenderer/ Candidate will need to accept the conditions in the bidder agreement a copy of which can be found at Annex A.
- 1.8 Once the Tenderer/Candidate the eSourcing portal home page can be accessed using the following link:  
<http://seller.ariba.com>

### Purpose of this Document

- 1.9 This document provides further information about the format of Competitive Procurement Exercises used by HMRC and clarifies matters relating to the submission and evaluation of a Tender using the eSourcing Portal.
- 1.10 These instructions should therefore be read, along with all other documents attached within the eSourcing Event, before attempting to complete any on-line questionnaires in relation to a Competitive Procurement Exercise.

### Further Sources of Information

- 1.11 Once logged onto the system technical guidance relating to the use of the eSourcing Portal can be found in the Help Centre that is accessed via the help tab at the top of the screen.
- 1.12 General information for suppliers wanting to sell their products and services to HMRC can also be found on the suppliers guide on the HMRC website using the following link:

<https://www.gov.uk/government/organisations/hm-revenue-customs/about/procurement#supplying-to-hmrc>

which includes a link to the SAP Ariba Sourcing Professional Supplier's Guide

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/528355/SAP\\_Ariba\\_Sourcing\\_Professional\\_Supplier\\_s\\_Guide\\_-\\_June\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/528355/SAP_Ariba_Sourcing_Professional_Supplier_s_Guide_-_June_2016.pdf)

- 1.13 Before attempting to use the eSourcing Portal all Candidates/Tenderers must ensure that they read SAP Ariba Sourcing Professional Supplier's Guide

## **2. TENDERING INSTRUCTIONS**

- 2.1 These instructions are provided to assist the Candidate/Tenderer in submitting a Tender in the required format. It is important that you provide all the information asked for in all questionnaires and in the format specified to ensure that all Tenders are given equal and fair consideration.
- 2.2 A Candidate/Tenderer should:
- a. acquaint themselves fully with the tendering instructions, conditions of tender and contractual obligations outlined in this document, and are deemed to have done so before submitting a Tender;
  - b. acquaint themselves fully with the all of the applicable Requirements, as outlined in Section 16 of this document, before attempting to answer any question in any questionnaire; and are deemed to have done so before submitting a Tender; and
  - c. ensure that their response to the questions in the various questionnaires relate to all of the applicable Requirements.
- 2.3 A Candidate/Tenderer failing to:
- a. comply with any of the instructions contained in this document;
  - b. provide all of the information requested; and/or
  - c. provide the requested information in the correct format, may result in the Candidate's/Tenderer's Tender not being fully evaluated or rejected entirely.

### **Communication and/or Notification Messages**

- 2.4 The Candidate/Tenderer should note that any communications or notifications in connection with the tendering exercise, both at the Selection stage and beyond, will routinely be sent by HMRC to the Candidate/Tenderer using the messaging facility within the eSourcing Event.
- 2.5 Notifications or communications sent via the messaging system may represent material changes to information previously provided. Accordingly, until the Competitive Exercise has been fully concluded, the Candidate/Tenderer must log into the eSourcing Event at regular intervals, and no less frequently than once a week, to check for messages and access their content.
- 2.6 Any message sent via the eSourcing System is retained within the messages section of the eSourcing Event and this allows the messages to be accessed and the information therein reviewed at any time.
- 2.7 The eSourcing system generates an automated email prompt, advising the Candidate/Tenderer to log onto the eSourcing Event to view messages.

### **Contact e-mail address**

- 2.8 The email prompt will be sent to the email address of the Candidate/Tenderer administrator provided during registration.
- 2.9 The Candidate/Tenderer administrator can create multiple user accounts for personnel from within their organisation, invites to eSourcing events will only be forwarded to the Candidate/Tenderer administrator.
- 2.10 For the avoidance of doubt, it is the information provided within the message and retained in the eSourcing Event that is the material change to any information previously provided and not the content of any system generated email prompt.

## **Contract Documents**

- 2.11 The draft Contract documents are provided within the eSourcing Event as attachments. The Tender provided by the Candidate/Tenderer to the questions within questionnaires contained within the eSourcing Event, will all form part of the final Contract documents.
- 2.12 Where the Candidate/Tenderer believes that a change is required to the draft Contract documents, for example in respect of the draft specification, then the Candidate/Tenderer must request HMRC to make any such changes. The Candidate/Tenderer must not alter any aspect of the draft Contract documents.
- 2.13 HMRC reserves the right to modify the Contract documents at any time prior to the deadline for receipt of tenders. Any such changes will be notified to the Candidates/Tenderers in writing via the eSourcing Portal messaging facility.
- 2.14 Where the modifications or amendments are significant, HMRC may, at its discretion, extend the deadline for receipt of tenders.

## **3. CONDITIONS OF TENDER**

### **General**

- 3.1 In accordance with the Bribery Act 2010, any Candidate/Tenderer found offering an inducement of any kind in relation to obtaining a contract with the Contracting Authority or any Client Organisation will be disqualified from the Competitive Procurement Exercise and any Tender already submitted by the Candidate/Tenderer will not be considered. Offering an inducement in relation to a public contract may constitute a criminal offence.
- 3.2 The Candidate/Tenderer is responsible, at their own expense, for obtaining all information necessary to complete their Tender.
- 3.3 The Information provided in the draft Contract documents is considered sufficient to allow the preparation of a Tender, but Candidates/Tenderers must satisfy themselves by their own investigations about the sufficiency of information.
- 3.4 Where the Candidate/Tenderer believes that there is insufficient information, then the further information required should be requested using the clarification process referred to in Section 5.20 of this document.
- 3.5 Where a Candidate/Tenderer, believes there is an omission and/or an anomaly in the specification for the goods and/or services being tendered, particularly in the case of a repeat procurement where a Candidate/Tenderer has provided the goods and/or services previously and aspects of the service have been omitted and/or changed, then the Candidate/Tenderer is obliged to bring the omission and/or anomaly to the attention of HMRC using the clarification process referred to in Section 5.20 of this document.
- 3.6 No responsibility is accepted by HMRC for any loss, damage or expense of whatever kind arising from the use by the Candidate/Tenderer of any information provided in the Contract documents.

### **Measures to promote tax compliance**

- 3.7 A new policy Action Note 03/14 was released by the Cabinet office regarding Measures to Promote Tax Compliance, which can be accessed using the following link:

<https://www.gov.uk/government/publications/procurement-policy-note-0314-promoting-tax-compliance>

- 3.8 For all Competitive Procurement Exercises which have or are likely to have a value of £5 million or over a Condition of Tender is that Candidate/Tenderers must self-certify their tax compliance by answering the relevant questions in the Selection Criteria questionnaires.

- 3.9 For all Competitive Procurement Exercises where HMRC is named in the Contract Notice then HMRC will perform the Revenue enquiries described in Section 17.

### **Information Sharing in Government**

- 3.10 A new policy Action Note 01/14 was released by the Cabinet Office to allow Information Sharing in Government procurement exercises, which can be accessed using the following link:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277102/PPN\\_0114\\_Information\\_Sharing\\_in\\_Government\\_Procurement\\_Exercises.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277102/PPN_0114_Information_Sharing_in_Government_Procurement_Exercises.pdf)

- 3.11 Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the cabinet office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross Government role delivering overall Government policy on public procurement – including ensuring value for money and related aspects of good practice.
- 3.12 For these purposes any of the Candidates/Tenderer's documentation/information (including any that the Candidates/Tenderer considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Candidate/ Tenderer during a Competitive Procurement Exercise may be disclosed within Government. This information will not be disclosed outside Government. Candidates/Tenderers taking part in this Competitive Procurement Exercise consent to these terms as part of the competition process.

### **Conditions of Contract**

- 3.13 The Conditions of Contract applicable to any agreement are stated in the draft Contract documents and will be based on or subject to:
- Framework Agreement Terms and Conditions, in the case of a Call Off; or
  - HMRC Standard Terms and Conditions , which can be accessed using the following link:

<https://www.gov.uk/government/organisations/hm-revenue-customs/about/procurement#terms-and-conditions>

- 3.14 The Candidate/Tenderer should be aware that there will be no opportunity to change the Conditions of Contract but there may be a limited opportunity early in the procurement to clarify how the Terms and Conditions will be applied in practice. Initial clarification in respect of this is contained in Appendix A, Explanatory Note for Terms and Conditions.
- 3.15 At the outset the Candidate/Tenderer must ensure that they familiarise themselves with the content of the draft Contract documents and assure themselves that they are prepared to enter into an agreement pursuant to all Conditions of Contract, including the Contract terms, as stated in the draft Contract documents.
- 3.16 HMRC reserves the right to exclude a Candidate/Tenderer who does not accept the Conditions of Contract or Contract terms at any stage in the Competitive Procurement Exercise.

### **Tender Costs**

- 3.17 The Candidate/Tenderer will not be entitled to claim from HMRC any costs or expenses that may be incurred in preparing their Tender. This applies:
- whether, or not, the tender is successful;
  - if any modifications or amendments are made to the specification during the stages of the Competitive Procurement Exercise.

## **Cancellation of the Competitive Procurement Exercise**

- 3.18 HMRC reserves the right to annul a Competitive Procurement Exercise and reject all applications or tenders at any time prior to Award of Contract without incurring any liability to the Candidate/Tenderer in respect of the cost of preparing and submitting a Tender.

## **4. FORM OF TENDER**

### **General**

- 4.1 A duly authorised person within your organisation must approve the content and submission of any Tender made.
- 4.2 The Candidate/Tenderer must ensure that they provide a full Tender in every aspect, as only the information provided in your Tender will be taken into account as part of the Competitive Procurement Exercise. The Candidate/Tenderer must not assume that HMRC will take into account any prior knowledge it may have of the organisation.
- 4.3 Any Tender shall be submitted in English. Any printed literature furnished by the Candidate/Tenderer may be written in any other language, but must be accompanied by an English translation of its relevant pages. In such a case, for the purpose of interpretation in relation to the tender, the English translation shall prevail.

### **Validity of Tender**

- 4.4 The Tender shall remain open for acceptance for a period of six months from the Close Time of the eSourcing Event.

### **Contract Price**

- 4.5 Prices shall be in GBP/Sterling exclusive of VAT and MUST be submitted within the bids section of the eSourcing event. Currency fluctuations shall be at the Candidate's/Tenderer's risk.

## **5. SUBMISSION OF TENDERS**

### **Electronic Submission**

- 5.1 The Tender, and Tender Clarification correspondence should be submitted electronically using the eSourcing Portal, subject only to any specified exceptions referred to below under hard copy documentation or as may be agreed with the Candidate/Tenderer due to accessibility needs.
- 5.2 The eSourcing Portal uses a secure password protected web-link for the electronic submission, however the Candidate /Tenderer must have a clear understanding and acceptance that there are risks involved with any electronic communication.
- 5.3 Accessibility needs, which cover a range of disabilities, should be highlighted by the Candidate/Tenderer at the earliest opportunity if it is felt that they may hinder the ability of the Candidate/Tenderer to provide a Tender.
- 5.4 Where a Competitive Procurement Exercise is not divided into Lots, all questionnaire questions and Bid Fields contained within the eSourcing event, must be completed to ensure that the Tender can be fully evaluated in respect of the single lot requirement.
- 5.5 Where a Competitive Procurement Exercise is divided into Lots, the Candidate/Tenderer must provide a response to all questionnaires which are not Lot specific, but need only provide a response to the Lot specific questionnaire(s) related to those Lots for which the Candidate/Tenderer intends applying for.
- 5.6 Where it is believed that no answer is necessary in response to a question, an answer of

some form must entered, such as 'not applicable', and a short explanation should be provided as why a response to the question has not been provided.

