

Invitation to Tender

Analysis of environmental assessment regimes in jurisdictions outside the UK CRO045-01

October 2022

1. Introduction

- 1.1 The Office for Environmental Protection (OEP) is a new public body. We protect and improve the environment by holding government and other public bodies to account.

We were legally created in November 2021, under the Environment Act 2021.

Our work covers England and Northern Ireland. We also cover reserved matters across the UK (a matter on which only UK Parliament in Westminster can make legislation).

We are an independent non-departmental public body, funded by the Department for Environment, Food and Rural Affairs (Defra) in England and the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland, who oversee our use of public money.

However, we pursue our objectives and implement our functions independently and impartially, separately from government. Our judgements are our own, formed independently.

- 1.2 This document sets out the scope and parameters of work which the OEP wishes to commission and describes how tenderers may tender to undertake this work.
- 1.3 For guidance, this tendering opportunity has a budget in the range indicated below (NB. all values include VAT):

| £10- £25k | £20k- £35k | £25k- £50k | £40k- £75k | £60k- £100k | £75k- £125k | £100k- £150k | £125k- £200k | £175k- £250k | £200k- £350k | £300k- £500k |
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2. Timetable

The target timetable for this process is as follows:

- Deadline for receipt of questions relating to this ITT 23:45, 26 October 2022
- **Deadline for receipt of tender submissions** **23:45, 7 November 2022**
- Notification of the OEP's decision 18 November 2022
- Commencement of work 24 November 2022
- Completion of work 10 February 2023

We reserve the right to change the timetable if deemed necessary.

3. Objectives

3.1 The objectives of this work are to:

- 3.1.1 Enable us to analyse and report on the implementation and effectiveness of Habitat Regulation Assessments (HRA), Environmental Impact Assessments (EIA) and Strategic Environmental Assessments (SEA) laws in England and NI, and the potential for future improvements in these areas, by making comparisons with and using examples from environmental assessment regimes in other jurisdictions that are broadly equivalent or have similar objectives to HRA, EIA and SEA. We want to understand how the legal framework, wider legal context, policy, guidance, practice, caselaw and other factors influence success or failure of the regimes on the ground. OEP may use this information to make recommendations for improvements to the existing arrangements in England and NI.
- 3.1.2 Support the OEP's work to influence legislative or practical reforms to environmental assessment in England and NI to maintain or improve environmental protection.

4. Background

- 4.1 This work will support our project to analyse and report on the current policy, legislative and operational frameworks for assessing and managing environmental impacts through HRA, EIA and SEA, in England and Northern Ireland. The project will also consider the scope for improvements to these current arrangements whilst they remain in place.
- 4.2 The UK Government has signalled its intention to replace or modify the HRA, SEA and EIA legislation, including in the recent [Nature Recovery Green Paper](#).¹ We provided [advice](#)² to government in connection with this Green Paper.
- 4.3 The explanatory notes to the [Levelling Up and Regeneration Bill](#)³ (LURB) outline the proposed replacement in England of EIA and SEA. The notes do not explain why an entirely new approach is needed, or provide any evidence for the need to "address procedural issues with the current system". The LURB also makes provision for Environmental Outcome Report (EOR) Regulations. These Regulations may include provision for "environmental assessment legislation" (EIA and SEA regulations) and the Habitats Regulations to be disapplied in certain circumstances. We gave [evidence](#) to the LURB bill committee.⁴ The recently introduced [Energy Bill](#)⁵ makes provision for secondary legislation covering assessment of certain offshore activities' impacts upon habitats (clause 226). The Retained EU Law (Revocation and Reform) Bill⁵ was published on 22 September 2022. If enacted, it would apply a sunset clause to Retained EU Law ("REUL") unless regulations are passed to remove specific laws from its scope.

¹ <https://consult.defra.gov.uk/nature-recovery-green-paper/nature-recovery-green-paper/>

² www.theoep.org.uk/report/oep-response-government-nature-recovery-green-paper-and-advice-proposals-reform-habitats

³ <https://bills.parliament.uk/bills/3155>

⁴ [Levelling-up and Regeneration Bill publications - Parliamentary Bills - UK Parliament](#)

⁵ <https://bills.parliament.uk/publications/47229/documents/2107>

The laws concerning environmental assessment (all REUL) could therefore be significantly changed or even revoked if this bill is enacted in its current form⁶.