- 5.7 The Candidate/Tenderer should be aware that if no answer is provided to an optional question an auto-generated zero score will be applied
- 5.8 An answer to a question must not include a cross reference to a previous answer provided in the Tender to a previous question. This is especially relevant in relation to answers provided to questions in other questionnaires as the evaluator may have restricted access to the questionnaires relevant to their specialism only.
- 5.9 Where the Candidate/Tenderer believes that any information provided in response to one question can be relevant to the response required for another question, then the information should be duplicated.
- 5.10 Answers to the questions should:
  - a. fit within the text field space provided unless a maximum number of words/characters are specified within the question;
  - b. include an attachment only when specifically requested; and
  - c. indicate that an attachment has been used to part answer the question, but ONLY where the question has made provision for an attachment to be used as part of the answer.
- 5.11 The Tenderer/Candidate must ensure that only the information requested to be provided in the attachment is provided in the attachment and it should not be used to provide further information or answer the question in its entirety unless the question makes specific provision for this. Only the information specifically requested to be provided in the attachment will be considered.
- 5.12 Where the Candidate/Tenderer believes that any information contained in an attachment for one question can be relevant to the answer required for another question, (taking into account the restrictions on the use of attachment as stated at 5.10) then the attachment should be attached to both questions and the appropriate reference made to it in each question answer.
- 5.13 Attachments must have a maximum file size of 10mb per attachment.

### **Hard Copy Documentation**

- 5.14 Hard copy documentation should only be forwarded where a question has requested for information to be provided as an attachment and the information is not available in an electronic format.
- 5.15 Where the question allows for and the Candidate/Tenderer intends to provide information in a hard copy format, then the Candidate/Tenderer must provide in the question text field a description of the information sent.
- 5.16 Where the questionnaire has specifically provided for material to be submitted in hard copy format:
  - a. such information should be placed in a sealed envelope and forwarded to the address provided by the HMRC nominated contact person as stated in the Contract Notice; and
  - b. the envelope should bear no reference to the Candidate/Tenderer by name and should merely bear the HMRC tender reference number.
  - c. The messaging facility within the eSourcing Portal should be used by the Candidate/Tenderer to provide a notification that hard copy information should be expected.
- 5.17 The Candidate/Tenderer will be responsible for all costs of carriage and should ensure that documents are sent by appropriate means so as to ensure that they are received by HMRC

by the notified Close Time.

### **Clarification Questions**

- 5.18 Any clarification questions that the Candidate/Tenderer may have in respect of any aspect of the Competitive Procurement Exercise, must be submitted using the eSourcing Portal messaging facility within the eSourcing Event.
- 5.19 The 'Event Messages' function is the first item in the list, which can be found on the left hand side of the screen in the column headed Event Details, and you can access the messages by clicking on the name. The 'Compose Message' tab can be used to create and send a message from within the eSourcing Portal.
- 5.20 Exceptionally, such as in the event of technical failure, queries may be raised with the HMRC contact person named in the Contract Notice by email, but under no circumstance should information be sought from any other party within HMRC unless previously agreed in writing.
- 5.21 Clarification questions relating to the specification must be submitted a minimum of 14 days before the event close date, or in the case of a 'mini' tender, within the timeframe specified by HMRC in the procurement documents. This will allow sufficient time, 6 days where Regulation 47 is applicable, in advance of the tender close date for HMRC to prepare and distribute a response and as necessary for the Candidates/Tenderers to amend their Tender.
- 5.22 If HMRC considers any clarification to be of material and general significance, both the query and the response will be communicated (in a suitably anonymous form) using the messaging facility within the eSourcing Portal to all Candidate/Tenderers registered to the eSourcing Event.
- 5.23 Where any clarification provided results in modification or amendment of the Specification or other procurement documentation, and HMRC considers these changes to be significant, HMRC may, at its discretion, extend the deadline for receipt of tenders

### **Accuracy of Tenders**

- 5.24 The Candidate/Tenderer should make all efforts to ensure that any information provided in their Tender is valid and accurate.
- 5.25 HMRC reserves the right to exclude Candidates/Tenderers from further participation in the exercise in the event that any information provided in their Tender is found to be a misrepresentation, false or deliberately misleading.
- 5.26 The Tender submitted by the successful Candidate/Tenderer, including the information provided in respect of the Selection Criteria, will form part of the final Contract documents
- 5.27 Any error or misrepresentations discovered after Award of Contract may result in termination of the Agreement/Contract.
- 5.28 The Candidate/Tenderer must inform HMRC immediately (irrelevant of what stage the Competitive Procurement Exercise is at) if any changes occur within its operations that may impact on any Tender submitted, such as but not limited to: an organisation being the subject of:
  - a. a major restructuring which leads to a change in capacity;
  - b. administration/liquidation activity; and/or
  - c. a buy out/takeover by another organisation

## **6. PROPOSED TENDER TIMETABLE**

## **Tender Close Date/Time**

- 6.1 The proposed tender timetable/key milestone dates are provided in the Contract Notice and/or the Contract documents.
- 6.2 The proposed Agreement/Contract start date is provided in the Contract Notice and/or the Contract documents.
- 6.3 The Close Time, date and remaining time are all shown within the eSourcing Event in the form of a clock, which provides a live count down facility in days, hours and minutes, to the Close Time. The eSourcing Portal closes down the event automatically when the Close Time is reached and prevents any further updates to the Candidate's/Tenderer's Tender.
- 6.4 The close time for submission of Tender and or the Agreement/Contract start date may be extended in the event that;
  - a. changes are made to the Contract documents;
  - b. a large number of clarification questions are received; or
  - c. due to any technical issues outlined below.

The Close Time within the event will accurately reflect any such extensions and therefore supersedes any dates or times provided in the Contract Notice, Contract Documents and/or messages sent via the eSourcing system.

- 6.5 It is the responsibility of the Candidate/Tenderer to monitor the clock/countdown facility to ensure that the Tender is complete and the final version has been submitted using the 'Submit Entire Response' button at the bottom of the screen. Responses can be revised at any time up until the Close Time for the event, but the revised response must be saved and the 'Submit Entire Response' button used to re-submit the revised response.
- 6.6 Where a technology issue arises which may prevent the Candidate/Tenderer from submitting their Tender prior to the close time, then the Candidate/Tenderer must advise the HMRC Systems Management Team immediately, using the contact details below:

email:	e.procurement@hmrc.gsi.gov.uk
telephone:	03000 587778 or 03000 587787
- 6.7 Whilst the HMRC Systems Management Team will provide assistance to ensure that the Candidate/Tenderer is able to submit their Tender prior to the Close Time, HMRC does not undertake any obligation to resolve any issues that may prevent the Candidate/Tenderer from submitting their Tender.
- 6.8 The Candidate/Tenderer must therefore ensure that they leave themselves sufficient time to submit their bids especially where their Tender has been prepared using the 'offline' facility as detailed in the training guides.
- 6.9 The Candidate/Tenderer should be aware that the eSourcing Portal will prevent evaluators from viewing any information which has not been submitted or saved correctly prior to the event closing.

## **Modification of Tenders**

- 6.10 A Tender submitted electronically can be modified at any time prior to the eSourcing Event Close Time.
- 6.11 Where hard copy information has been despatched prior to the event closing, and the Candidate/Tenderer subsequently wishes to provide updated versions, this is permissible as long as the updated information is received prior to the Close Time. Where previously despatched information requires superseding, the Candidate/Tenderer should notify HMRC of this by sending a message using the messaging facility within the eSourcing Portal.

## **Withdrawal of Tenders**

- 6.12 Candidates/Tenderers may withdraw their tenders at any time prior to accepting the notification of award by sending a notice of withdrawal to HMRC. Any such notice should be sent electronically using the messaging facility within the eSourcing Portal.

## **Preliminary Examination of Tenders**

- 6.13 HMRC will examine tenders for completeness, to ensure that the Tender is in compliance with the Conditions of Tender (3.0), Form of Tender (4.0) and Submission of Tenders (5.0) instructions contained in this document. HMRC reserves the right to seek clarification in respect of any aspect of the Tender.
- 6.14 Where HMRC determines that a Tender has not substantially fulfilled the Tender Conditions, Form and Submission instructions, then the Tender will be rejected and will not be evaluated.

## **Post Submission Evaluation/Clarification stages**

- 6.15 HMRC reserves the right as part of the evaluation process to;
- a. Conduct post event close clarifications/clarification meetings to clarify information and/or to request further information as may be necessary to verify all aspects of the Tender made, including, but not exclusive to, the financial information that the Candidate/Tenderer stated that they would be willing to provide;
  - b. visit the Candidate's /Tenderer's site to verify that the resources and equipment stated in the Tender are available;
  - c. visit a customer site of the Candidate / Tenderer to validate that services are provided in the manner described in the Tender; and
  - d. conduct an electronic reverse e-auction to establish the best price, where this has been provided for in the Contract Notice and/or draft Contract documents.
- 6.16 HMRC reserves the right to conduct any of the above stages with only those Candidates / Tenderers, where it is felt that further verification/clarification of the initial Tender is deemed necessary.
- 6.17 Given the commodity type and value of the proposed Agreement/Contract being tendered for, HMRC will have anticipated the numbers responding to the contract notice and the amount of time therefore required for the evaluation and clarification stages required, to arrive at the Contract Award and Contract Start dates contained in the Contract Notice and Contract documents.
- 6.18 Although it is not normal practice for HMRC to depart from the proposed tender timetable, HMRC reserves the right to change the Contract Award and Contract Start dates at any time.

## **7. CONSORTIA AND SUBCONTRACTING**

- 7.1 Where a consortium or sub-contracting approach is proposed, the Candidate/Tenderer must provide all of the information requested in respect of the proposed consortium leader or prime contractor.
- 7.2 Relevant information will also be required in respect of consortium members or sub-contractors who will play a significant role in the provision of the goods and/or services under any ensuing Agreement/Contract and on which the capability of the Candidate/Tenderer relies.
- 7.3 Information must be provided clarifying the extent to which the proposed consortium leader or prime contractor will call upon the resources and expertise of the other parties in

order to enable HMRC to assess overall capability.

- 7.4 Consortium arrangements may be subject to future changes and any updates to the consortium should be provided to HMRC so that further assessment can be carried out (by applying the selection criteria to the new information provided). HMRC reserves the right to deselect the Candidate/Tenderer prior to any award of contract, based on an assessment of the updated information.
- 7.5 Where the Candidate/Tenderer becomes aware of the intention to sub-contract (or enter into a consortium) at a later stage in the procurement it must provide the sub-contractor information requested within the questionnaires within 14 days.
- 7.6 HMRC may require members of the consortium to assume a specific legal form, such as a Special Purpose Vehicle (SPV), if awarded the contract, to the extent that it is necessary for the satisfactory performance of the contract.

## **8. CONFIDENTIALITY AND FURTHER LEGAL OBLIGATIONS**

- 8.1 Whilst the content of the draft Contract documents will be in the public domain at the outset of the Competitive Procurement Exercise, information which is communicated in the course of any subsequent negotiations is provided to you under the terms of the Official Secrets Act 1989.
- 8.2 The Candidate/Tenderer must keep their intention to submit, and the content of, any Tender confidential from any third party, to ensure the competitive element of the procurement exercise is maintained.
- 8.3 The Candidate/Tenderer may communicate, disclose or otherwise make available this information to an employee or a professional adviser who requires the information in connection with;
  - a. the preparation of the Tender;
  - b. attaining sureties or quotations relating to the Tender; or
  - c. supporting any subsequent clarification, provided they are bound by equivalent conditions of confidentiality.
- 8.4 All information provided by the Candidate/Tenderer will be treated as "OFFICIAL" by HMRC and (except where required in law) will not be disclosed to a third party outside of government, as referred to at paragraph 3.10, without the written permission of the Candidate/Tenderer.

### **Freedom of Information Act**

- 8.5 HMRC is committed to meeting its responsibilities under the Freedom of Information Act 2000 (FOIA).
- 8.6 Consequently, information submitted to HMRC within a Tender may be subject to disclosure to a third party in response to a Freedom of Information Act request.
- 8.7 In submitting a Tender, the candidate accepts and acknowledges that the decision to disclose information and the application of any exemptions under the FOIA will be at HMRC's sole discretion. HMRC will, however, act reasonably and proportionately in exercising its obligations.
- 8.8 Should the Candidate/Tenderer consider that any of the information included in their Tender is commercially sensitive, then an explanation (in broad terms) of what harm may result from disclosure if a request is received and the time period applicable to that sensitivity should be provided as a response to the appropriate question within the questionnaires.

- 8.9 Further information about FOI is obtainable on the HMRC website [www.hmrc.gov.uk](http://www.hmrc.gov.uk) and from the Ministry of Justice website [www.justice.gov.uk](http://www.justice.gov.uk)

### **Equality Act 2010**

- 8.10 The Public Sector Equality Duty (PSED) is contained within section 149 of the Equality Act 2010 and it requires central Government departments and their agencies to ensure that they meet their legal obligations, to have due regard to the three aims of the duty:
- a. Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act
  - b. Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
  - c. Foster good relations between people who share a protected characteristic and people who do not share it.
- 8.11 The PSED should help to ensure that public goods and services are accessible to, and meet the diverse needs of all users to ensure that no one group is disadvantaged in accessing public goods and services.
- 8.12 The PSED will be incorporated into the stages of the Competitive Procurement Exercise proportionately to allow equality related issues to be taken into account to select suppliers and award contracts where they are relevant to the subject matter of the contract. The Candidate/Tenderer must familiarise themselves, and operate in compliance, with the PSED requirements, which should be reflected in their Tender, where relevant.

Further information can be found at;

[http://www.cabinetoffice.gov.uk/sites/default/files/resources/PPN\\_Procurement\\_Equality\\_Jan-13\\_0.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/PPN_Procurement_Equality_Jan-13_0.pdf)

### **9. MANDATORY STANDSTILL PERIOD (BEFORE CONTRACT AWARD)**

- 9.1 The Alcatel judgement (C-81/98), means that all public sector procurements covered by Regulation 87 must have a standstill notice period of not less than 10 calendar days between the electronic notification of the award decision to all Candidates/Tenderers and the Contract commencement. This is to allow unsuccessful Candidates/Tenderers a reasonable opportunity to make any legal challenges to the award decision.
- 9.2 The standstill notice issued to unsuccessful Candidates/Tenderers must contain:
- a. The criteria for the award of the Contract;
  - b. The reasons for the decision, including the:
    - i. characteristics and relative advantages of the successful tender;
    - ii. unsuccessful Candidate's/Tenderer's score;
    - iii. successful Candidate's/Tenderer's score;
  - c. If applicable, the reasons why the unsuccessful Candidate/Tenderer did not meet the technical specification;
  - d. The name of the successful Candidate/Tenderer; and
  - e. A precise statement of when the standstill period will end, subject to no challenge being made.
  - f. The transformation weighting, where a reverse e-Auction has been used in the evaluation process (as referred to in Annex B, paragraph 3.44).
- Candidates/Tenderers must accept these obligations and understand that any award will be the subject of a 10 day standstill period.

### **10. PUBLICATION OF CONTRACT/AWARD**

- 10.1 As a result of government policy to achieve greater transparency in public procurement and help deliver improved value for money, with effect from January 2011, HMRC is obliged to publish all;
  - a. Tender documents for all contracts with a whole life value of over £10,000; and
  - b. Contract documents with a whole life value of over £10,000.
- 10.2 In order to comply with the Public Contracts Regulations 2015, HMRC is required to publish details of the Contract award, including contract value, in the Official Journal of the European Union (OJEU) and on Contracts Finder, in compliance with Regulations 106, 108, 109, 110 and 112.
- 10.3 It is a condition of bidding for this work that Candidates/Tenderers accept these obligations and agree to the subsequent publication of the Contract once awarded.

## **11. VARIANT PROPOSALS**

- 11.1 The Candidate /Tenderer MUST submit a Tender in the required format as described in Section 5, to form the primary/main proposal.
- 11.2 Where provision is made in the Contract Notice, the Candidate/Tenderer may submit an additional secondary variant proposal, where it is believed they can achieve the requirements in an alternative manner.
- 11.3 Any secondary variant proposal the Candidate/Tenderer may submit will need to result in increased efficiency, cost savings and/or enhancements in respect of the specification provided by HMRC in the draft Contract documents.
- 11.4 Variant proposals will be subject to separate evaluation by HMRC and should therefore be submitted by way of a separate second offer to the primary/main proposal.
- 11.5 The variant proposal should be provided in response to the questions provided in the variant proposals questionnaire and should be provided in a manner whereby the variant aspects when compared to the primary proposal can be easily identified.
- 11.6 All aspects of the variant proposal must be fully detailed and costs provided so as to clearly demonstrate where increased efficiency, cost savings and/or enhancements will arise relative to the specification and the Candidate's/Tenderer's primary proposal.

## **12. BACKGROUND**

- 12.1 Candidates/Tenderers need to be aware that HMRC will be the Contracting Authority for any agreements awarded as a result of the Competitive Procurement Exercise.
- 12.2 The types of Agreements that can generally result from a Competitive Procurement Exercise for goods and/or services, as specified in the Contract Notice, the Contract and/or the Service Order, are:
  - a. Call Off contracts made from an existing Framework Agreement;
  - b. Framework Agreements for goods and/or services;
  - c. Dynamic Purchasing Systems (DPS); or
  - d. Contracts for goods and/or services.
- 12.3 Further information about HMRC can be found on the HMRC website accessed using the following link: [www.hmrc.gov.uk](http://www.hmrc.gov.uk).
- 12.4 HMRC's Commercial Directorate, based in Salford, will manage the Competitive Procurement Exercise on behalf of business stakeholders who have a requirement for the provision of goods and/or services.

- 12.5 It is intended that these instructions:
- a. Relate to Competitive Procurement Exercises conducted using the eSourcing Portal;
  - b. can be used for all Competitive Procurement Exercises in compliance with the overriding EU Procurement Directive principles for open and transparent competition to ensure Value for Money; and
  - c. Shall ensure that Competitive Procurement Exercises are conducted in compliance with the Public Contracts Regulations.

### **13. THE PUBLIC CONTRACTS REGULATIONS 2015**

- 13.1 Candidates/Tenderers need to be aware that these instructions are intended to ensure that HMRC carries out Competitive Procurement Exercises in compliance with the Public Contracts Regulations 2015.
- 13.2 The Public Contracts Regulations 2015 can be accessed using the following link:  
<http://www.legislation.gov.uk/uksi/2015/102/contents/made>

#### **Conduct of the Procedure leading to the award of a Public Contract**

- 13.3 The Conduct of the Procedures leading to the Award of a Public Contract are defined in Section 3 of the Public Contracts Regulations. These instructions are intended for use with both Open and Restricted Type Procedures.
- 13.4 The extent to which the Public Contracts Regulations will apply will be dependent on the value of the proposed Contract.
- 13.5 The intention is that any Competitive Procurement Exercise will comply with the overriding EU Procurement Directive principles for open and transparent competition to ensure value for money.
- 13.6 The Invitation to Tender (ITT) for an Open tender procedure provides the Candidate/Tenderer with the opportunity to provide a Tender in respect of the pre-defined Selection and Award Criteria simultaneously
- 13.7 At the award stage Tenderers are assessed using criteria compatible with Regulation 67 Contract Award Criteria.
- 13.8 Further information about the Competitive Procurement Exercise Evaluation process is contained in Section 14, Award Criteria and Weightings and Appendix B, Competitive Procurement Exercise Evaluation.
- 13.9 Candidates/Tenderers should ensure that they tailor their tender response in accordance with the weightings of questions/questionnaires.

#### **Selection and Award stages in the Competitive Procurement Exercise**

- 13.10 Candidates/Tenderers need to be aware that Competitive Procurement Exercises have both Selection and Award stages as defined in the Public Contracts Regulations.
- 13.11 At the Selection stage Candidates are assessed using criteria compatible with:
- a. Regulation 57, Exclusion Grounds; and
  - b. Regulation 58, Selection Criteria

#### **Grounds for mandatory exclusion**

- 13.12 As set out in FORM B, Reg 57 Exclusion Grounds of the Selection Criteria questionnaire, Candidates/Tenderers will be excluded from the procurement process if there is evidence of convictions relating to specific criminal offences including, but not limited to, bribery, corruption, conspiracy, terrorism, fraud and money laundering, or if the

Candidate/Tenderer has been the subject of a binding legal decision, which found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate e.g. only minor amounts involved).

### **Non-payment of taxes**

- 13.13 If Candidates/Tenderers have answered “yes” to question B1 e) of FORM B, Reg 57 Exclusion Grounds of the Selection Criteria questionnaire on the non-payment of taxes or social security contributions, and have not paid or entered into a binding arrangement to pay the full amount, the Candidate/Tenderer may still avoid exclusion if only minor tax or social security contributions are unpaid or if the Candidate/Tenderer has not yet had time to fulfil their your obligations since learning of the exact amount due. Candidates/Tenderers may contact HMRC for advice before completing this form.

### **Conflicts of interest**

- 13.14 In accordance with question B2 e), HMRC may exclude the Candidate/Tenderer if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest 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.
- 13.15 Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Candidate/Tenderer to inform HMRC, during the tender process. . Provided that it has been carried out in a transparent manner, routine pre-market engagement carried out by HMRC should not represent a conflict of interest for the Candidate/Tenderer.

### **Taking Account of Bidders’ Past Performance**

- 13.16 The Government has developed an approach to ensuring that previous poor performance by suppliers can be taken into account and robustly assessed prior to entering into certain new contracts (as described in “Procurement Policy Note 04/15 Taking Account of Suppliers’ Past Performance”).

<https://www.gov.uk/government/publications/procurement-policy-note-0415-taking-account-of-suppliers-past-performance>

- 13.17 This will give the Government confidence, based on past performance, in the reliability of suppliers.
- 13.18 The policy is that, as part of any assessment of a Candidate’s/Tenderer’s technical and professional ability, contracting authorities should ensure that any failure by the Candidate/Tenderer to provide satisfactory performance of previous principal contracts is taken into account in the assessment of whether specified minimum standards for reliability for such contracts are met.
- 13.19 Evidence will be collected from the Candidates/Tenderers to enable this assessment to be made (and a random sample of the evidence collected may be verified).
- 13.20 In addition, under the policy, HMRC will re-assess reliability based on past performance before key points in the procurement process (i.e. short listing, preferred bidder status, conclusion of contract etc.). Candidates/Tenderers will accordingly be asked to update the evidence they provide in relation to past performance to reflect more recent performance on new or existing contracts (or to confirm that nothing has changed).
- 13.21 In accordance with question B2 g), HMRC may assess the past performance of a Candidate/Tenderer (through a Certificate of Performance provided by a Customer or other means of evidence). HMRC may take into account any failure to discharge obligations under the previous principal relevant contracts of the Candidate/Tenderer

completing their Tender. HMRC may also assess whether specified minimum standards for reliability for such contracts are met.

- 13.22 In addition, HMRC may re-assess reliability based on past performance at key stages in the procurement process (i.e. supplier selection, tender evaluation, contract award stage etc.). Candidates/Tenderers may also be asked to update the evidence they provide in this section to reflect more recent performance on new or existing contracts (or to confirm that nothing has changed).

### **'Self-cleaning'**

- 13.23 Any Candidate/Tenderer that answers 'Yes' to questions B1 and B2 should provide sufficient evidence, in a separate Appendix, that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively "self-cleans" the situation referred to in that question. The Candidate/Tenderer has to demonstrate it has taken such remedial action, to the satisfaction of HMRC in each case.
- 13.24 If such evidence is considered by HMRC (whose decision will be final) as sufficient, the economic operator concerned may be allowed to continue in the procurement process.
- 13.25 In order for the evidence referred to above to be sufficient, the Candidate/Tenderer must, as a minimum, prove that it has;
- a. paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;
  - b. clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
  - c. taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.
- 13.26 The measures taken by the Candidate/Tenderer will be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered by HMRC to be insufficient, the Candidate/Tenderer will be given a statement of the reasons for that decision.

### **Grounds for discretionary exclusion**

- 13.27 HMRC, as the UK's tax and customs authority, reserves the right to use its discretion to exclude a Candidate/Tenderer from any competitive procurement exercise, where it can demonstrate the non-payment of taxes/social security contributions by the Candidate/Tenderer, including instances where no binding legal decision has been taken.
- 13.28 FORM C, Reg 57, Mandatory and Discretionary Exclusions for Non-payment of Taxes relating to an "Occasion of Tax Non-Compliance" will apply where HMRC has indicated that the contract is estimated to be over £5million in value.
- 13.29 "Occasion of Tax Non-Compliance" means:
- a. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
    - i. Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
    - ii. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
  - b. the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a

penalty for civil fraud or evasion

### **Purpose of the Selection Criteria Questionnaire**

- 13.30 Where a Restricted Type Procedure is used, and when requested in the Contract Notice, the Candidate is required to make an initial Expression of Interest by completing Selection Criteria Questionnaires, commonly referred to as a Pre-Qualification Questionnaire (PQQ), contained within an eSourcing Event.
- 13.31 The information provided in response to the Selection Criteria Questionnaires will be used to select those Candidates who are to be invited to tender.
- 13.32 The Candidate will need to provide any requested information in order to demonstrate that they have the capability to provide the goods and/or services required.
- 13.33 Whether a Candidate will be invited to tender will depend on the Candidate:
  - a. having met the Selection Criteria stated in the Contract Notice and more specifically any stated minimum standards;
  - b. the number and quality of applications received; and
  - c. any restriction on the numbers to be invited to tender as notified in the relevant Contract Notice.
- 13.34 The completion of the Selection Criteria Questionnaires therefore, does not guarantee that the Candidate will be invited to submit a formal proposal/bid.
- 13.35 Further information about the Selection Criteria evaluation is provided in Appendix B.

### **Purpose of the Invitation to Tender (ITT)**

- 13.36 The Invitation to Tender (ITT) provides the Candidate/Tenderer with the opportunity to provide a Tender, which allow an Award assessment to be made against the pre-defined Award Criteria.
- 13.37 Where a Restricted Type Procedure is used the eSourcing Event will use an ITT format but will include only Award Criteria questionnaires.
- 13.38 Where an Open Type Procedure is used the eSourcing Event will use an ITT format but will include clearly defined Selection Criteria questionnaires in addition to the Award Criteria questionnaires.
- 13.39 Where a Competitive Procurement Exercise is used as part of a Call Off from an existing Framework Agreement, this will also use an Open ITT format, but Selection Criteria questions will be minimal, such as requests for Tax Revenue compliance information. The ability to meet the Selection Criteria will have been demonstrated in establishing the Framework Agreement.
- 13.40 The ITT type eSourcing Event will also include a Bid Field section, which is the part of the event where all pricing information MUST be provided. All bid prices must be shown excluding VAT.
- 13.41 Further information about the evaluation of ITT's is provided in Appendix B.

## **14. AWARD CRITERIA AND WEIGHTINGS**

- 14.1 At the award stage, the information provided in the Tender will be evaluated against the pre-determined Award Criteria stated in the Contract Notice and /or the procurement documents.
- 14.2 Questionnaires are set up in the eSourcing Event to correspond directly with the Award Criteria and the questions provided in each questionnaire act as the sub-criteria by which

the Award Criteria will be evaluated.

- 14.3 A percentage weighting importance is applied to each questionnaire to provide an aggregated weighting of 100%.
- 14.4 The weighting for each individual question will be weighted 1 to 10, with 10 being the most important. The effect the question weighting has is in relation to the overall event will depend on the number of questions contained in the questionnaire and the weighting attached to the questionnaire overall.
- 14.5 The percentage score for each question is available withing the eSourcing portal using the 'Table Options Menu', and further instructions regarding this are provided in the 'Supplier Response/Proposal Process' section of the SAP Ariba Sourcing Professional Supplier's Guide
- 14.6 The cost effectiveness questionnaire provides a method of manually recording the scores arrived at following evaluation of the prices provided in the bid section of the eSourcing Portal when applicable.
- 14.7 Further information about the Award evaluation process is contained in Appendix B.

## **15. SELECTION AND AWARD CRITERIA IN RESPECT OF LOTS**

- 15.1 Where the purpose of the Competitive Procurement Exercise is to set up a Framework Agreement then the requirements may be sub-divided into Lots.
- 15.2 The Selection Criteria will be common across all Lots and the Candidate/Tenderer must ensure that a response is provided to all of the questions contained in the Selection Criteria Questionnaires.
- 15.3 Some Award Criteria/Questionnaires are 'Common' as they ask questions about requirements which are considered to be common across all 'Lots', such as:

- a. Award Criteria – Technical Merit – Corporate & Social Responsibility Requirements; and
- b. Award Criteria – Technical Merit – Framework Support requirements.

The Candidate/Tenderer must ensure that they provide a response to ALL of these 'Common' questionnaires as the evaluation scores achieved will contribute to the overall scores for the 'Lot' specific evaluations.

- 15.4 The remainder of the Award Criteria/Questionnaires are 'Lot Specific' as they ask questions relating specifically to the requirements of that lot such as;
  - a. Award Criteria – Technical Merit – Lot 1;
  - b. Award Criteria – Technical Merit – Lot 2; and
  - c. Award Criteria – Technical Merit – Lot 3.

The Candidate/Tenderer must ensure that where they intend to apply for a particular 'Lot' then they complete the applicable 'lot specific' questionnaire. If the Candidate/Tenderer does not intend to apply for a particular 'Lot' then the applicable 'lot specific' questionnaire need not be completed.

- 15.5 The Award Criteria questionnaires will be evaluated and scored independently and the scores of the 'Common' questionnaires will be aggregated with the scores of the 'Lot Specific' questionnaires to arrive at the total scores in respect of each 'Lot'.
- 15.6 The number of suppliers appointed to each 'Lot' will generally be as specified in the Contract Notice and/or procurement documents but HMRC reserves the right to alter the number of suppliers appointed where:
  - a. the score achieved does not differentiate sufficiently between suppliers;

- b. It is identified volumes may change in the short term; and/or
- c. more are needed to ensure sub-lot requirements are accounted for.

## 16. REQUIREMENTS

### Overview of Requirements

- 16.1 Candidates/Tenderers need to be aware that where the Competitive Procurement Exercise is used to establish a Call Off from a Framework Agreement, then the specifics for the individual Call Off will be contained in the Service Order with the overview of requirements contained within the overarching Framework Agreement documents.
- 16.2 Candidates/Tenderers need to be aware that where the Competitive Procurement Exercise is used to establish a Framework Agreement or Contract then an overview of requirements will be provided in the Contract Notice.
- 16.3 The overview of Agreement/Contract requirements detailed in the Contract Notice, including the value and volume of the work, are intended to be indicative only and are based on the information available at the time the Contract Notice was issued.
- 16.4 The detailed specification of requirements for the Agreement/Contract will be provided in the draft Contract documents.
- 16.5 The draft Contract documents will be provided at the outset the Open Procedure Competitive Procurement Exercise.
- 16.6 Where a Candidate/Tenderer believes that there is;
  - a. an anomaly between the overview of requirements in the Contract Notice and the more detailed specification contained in the draft Contract documents; and/or
  - b. a fundamental omission from the specification which affects the ability of the Candidate/Tenderer to provide the goods and/or services,then this should be brought to the attention of HMRC as soon as possible and no later than the time specified for the submission of clarification questions.
- 16.7 For the avoidance of doubt the Candidate/Tenderer needs to be aware that the content of the signed final Contract document will supersede any information provided in the Contract Notice, the eSourcing event attachments and/or the draft Contract documents.

### HMRC Corporate and Social Responsibility Requirements

- 16.8 HMRC is required to comply with a number of Government Corporate and Social Responsibility requirements, as outlined on the 'Procurement at HMRC' webpage which can be accessed using the following link  
<https://www.gov.uk/government/organisations/hm-revenue-customs/about/procurement#supplying-to-hmrc>
- 16.9 Candidates/Tenderers are required to familiarise themselves with the Government Corporate and Social Responsibility requirements then complete the 'Corporate and Social Responsibility Requirements' questionnaire where provided within the eSourcing event.
- 16.10 To assist HMRC in achieving its Corporate and Social Responsibility targets Candidates/Tenderers may also be required to provide a variety of further information post contract award in the form of questionnaires and/or achieving accreditation standards as directed by central government policy.
- 16.11 They types of questionnaires which may be required may include, but not exclusive to:
  - a. CAESER [http://NQCLtd\\_SaaS\\_CAESER.pdf](http://NQCLtd_SaaS_CAESER.pdf)
  - b. HADRIAN [http://NQCLtd\\_SaaS\\_ServiceOverview.pdf](http://NQCLtd_SaaS_ServiceOverview.pdf);

- c. Sid4gov <https://sid4gov.cabinetoffice.gov.uk/> ;
- d. Strategic Procurement Management (SPM via the eSourcing portal);
- e. Cyber Essentials; and
- f. Article 6 of the Energy Efficiency Directive

### **Security Requirements**

- 16.12 Where Data Security/Protection of Information are believed to be a priority for the delivery/provision of goods and/or services, then a Security Plan questionnaire will need to be completed. .
- 16.13 The Contractor is required to provide answers to the standard set of questions contained within the questionnaire in the eSourcing event to formulate the initial Security Plan.
- 16.14 Whilst responding to the questionnaire, Candidates/Tenderers will need to refer to the following hyperlink documents;
  - a. [Government Security Policy Framework \(SPF\)](#)
  - b. [Public Sector Network \(PSN\)](#)
  - c. [Data Protection Act](#)
  - d. [Information Commissioners Office](#)
  - e. [Government Security Classification](#)
  - f. [Contractual Process](#)

### **Terms and Conditions Requirements**

- 16.15 The terms and conditions applicable to the Competitive Procurement Exercise will be referred to within the draft Contract documents.
- 16.16 The Candidate/Tenderer should ensure that it properly takes into account all of the specific requirements detailed in the terms and conditions when formulating its full tender response.

### **Contract Specific Requirements**

- 16.17 The Contract specific requirements are contained in the draft Contract documents attached to the event. The Candidate/Tenderer should take into account all of the requirements detailed in the procurement documents including any requirements detailed in the Contract schedules.

### **TUPE requirements**

- 16.18 In relation to the provision of Service Contracts, the Candidate's/Tenderer's attention is drawn to the potential for Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to apply.
- 16.19 Where HMRC believes that TUPE is likely to apply in respect of certain staff involved in the delivery of the service, be it HMRC's staff or the incumbent supplier's staff, then this may initially be stated in the Contract Notice and then referred to in more detail in Contract documents as referred to at 16.20, 16.21 and 16.22 below.
- 16.20 In the case of staff being employed by the incumbent supplier then:
  - a. HMRC would be neither the transferor nor transferee of the staff in the circumstances of any contract awarded as a result of this Competitive Procurement Exercise. Consideration of the application of TUPE in this case is not matter of direct concern to HMRC, but it is the Candidate's/ Tenderer's responsibility to consider whether or not TUPE applies in the specific circumstances and to tender accordingly.
  - b. The TUPE information where provided in the Contract documents has been obtained from the incumbent supplier performing this work. Whilst HMRC has obtained this information in good faith, HMRC gives no guarantee or assurance as to the accuracy

of this information and cannot be held responsible for errors or omissions in it. It remains the Candidate's/Tenderer's responsibility to ensure that the Tender full account of all the relevant circumstances.

- 16.21 Where HMRC believes that TUPE may apply to either HMRC's staff or to the incumbent supplier's staff where the incumbent employs staff previously transferred from HMRC under TUPE, HMRC may require that the successful Candidate/Tenderer secures continued access for those staff to the Civil Service Pension Scheme. Where HMRC indicates that this requirement applies, the successful Candidate/Tenderer will be required to enter into a Participation Agreement and must include all costs associated with this Agreement in their bid.
- 16.22 Information to enable you to formulate your bid on the basis that TUPE applies is set out in the Contract documents where applicable. This information must be treated on a confidential basis and is released to you on the understanding that you will not copy or use the material except for the purposes of preparing your bid and that you will return it, and any copies of it, should you be unsuccessful in the Competitive Procurement Exercise.

## **17. HMRC REVENUE COMPLIANCE ENQUIRIES**

- 17.1 Where HMRC is named in the Contract Notice then the Candidate/Tenderer will be required to complete the Selection Criteria - FORM C – Regulation 57 Mandatory and Discretionary Exclusions for Non Payment of Taxes, questionnaire to allow HMRC to make revenue compliance enquiries prior to HMRC procuring any goods and/or services from any resulting Agreement.
- 17.2 The ability to carry out revenue compliance enquiries is unique to HMRC, as the Government Department with responsibility for direct and indirect taxation.
- 17.3 HMRC will undertake revenue compliance enquiries throughout the Competitive Procurement Exercise, and/or just prior to procuring any goods and/or services from the Agreement, regarding fulfilment of obligations relating to payment of taxes during the previous three years of trading.
- 17.4 Where revenue compliance enquiries identify certain circumstances such as, but not necessarily limited to those listed below, the Candidate/Tenderer may be required to provide additional explanations or background information necessary for a full understanding of the situation:
- a. time to pay arrangements;
  - b. late payment of taxes;
  - c. late payment of taxes resulting in interest charges; and
  - d. a breach of obligations, which has been established by a judicial or administrative having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of any of the jurisdictions of the United Kingdom.
- 17.5 Consideration will be given on a case by case basis as to whether the Candidate's/Tenderer's revenue compliance record gives grounds for the Tender to be excluded from the Competitive Procurement Exercise.
- 17.6 A Candidate/Tenderer with concerns that there may be issues with the revenue compliance record should use the clarification process to obtain an early decision as to whether the non-compliance would result in them being excluded from further participation in the Competitive Procurement Exercise
- 17.7 Revenue compliance enquiries will be carried out on sub-contractors (or consortium members) regardless of the stage in the procurement at which they are introduced, and may result in the Candidate/Tenderer being excluded from the award stage in the event

that sub-contractors (or consortium members) are non-compliant.

- 17.8 The proposed consortium leader or prime contractor must ensure that all consortium members and/or sub-contractors agree to provide their Revenue Compliance details and consent to Revenue Compliance checks being carried out by completing the Sub-Contractor Revenue Compliance Consent Form at Appendix C.
- 17.9 The Candidate/Tenderer should be aware that the information available to HMRC is not included in any financial checks you may have obtained from credit reference companies in respect of your sub-contractors.
- 17.10 The Dun & Bradstreet Data Universal Numbering System (DUNS) number is requested, as additional financial check information, to assist the Efficiency and Reform Group (part of the Cabinet Office) and the Crown Commercial Service (CCS) is to identify common suppliers across Government and Public Sector bodies as part of the Centralised Commodity Strategy.

## **APPENDIX A**

### **Explanatory note for Terms and Conditions**

- A1 The HMRC standard terms and conditions have been developed in such a way that they are applicable, as they stand, to the majority of contracts for goods and services. Where more detailed, contract specific terms and conditions are required, these will be described either in the specification of requirements or other schedule to the contract as appropriate. Such specific contract terms may cover issues such as security or intellectual property.
- A2 The HMRC standard terms and conditions are based on those developed by the Office of Government Commerce (now Efficiency and Reform Group) and are not generally open to negotiation, although suggestions for improved drafting will be considered for any subsequent reviews. The terms and conditions are government standard clauses and are not designed to disadvantage the contractor in any way. They are designed to provide adequate contractual protection for HMRC and to provide suitable remedies for both parties in the event that something goes wrong.
- A3 Contractors who are familiar with government contracts generally accept the standard terms and conditions for what they are; a model set of clauses that will apply to the majority of contracts for goods and/or services. However, there are certain clauses that cause concern for contractors who are not so familiar with government contracts. This note attempts to shed light on some of these clauses and allay concerns.

### **Recovery of sums due – Clause B3**

- A4 Contractors sometime express concern regarding the provisions in this clause for HMRC to recover sums due under the contract from any payment due to the contractor under virtually any contract with government. This clause would not be invoked without a bone fide reason for doing so and all other available remedies would be considered before taking such action.

### **Arrears of VAT – Clause B5**

- A5 Contractors also express concerns regarding the provision in this clause for HMRC to recover outstanding VAT from payment due to the contractor under the contract. This clause would only be invoked when all other debt management action has been considered, and does not take precedence over established debt recovery procedures.

### **Intellectual Property Rights – Clause D8**

- A6 These clauses have been drafted in such a way that HMRC's commercial staff can select from 3 options:
- a. there is no IP in the contract but the basic clause protects against the possibility of infringement of 3rd party IPR. This may not apply to the goods or services being provided, but the clause is designed to provide a standard level of protection;
  - b. the IP in goods or material s provided under the contract remains with the contractor;
  - c. HMRC wishes to acquire the IP in any goods or material developed.

Contractors are sometimes concerned that there is insufficient protection for specific IPR. Again, these clauses are intended to be standard and anything specific can be included elsewhere in the contract.

### **Client's right to publish the contract – Clause D10**

- A7 Government has set out the need for greater transparency across its operations to enable the public to hold public bodies and politicians to account. This includes commitments relating to public expenditure, intended to achieve greater transparency and better value for money. This clause enables HMRC to meet its transparency obligations in terms of the commitment to publish all new central government ICT contracts above £10,000 from July 2010, and all new central government contracts from January 2011.

**Liabilities, indemnities and insurance – Clause F1**

- A8 These are standard clauses which provide protection to both parties and enable a level of liability to be set that is commensurate with the risk of direct loss under the contract. HMRC no longer asks for unlimited liability (except for death and personal injury etc. as described in clause F1.1 (a-d) as it understands the difficulties in obtaining unlimited cover.

**Break Clause – Clause G3**

- A9 Some contractors have expressed concern at the unilateral provision within this clause for HMRC to terminate the contract. This is a standard government clause intended for use when there is a sudden or unforeseen change in central government policy resulting in there being no further need for the goods or services in question. This has been rarely invoked in the past, but contractors will no doubt appreciate that it is an important provision to have during times of political change or uncertainty. Clause G4.2 provides for compensation to be paid where the break clause is invoked.

## APPENDIX B

### Competitive Procurement Exercise Evaluation

#### B1 INTRODUCTION

- B.1.1 There are two sets of criteria for evaluating tenders
  - a. Selection Criteria; and
  - b. Award Criteria.
- B.1.2 When using the Open Type Procedure, the information required to evaluate the Selection Criteria is requested in clearly identified questionnaires within the main tender event.
- B.1.3 For Open procedure, the information requested in the Selection Criteria Questionnaires will be used to establish if the Candidate/Tenderer has demonstrated that they have they have sufficient economic and financial standing and the technical capacity to fulfil the Contract.
- B.1.4 Tenders from Candidates/Tenderers who do not demonstrate that they have the necessary capacity will not be evaluated beyond the Selection stage.

#### B2 THE SELECTION STAGE

- B.2.1 At the Selection Stage, applications or formal Expressions of Interest will be evaluated in compliance with the applicable Public Contracts Regulations, and specifically:
  - a. Regulation 57, Exclusion Grounds and
  - b. Regulation 58, Selection Criteria
- B.2.2 The Public Contracts Regulations can be accessed using the following link:  
<http://www.legislation.gov.uk/ukxi/2015/102/contents/made>
- B.2.3 The Pre-Qualification Questionnaire Core Questions promoted by the Cabinet Office's Efficiency and Reform Group (ERG), to make public procurement more accessible to SME's, are in general used by HMRC as the Selection Criteria questions in all applicable eSourcing Events, having been adapted where necessary to suit HMRC specific requirements and use of the eSourcing tool. Applicants MUST answer the Core Questions contained in the eSourcing Event but the ERG hard copy down load version, which provides some further background information, can be accessed using the following link:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/409424/427\\_9-15\\_GN\\_PQQ\\_Guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409424/427_9-15_GN_PQQ_Guidance.pdf)
- B.2.4 At the Selection Stage, HMRC will undertake an appraisal of the Tenderer/Candidate to satisfy itself that:
  - a. Sufficient and accurate information has been provided;
  - b. there are no exclusion grounds as stated in Regulation 57;
  - c. the Selection Criteria compatible with Regulation 58 can be met in respect of:
    - i. suitability to pursue a professional activity;
    - ii. economic and financial standing;
    - iii. technical and professional ability.
- B.2.5 The type of appraisal will be dependent on the type of procedure used. For:
  - a. an Open Procedure the appraisal will be on a pass/fail basis, with all Tenderers/Candidates who pass the appraisal being fully considered at the Award stage.

- b. a Restricted Procedure a ranking system will be used to identify the applicable number of Tenderers/Candidates to be invited to tender as detailed in the procurement documents
- B.2.6 As a result of this appraisal the Candidate/Tenderer may be asked to provide a Parent Company Guarantee as a condition of entering into any contract offered. If the guarantor is a charity, HMRC would need to understand whether there is anything in the provisions of the charity's constitution that prevents them from being able to offer a guarantee. In these circumstances HMRC may require an alternative guarantor
- B.2.7 HMRC will undertake financial assessment in compliance with Cabinet Office Procurement Policy Note 02/13 <https://www.gov.uk/government/publications/procurement-policy-note-02-13-supplier-financial-risk-issues>
- B.2.8 Where a certificate of performance is required, this will be stated in the minimum standards section of the Contract Notice.

### **B3 THE AWARD STAGE**

#### **Objective Evaluation for Award Criteria Questionnaires**

- B.3.1 Evaluation of Tender will be objective. Answers provided by the Candidates/Tenderers in response to questions contained within the eSourcing Event Award Criteria questionnaires will be evaluated against the requirements referred to in the draft Contract documents and Specification.
- B.3.2 Higher scores will be awarded to Tender that more readily demonstrate that the requirements will be met.
- B.3.3 Tender will be scored independently by the evaluators using the inbuilt scoring facility within the eSourcing Portal, whereby the responses to questions can be scored in the range 0 – 100.
- B.3.4 Evaluators will be assigned to questionnaires that relate to their specialism and they will only be required to score the questions assigned to them.
- B.3.5 Evaluators are required to score the information presented to them for each question only and they are not required to take into account of, or look for, any information provided elsewhere within the Tender.
- B.3.6 Candidates/Tenderers will have the opportunity to provide an answer that has the potential to achieve the maximum score for each question.
- B.3.7 In general questions are split into two types:
  - a. 'closed' questions whereby Candidates/Tenderers are asked to confirm that they can meet a 'conformance' specification laid down in the procurement documents.
  - b. 'open' questions whereby Candidates/Tenderers are asked to provide a response as to how they would satisfy a set of 'outline requirements' as detailed in a 'performance' type specification.
- B.3.8 For 'closed' type questions where answers clearly demonstrate that the specification can be achieved then the maximum marks should be awarded and care should be taken to ensure that Candidates/Tenderers who provide a specification that 'exceeds' the requirement should not receive a higher score.
- B.3.9 An example of a 'closed' question is where the speed for a vehicle is required to have a

maximum speed of 80mph. All Candidates/Tenderers who propose a vehicle that can achieve this speed should be awarded the maximum score of 100. In this example Candidates/Tenderers who propose a specification which 'exceeds' the requirement, i.e. with a vehicle that has a greater maximum speed should not obtain a higher score.

B.3.10 For 'open' type questions there is more scope for Candidates/Tenderers to provide more 'innovative' answers that demonstrates that they will be able to achieve the 'outline requirements' detailed as a performance specification.

B.3.11 An example of an 'open Question' is where information is requested in relation to contingency arrangements for business continuity. A good example of a response that demonstrates that they will be able to achieve the requirements is where a Candidate/Tenderer has its own backup generators and therefore an award of the maximum score of 100 could be justified.

B.3.12 Initial scoring will be kept within bands of 20 and scores allocated for each question in line with scoring scheme detailed at in the table at B3.15 below.

B.3.13 At Questionnaire level the Candidate/Tenderer would be expected to achieve a minimum score of 40 for each questionnaire. An average score of 40 achieved for an individual questionnaire equates to a questionnaire score which is limited and although may satisfies some aspects of the requirements, fails to meet the specification in the whole. HMRC reserves the right to disregard/discount any Candidate's/Tenderer's overall Tender which receives a score which is equal to or below this minimum requirement.

B.3.14 The Overall Technical score (the average score achieved across all the Technical questionnaires) the Candidate/Tenderer would be expected to achieve would be a minimum of 50. HMRC reserves the right to disregard/discount any Candidate/Tenderer overall Tender which receives a score which is equal to or below this minimum requirement.

B.3.15 On completion all individual question answers scoring 0 will be reviewed to see whether the 0 answers give grounds for exclusion from the Competitive Procurement Exercise.

B.3.16 The following scoring matrix will be used by the evaluators to score individual questions.

Score	'Closed' Question Criteria	'Open' Question Criteria
100	Excellent answer which meets all of the requirements and provides all of the required detail.	The response is excellent and completely relevant. The response is comprehensive, unambiguous and demonstrates an excellent understanding of, and meets, the requirements in all aspects, with no clarification required. The response is well thought out and/or provides <ul style="list-style-type: none"> <li>• highly credible examples;</li> <li>• benefits; or</li> <li>• innovation.</li> </ul>
80	Good answer which meets all of the requirements but lacks some minor detail	The response is good and highly relevant. The response indicates a good understanding of the requirements and provides sufficient detail across all areas. The response demonstrates how the requirements will be met in the main, which may require minor clarification only.
60	Satisfactory answer, which meets the requirements in many aspects, but fails to provide sufficient detail in some areas.	The response is satisfactory and relevant. The response indicates a satisfactory understanding of the requirements in most aspects, although may lack detail in certain areas. The response suggests that the requirements would be met satisfactorily, but may require some clarification.
40	Limited answer which satisfies some aspects of the requirements, but fails to meet the specification in the whole.	The response is limited and partially relevant. The response indicates partial understanding of the requirement. The response contains ambiguities which suggests that the requirements would not be met unless clarified.
20	Poor answer which significantly fails to meet the requirements.	The response is poor and only partially relevant. The response addresses some aspects of the requirements but contains insufficient/limited detail or explanation. The response demonstrates only limited understanding of the requirement. The response contains deficiencies which suggest the requirements would not be met.
0	The response is not considered relevant. The response is unconvincing, flawed or otherwise unacceptable. The response fails to demonstrate an understanding of the requirement.	

## Cost Evaluation, Cost Effectiveness Questionnaire

B.3.17 The cost schedules or bid information will be extrapolated from the eSourcing Portal and assessed 'offline'.

B.3.18 Costs will initially be checked to ensure that the 'unit' costs submitted are in accordance with the quantities, volumes or all inclusive prices requested.

B.3.19 Where irregularities are identified then HMRC reserves the right to seek clarification from the Candidates/Tenderers for the costing model they have used.

B.3.20 Using the lowest price as the benchmark, a calculation will be made to establish as a percentage how much cheaper the lowest bid is and this percentage will then be used as the score as per the following examples.

B.3.21 In a tender for laptop computers:

Lowest price is £400 and is awarded a score 100

The next lowest price is £425 therefore  $\frac{£400}{£425} = 0.94 \times 100 =$  Score of 94

The next lowest price is £522 therefore  $\frac{£400}{£522} = 0.77 \times 100 =$  Score of 77

B.3.22 Once the scores have been established for each of the items these will be fed back into the 'buyer view only' questions contained in the Cost Evaluation Questionnaire.

B.3.23 Alternative bids will only be considered where a fully compliant bid has been received.

B.3.24 For tenders where four, or more, bids have been received, taking into account any anomalies identified in the initial assessment, a cost comparison may be made across the bids and the average price identified.

B.3.25 The costs received are then compared to the average price and where a price is identified as being less than 50% of the average price, although given a maximum score of 100, they will not be used further for benchmark purposes.

B.3.26 The lowest price which is greater than 50% of the average price will be awarded the maximum score of 100 and will act as the benchmark for scoring all other bids.

B.3.27 The Overall Cost Effectiveness score (the average score achieved across the Cost Effectiveness questionnaire) the Candidate/Tenderer would be expected to achieve would be a minimum of 50. HMRC reserves the right to disregard/discount any Candidate/Tenderer overall Tender which receives a score which is equal to or below this minimum requirement.

## Variant Proposal Evaluation

B.3.28 Where the Candidate/Tenderer submits a variant proposal, HMRC will firstly fully evaluate the primary/main Tender by scoring all of the responses made to the questions in the Award Criteria questionnaires.

B.3.29 Once all of the responses to the questions in all of the Award Criteria questionnaires in the primary/main Tender have been scored, the eSourcing tool will generate a percentage score for:

- a. each Award Criteria questionnaire; and
- b. the eSourcing event level overall, taking into account the individual questionnaire Award Criteria weightings.

B.3.30 HMRC will then assess the secondary variant proposal to establish what the alternative aspects of the variant proposal are when compared to the responses made to the questions in the Award Criteria questionnaires in the primary/main Tender.

B.3.31 Once the assessment described at B3.25 is complete, each Award Criteria score arrived at for the primary/main Tender will be adjusted to take account of the extent of changes contained in the secondary variant proposal to arrive at a new overall score for the secondary variant proposal.

B.3.32 The overall score achieved for the primary/main proposal and secondary variant proposal will be compared, and the one with the highest overall score will be taken forward for comparison with the scores of other Candidates/Tenderers.

### **eAuction**

B.3.33 HMRC reserves the right to use an e-Auction as part of the Contract Award process where provision for the use of an e-Auction has been stated in the Contract Notice.

B.3.34 Where provision has been made, the final decision as to whether to use an e-Auction will be made during the evaluation process.

B.3.35 An e-Auction may be used where HMRC considers:

- a. the overall score achieved by the highest ranking Candidate/Tenderer is not significantly higher than the next ranking Candidate/Tenderer in terms of the technical and/or cost effectiveness scores;
- b. there is little difference between the evaluated scores awarded to the highest ranking Candidates/Tenderers and the use of the e-Auction would therefore be the most transparent method of reaching the award decision; and/or
- c. there are a sufficient number of compliant bids (a minimum of three), where the overall score differentials are so marginal that they would allow for a competitive e-Auction to take place.

B.3.36 HMRC reserves the right to invite only those Candidates/Tenderers who have achieved an overall score that is comparable with the scores achieved by other Candidates/Tenderers and, as such, their involvement in the e-Auction would be competitive. Therefore, Candidates/Tenderers must ensure that any bids made in their Tender are competitive at the outset.

B.3.37 The Contract will be awarded using the Award Criteria stated in the procurement documents and where allowed for two types of e-Auction can be used:

- a. Lowest price e-Auction; and
- b. Transformation e-Auction

B.3.38 Lowest price e-Auction is used where all of the suppliers invited to the e-Auction have demonstrated they will meet the requirements by reaching the necessary technical hurdle score, as stated in the Contract documents. For this type of e-Auction all Candidates/Tenderers who reach the necessary technical hurdle score are considered equal and the lowest bid will therefore always win.

- B.3.39 Transformation e-Auctions are used to allow technical scores achieved during the evaluation to transform the bids placed as part of the e-Auction. This ensures that those Candidates/Tenderers with a higher technical merit score will benefit.
- B.3.40 The Award Criteria technical/cost ratio stated in the procurement documents will form the basis of the transformation weighting.
- B.3.41 The following example shows how an individual transformational marking is arrived at (the example shown assumes that the questionnaire weightings were 55% Technical/Quality and 45% Cost)

Tenderer A (highest score from the Technical/Quality evaluation)	90
Tenderer B score	80
Score difference	10
Score difference % (10/90 x 100)	11%
Ratio (55% Technical/45% Cost)	1.222
Transformation weighting (score difference 11% x ratio 1.222)	13.5%
Transformational multiplier (1 + 13.5% transformation weighting)	1.135

- B.3.42 Using the above example, Tenderer A with the highest score from the technical evaluation would form the 'benchmark' in the e-Auction with a transformational multiplier of 1.000.
- B.3.43 Using the above example, the Tenderer B transformation weighting increases any bids placed by 13.5% using a transformation multiplier of 1.135.
- B.3.44 Using the above example if the Tenderers bid £100 the transformed bids are:
- Tenderer A £100 x 1.000 transformational multiplier = £100 transformed bid.  
Tenderer B £100 x 1.135 transformational multiplier = £ 113.50 transformed bid.
- B.3.45 When a transformation e-Auction is used only the actual bid placed and their overall rank in the e-Auction will be visible to the Candidate/Tenderer, the transformed bids are only visible to HMRC. The Candidate/Tenderer whose transformed bid is the lowest at the end of the e-Auction will be offered the Contract.

B.3.46 Where a reverse e-Auction is used and this results in a Tender being unsuccessful, the Candidate/Tenderer will be informed of the Transformation weighting used in the reverse e-Auction in the standstill notification letter.

### **Clarification Meetings / Site Visits**

B.3.47 As part of the evaluation process Candidates/Tenderers may be requested to attend clarification Meetings either at HMRC's or the Candidate's/Tenderer's site.

B.3.48 The purpose of the clarification meeting will be to clarify with the Candidate/Tenderer any anomalies that may exist and verify that all other information provided by the Candidate/Tenderer in their tender is correct.

**B.3.49** Following on from the clarification meetings / site visits, the right is reserved to revisit and amend scores as may be appropriate.

### **Moderation**

B.3.50 The eSourcing Portal will generate an average of the scores awarded for each question by all of the evaluators and this will assist in identifying any differences between individual evaluator scores.

B.3.51 Where a difference in scores between evaluators is identified, a moderation exercise will take place to discuss the submissions made by the Candidates/Tenderers, to ensure that the previously-agreed marking guidelines and standards have been applied consistently by each of the evaluators.

B.3.52 Following discussions the evaluators may agree to:

- a. use the system generated average score;
- b. adjust any score awarded individually; and / or
- c. apply an 'override average score' moderated score using functionality within the eSourcing Portal.

B.3.53 The original scores from individual evaluators will remain on the system to provide an audit trail.

B.3.54 To ensure that the evaluation methodology used by the various evaluators is consistent across all questions and questionnaires, the right is reserved to re-score any question during the moderation process.

### **Recommendation**

B.3.55 The Candidate(s)/Tenderer(s) who obtains the highest overall score from the evaluation process, taking into account the Award Criteria weightings, will be recommended for Framework Agreement/Contract Award.

B.3.56 Where stated in the Contract Notice, more than one Candidate/Tenderer may be recommended for award, where the award is to a Framework Agreement with multiple suppliers or if an award is to be made on a 'lot' basis

B.3.57 The decision on how the recommendation has been derived should be documented into a recommendation paper by the Commercial Manager and submitted to the tender sponsor for technical sign off and line management within Commercial Directorate at the appropriate level.

B.3.58 Once approval has been obtained Commercial Directorate will take the responsibility for notifying the successful and unsuccessful Candidates/Tenderers using the formal process.

**APPENDIX C**

**Sub-Contractors Revenue Compliance Consent Form**

**TENDER/CONTRACT REFERENCE/TITLE:** .....

**Instructions for Use**

Candidates – After entering your details within the [ ] provided in Section 2, please (a) issue the form to your proposed subcontractor(s) for completion of Section 1 and the remainder of Section 2 and (b) return the completed/signed form as instructed in the procurement documents or as directed by the Contract Manager post contract award.

**1. Details of Proposed Subcontractor**

Organisation Name:	
Registered Business Address:	
Function to be performed on the Contract:	
VAT Registration Number:	
PAYE Reference:	
Corporation Tax Ref:	
Self Assessment Tax Ref:	

**2. Subcontractor Declaration**

I certify that the above tax details have been provided in order that HMRC may undertake revenue compliance checks to determine suitability on these grounds in connection with possible involvement as a subcontractor in the specified contract and accept that such checks may be conducted during the procurement phase and, if applicable, also during the contract management stage.

Subject to any reservations that may be expressly stated here, by means of a continuation sheet to this form, authority is also hereby given that the outcome of the checks may be disclosed for the above purposes to: [.....]

This authority will remain in force until I give HM Revenue & Customs written notice to the contrary to: commercial.bmt@hmrc.gsi.gov.uk

Continuation Sheet attached [YES ] [ NO ] (Delete, as appropriate)

Submitted by (Subcontractor Organisation Name): .....

Signed (Subcontractor Organisation Authorised Signatory): .....

Signatory Name (Print): .....

Status: .....

Date: .....

## **ANNEX A**

### **Copy of Bidders Agreement**

**In order to use this application, please carefully review and accept the Agreement below.**

**Please note that by accepting the Agreement, you are representing that you are duly authorised by your organisation to do so on its behalf and creating a binding legal agreement between HMRC and your organisation.**

**A full copy of this agreement is available at Annex A to the Tendering Instructions.**

### **eSOURCING PORTAL USE AGREEMENT**

This eSourcing Portal Use Agreement (the "Agreement") is made between the legal entity on whose behalf you have been given access to this system (the "Bidder") and Her Majesty's Revenue & Customs ("HMRC").

The System (as defined in clause 1 below) is provided by HMRC and hosted by a third party, Ariba Inc. However, specific content and Services (as defined in clause 1 below) provided to the Bidder by means of the System may be provided by one or more employees from the various business areas within HMRC.

This Agreement is legally binding. By clicking the <ACCEPT> button at the end of this Agreement, you are entering into this Agreement for and on behalf of the Bidder. By clicking the <ACCEPT> button you warrant and represent that you are duly authorised by the Bidder to enter into this Agreement on the Bidder's behalf and to use the System and the Services provided through the System, and that your accepting these terms and conditions in this manner shall give rise to a binding agreement between the Bidder and HMRC upon the terms of this Agreement.

#### **1. Licence to use the System and provision of the Services**

- 1.1. HMRC grants to the Bidder and the Bidder accepts, a non-exclusive, non-transferable licence to access and use the eSourcing Portal (the "System") for the purpose of participating in an HMRC procurement exercise, subject to this Agreement, and not for any other purpose. HMRC agrees to provide through the System such online sourcing events as HMRC may offer to the Bidder and the Bidder may accept from time to time (the "Services"), on the terms and subject to the conditions set out in this Agreement.
- 1.2. For the avoidance of doubt the terms governing this Agreement are for the use of the System, and separate HMRC terms (as issued with any sourcing events) will govern any goods and or services sourced using the System.

#### **2. Services**

- 2.1. The functionality of each element of the System and the Services may be added to, amended or withdrawn and new elements introduced by HMRC at its complete discretion from time to time (each a "Change"). Prior to any Change, HMRC may, at its complete discretion, notify the Bidder of such Change. The Bidder will not be entitled to continue to receive any System or Service which has been withdrawn by HMRC. Following any Change, the Bidder's continued use of the System and the Services will be deemed to constitute acceptance of such Change.

- 2.2. If, in connection with a Change, or for any other reason any amendments to this Agreement are required, HMRC will notify the Bidder of such amendments by posting the amended version of this Agreement on the System. The Bidder's continued use of the Systems and Services will constitute acceptance of these changes. If the Bidder does not agree with such amendments, it must discontinue its use of the System and Services immediately

### 3. Users

- 3.1. The Bidder has notified HMRC of the names of the Bidder's officers and/or employees that the Bidder has selected to have access to the System ("Users"). The Bidder hereby represents and warrants to HMRC that:
- a. such Users shall be authorised to access and use the System on behalf of the Bidder;
  - b. such Users are experienced and knowledgeable regarding the matters in respect of which they will use the System;
  - c. the Bidder shall be bound by and accountable for each User's acts and omissions; and
  - d. in using the System and the Services, the Bidder's Users will at all times be acting within the scope of their authority. The Bidder agrees to promptly notify HMRC of any changes to the authority or status of any User and acknowledges that HMRC may rely exclusively on the names of the Users notified by the Bidder to HMRC in granting access to the System on behalf of the Bidder.
- 3.2. Upon receipt of such Users' names HMRC shall, in reliance on the Bidder's foregoing representations and warranties regarding such Users, allocate a username and password in respect of each User. Notwithstanding the foregoing, HMRC retains the right, at its complete discretion, to deny any User access to the System. Each password will continue in force until it is terminated by HMRC, changed by User or expires automatically after a period, if any, specified by HMRC and HMRC will provide the facility for Users to replace their passwords prior to such expiry. HMRC may provide replacement username(s) and password(s) at any other time as it thinks fit. The Bidder shall take, and procure that Users take, all reasonable steps to protect the security of such usernames and passwords and prevent any person who is not a User from accessing the System or using the Services. For the avoidance of doubt, each username and password is strictly confidential to and shall only be used by the User to whom it is issued and is not transferable.
- 3.3. The Bidder will ensure that each User complies at all times with all applicable laws, rules and regulations, the terms and conditions of this Agreement, and any additional terms and conditions presented in any part of the System and any other terms and conditions pertaining to the System and the provision of the Services from time to time.
- 3.4. In the event that any User ceases to be employed by the Bidder or authorised by the Bidder to access and use the System, the Bidder will notify HMRC without delay and HMRC will, within a commercially reasonable time, disable the relevant username, password and digital certificate and so deny that User access to the System.
- 3.5. The Bidder agrees that, subject to the confidentiality obligations in clause 7, HMRC may also collect and maintain general data regarding each User's individual, and the Bidder's, access to and use of the System and the Services and the Bidder consents and agrees to procure that its Users consent to the use of such devices. Such general data will be used for administering access controls, providing assistance for use of the System and maintaining a record of communications effected through the System. The data may also be used for monitoring usage and performance of the System, and, in HMRC's opinion, improving the System's usefulness to HMRC's suppliers generally and to the Bidder in particular. This may include the offering of additional systems and

services to the Bidder. Such general data may be transferred to third parties acting on behalf of HMRC, including outsourcing service providers.

#### **4. Conditions of Access**

- 4.1. The Bidder is responsible for and must provide at its sole cost all software, telephony, Internet connectivity and other equipment necessary for the Bidder to access and use the System and the Services and obtain any relevant licences and/or consents.
- 4.2. The Bidder acknowledges that the System incorporates encryption technology. The Bidder agrees to comply with all laws, rules and regulations relating to the Bidder's use of such encryption technology applicable in any jurisdiction in which the Bidder does business, and not to export or re-export such technology in violation of any such laws, rules or regulations. HMRC shall not be responsible for any breakdown of any technology used for encryption or electronic transmission of information.
- 4.3. The Bidder agrees not to upload onto the System any software, file, information, data or other content: (a) which infringes any HMRC or third party intellectual property rights; (b) which adversely affects the performance or availability of the System or other HMRC resources or systems; (c) which is false, fraudulent or speculative; (d) which is defamatory of any person; (e) which is offensive in any manner; (f) which materially misrepresents facts or which may be damaging or injurious to HMRC, the Bidder, Users, or any third party; (g) which would result in a breach of any obligation of confidentiality; or (h) in the case of personal data, without having obtained the informed consent of the person to whom such data relates. The Bidder is responsible for checking the accuracy of any information the Bidder uploads into the System and for keeping such Information up-to-date.
- 4.4. The Bidder agrees that, when using the Internet or other communication media provided by third parties to connect to the System, the Bidder will be using media and a physical network not controlled, maintained or provided by HMRC. The Bidder acknowledges that the Internet and any third party websites accessed from the System by hypertext link are beyond HMRC's control and are not in any way endorsed, warranted or supported by HMRC. The Bidder assumes all risk and liability of any such use of the Internet and any such third party websites.
- 4.5. The Bidder shall not (and shall procure that each of its Users shall not) use the System for any illegal or unlawful purpose, or access or attempt to access any part of the System access to which would be denied to the Bidder and its Users by the System's normal operation.
- 4.6. Submission of a proposal and/or bid via the System does not obligate either party to enter into a contract for the provision of goods or services or otherwise, nor prevent HMRC from entering into a contract with any third party for the provision of goods or services. No binding commitment is created between HMRC and the Bidder through this Agreement or the System in respect of any future supply of goods or services.

#### **5. Intellectual Property Rights**

- 5.1. All title, ownership rights and intellectual property rights in or relating to the System, the Services, and any information transmitted by, HMRC over the System are owned by HMRC, or under licence to HMRC. Nothing on the System or the Services shall be construed as conferring on the Bidder any licence, save as expressly set out herein, of any of HMRC's or any third party's intellectual property rights, whether by estoppel, implication or otherwise.
- 5.2. Subject to clause 6.6, the Bidder may use data derived from and relating to its use of the System and the Services in accordance with this Agreement for its normal business purposes in so far as they concern the HMRC procurement exercise (as determined by HMRC from time to time in its sole discretion), provided that such use shall at all-time comply with all applicable laws, rules and regulations.

- 5.3. Except as permitted in clause 5.2, the Bidder shall not (and shall procure that each of its Users shall not) reproduce, distribute, transmit, publish or otherwise transfer, commercially exploit, reverse engineer or decompile (except to the extent expressly permitted by law) or make any derivative product from the System or the Services or any software, file, data, information, know-how, idea, communication or other content received or accessed through or in connection with the System or the Services.
- 5.4. The Bidder agrees to notify HMRC forthwith on becoming aware of any claim by any third party that any element of the System or the Services infringes any intellectual property right of any third party.

## **6. Warranty and Liability**

- 6.1. HMRC warrants that it has the right to grant the licence as set out in this Agreement. Subject only to this express warranty, the system and the services including, without limitation, their content, features and any related services are provided to the Bidder on an “as is” and “as available” basis at the Bidder’s sole risk and without representations or warranties of any kind.
- 6.2. HMRC does not guarantee that the system, the services or any part of them will be available to or accessible by the Bidder. All warranties, conditions or terms (express or implied, statutory or otherwise including without limitation any warranty, condition or term as to satisfactory quality, merchantability, fitness for a particular purpose and any warranties or commitments that access or use will be uninterrupted or error free), other than those expressly set out in this agreement, are expressly excluded to the fullest extent permitted by law.
- 6.3. Neither HMRC nor any third party providing services to HMRC for the purposes of this Agreement will have any liability for any loss or damage however caused arising under or in connection with this Agreement, including, without limitation, the Bidder’s use of or inability to access the system and/or the services, any product or service provided by any third party and any failure by HMRC to act on any information notified to it in any system user list, whether in contract, tort or otherwise.
- 6.4. HMRC shall not be considered in breach of this Agreement in the event of any failure or delay for reasons not within HMRC’s reasonable control, including, without limitation, war, disaster, acts of nature, power failure, failure of communications services or networks, labour stoppage, sabotage, computer virus, hacking, unrest or disputes, acts or omissions of the Bidder or any third party including national and/or supranational government agencies or bodies and courts of law.
- 6.5. HMRC may at any time and without giving any notice suspend the provision of all or any part of the System and/the Services to the Bidder in whole or in part with immediate effect in the event of any of the force majeure circumstances described above, planned or unplanned maintenance and upgrading of the System or related Systems, any breach of this Agreement by the Bidder or its Users and/or action by the Bidder or its Users which is prejudicial or potentially prejudicial to the System, HMRC or other the Bidders.
- 6.6. The System and the Services are provided to the Bidder solely for the Bidder’s benefit and use in accordance with the terms of this Agreement. HMRC accepts no liability or responsibility to any third party who gains access to the System or the Services as a result of any act or omission by the Bidder or any Users or otherwise. The Bidder agrees to indemnify HMRC and its officers and/or employees on demand against any liabilities, losses, costs, claims, expenses (including legal fees) and damages in connection with any claims against HMRC by any such third party, including but not limited to any claim by any third party which has access to data derived from the System and/or the Services pursuant to clause 5.2.
- 6.7. The Bidder agrees to indemnify HMRC and its officers and/or employees on demand

against any liabilities, costs, claims, losses, expenses and damages (including, but not limited to, legal fees) arising out of or relating to any breach of this Agreement by the Bidder or any User.

## 7. Confidentiality

7.1. In this Agreement:

"*Confidential Information*" means any and all information disclosed in connection with the provision by HMRC to the Bidder and/or the use by the Bidder of the System and the Services (whether before, on or after the date of acceptance by the Bidder of this Agreement, whether verbally, in writing, electronically or by any other means, whether directly or indirectly and whether or not marked "Confidential") by the Disclosing Party or any person on its behalf to the Receiving Party or otherwise obtained by the Receiving Party or any person on its behalf from the Disclosing Party. For the avoidance of doubt, HMRC's Confidential Information includes, without limitation, all information relating to the System, the Services and the existence and terms of this Agreement;

"*Disclosing Party*" means a party disclosing Confidential Information; and

"*Receiving Party*" means a party receiving Confidential Information.

7.2. In consideration of the disclosure of the Confidential Information supplied to it by the other party, each party agrees that it shall keep the other party's Confidential Information confidential, not use such Confidential Information and not disclose such Confidential Information to another person except as permitted in clause 7.3.

7.3. Each party may disclose the Confidential Information of the other party:

7.3.1. to its businesses and any of its and its businesses' officers and employees (together, "Recipients"); provided that before disclosure of any Confidential Information to any Recipient, the Receiving Party shall ensure that the Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement;

7.3.2. with the prior written consent of the other party; or

7.3.3. where disclosure is required by law, by a court of competent jurisdiction or by any regulatory body which regulates the conduct of the Receiving Party, provided that the Receiving Party shall give the Disclosing Party as much notice as is practicable of any such requirement and shall not disclose any more Confidential Information than is reasonably necessary in the circumstances.

7.4. HMRC may disclose the Confidential Information of the Bidder to any third party that provides hosting or other services to HMRC in respect of the System and/or Services, provided that such third parties will have agreed with HMRC to keep such information confidential.

7.5. The Receiving Party shall within 7 days following receipt of a written request from the Disclosing Party return to the Disclosing Party, or at the Receiving Party's option destroy or delete, all documents, electronic storage media and other materials in its possession, custody or control to the extent the same contain any of the Disclosing Party's Confidential Information, and certify to the other party that this has been done, provided that the Receiving Party shall be entitled to retain in its possession such Confidential Information as it is required to retain by applicable law or regulation or internal policy and information obtained pursuant to clauses 3.4 and 3.5.

7.6. Except as expressly set out in this Agreement, nothing contained in this Agreement shall be construed as granting any right or licence to either party's Confidential

Information or to any invention or discovery derived from or improvement made to such Confidential Information, whether conceived or created prior to or after the date of acceptance of this Agreement.

- 7.7. Each party is entitled to the remedies of injunction, specific performance and other equitable relief in respect of any actual breach or threatened breach of this clause 7, in addition to any other legal remedies which may be available.

## **8. Termination**

- 8.1. Each of HMRC and the Bidder is entitled to terminate the Bidder's access to and use of the System and/or any of the Services at any time and without cause by written notice to the other.
- 8.2. If the Bidder's access to and use of the System and the Services is terminated by either party, HMRC shall be entitled to disable the Bidder's usernames, passwords and digital certificates and the licence granted under clause 1 and the provision of the System and the Services shall terminate with immediate effect.
- 8.3. Clauses 3.5, 3.6, 5, 6, 7, 9, 10, 11 and 12 shall survive termination of the Bidder's access to the System and the Services.

## **9. Entire Agreement**

- 9.1. The entire agreement between the Bidder and HMRC with regard to the Bidder's access to and use of the System and the Services is comprised of the following:
- 9.1.1. this Agreement, as amended by HMRC from time to time; and
- 9.1.2. any additional terms and conditions governing access to specific areas of the System and/or specific Services which HMRC may post on any part of the System from time to time, as amended by HMRC from time to time (and any such additional terms shall take precedence over this Agreement).
- 9.2. This Agreement replaces any and all preceding versions of this Agreement, whether in electronic or tangible form, accepted and/or executed prior to the date of acceptance of this Agreement.

## **10. Notices**

- 10.1. Any notice to be given by the Bidder to HMRC under or in connection with this Agreement shall be in writing.
- 10.2. Any notice or communication given by HMRC to the Bidder under or in connection with this Agreement may be given through the System, by email to the email address of any the Bidder User, or in writing to the address or facsimile number of the Bidder that HMRC has in its records from time to time. Any such notice or communication shall be deemed to have been delivered and communicated to the Bidder at such time as it is available for the Bidder to view through the System.

## **11. Third Party Rights**

- 11.1. Each of the HMRC businesses may enforce the Bidder's obligations under this Agreement, as if it was a party to this Agreement.
- 11.2. Subject to Clause 11.1, a person who is not party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. The parties may vary the terms of or rescind this Agreement without the consent of any third party.

## **12. Governing Law and Jurisdiction.**

- 12.1. This Agreement shall be governed by and construed in accordance with English law. The Parties agree to submit to the exclusive jurisdiction of the courts of England in relation to this Agreement.