- 4.4 Whilst much is still unknown, these planned changes appear to signal a significant shift in the operation of environmental assessments undertaken to support decision-making processes associated with proposed activities that may affect the environment in the UK, including its offshore area. It also provides a time limited opportunity for the OEP to influence policy development, passage of the LURB, the Energy Bill and the Retained EU Law (Revocation and Reform) Bill, as well as the development of any secondary legislation, guidance or other implementing arrangements under such proposed primary legislation.
- 4.5 Before any new approach takes effect, the existing policy and legislative frameworks will continue to apply. They may also continue to operate in respect of residual activities where new arrangements under the LURB or other new legislation do not apply, and government decides to act under the REUL Bill (if enacted) to assimilate what is currently retained EU law into domestic law. There may be scope, therefore, to influence practical improvements in the implementation of the existing arrangements in both England and NI, even without legislative change, or within the scope of changes to the current legislation that do not require new primary legislation.
- 4.6 This project will directly contribute to our function of monitoring and reporting on the implementation of environmental law. Our reports are published and laid before Parliament and/or the NI Assembly, and the UK Government/NI Executive must respond to them. This project may also inform any advice we provide to ministers, for example on the future proposals for Environmental Outcome Report Regulations under the LURB, or assimilation or replacement of retained EU law under the REUL Bill. The work is one of our priorities as set out in our corporate plan for this financial year⁷. The work will be delivered within the context of our strategic objective "better environmental law, better implemented" and our approach to delivering our functions as set out in our strategy.
- 4.7 We have received advice from legal counsel on the LURB. We have also instructed legal counsel to advise on the legal frameworks of HRA, EIA and SEA, and their implementation in England and NI. We have contracted environmental consultants to advise on the implementation of the current HRA, EIA and SEA frameworks in England and NI. At the project inception meeting we can explain more about these other related work packages to ensure that your output is compatible.

5. Requirements and services

Project inception

- 5.1 Prior to the inception meeting, carry out initial scoping in order to propose jurisdictions (other countries, or specific regions, provinces, states or similar elements of other countries) for specific study as comparator regimes to the environmental assessment regimes in England and NI. **We require five comparator regimes for each of HRA, EIA and SEA, drawn from at least five different jurisdictions;** a jurisdiction can provide comparator examples for one

⁶ <https://publications.parliament.uk/pa/bills/cbill/58-03/0156/220156.pdf>

⁷ www.theoep.org.uk/report/our-corporate-plan See p15: Better environmental law, better implemented – what we will do this year, point ii

- or more regimes. Provide a short explanation of why each proposed jurisdiction was selected and a summary of other jurisdictions considered but not proposed.
- 5.2 It could be helpful to approach the scoping by using this hierarchy: the best examples would be those where the processes include environmental outcomes and the context is similar to England and NI. We think these examples would be the most relevant and persuasive. The second best would be where the processes include environmental outcomes but the context differs. The next category would have a similar context to England and NI but not include environmental outcomes. This possible approach is a suggestion and does not preclude another approach. Within this hierarchy, or other approach, we are also interested in how well (or badly) the processes work for the parties involved in the process: regulators, developers, communities and others.
- 5.3 In “context” we include the legislative framework, links between the process and other environmental law or policy, the role of expert/advisory bodies, cultural attitudes towards the environment etc. Where possible, please identify key factors in delivering positives and your view on the root-causes for negatives.
- 5.4 In proposing jurisdictions, please also consider the following points (please note, however, that where we refer to specific jurisdictions, we are not wedded to these and would want the contractor to use their expertise and analysis to propose to us which jurisdictions they consider most useful to meet the project’s objectives):
- Possibly including Israel and Queensland, Australia due to the Department of Levelling Up, Housing and Communities’ apparent understanding that these jurisdictions use an outcome-based approach to their equivalent of environmental assessment processes.
 - Although the government has expressed the view (in the Nature Recovery Green Paper and elsewhere) that the current EU-derived regimes need to be replaced in England, there may be useful examples of environmental outcome-based processes or other effective processes from EU member states.
 - Possibly including the USA due to its long history of environmental assessment regimes.
 - Possibly including Japan or South Korea because of similarities in land-use pressure with the UK.
- 5.5 Attend the project inception meeting on MS Teams to agree the methodology and confirm the deliverables. This includes agreeing the research questions to be addressed and points to be illustrated by the use of international comparators. We will agree the agenda in advance of the meeting, but the supplier will be required to present the jurisdictions they propose are chosen for analysis together with the underlying rationale. Produce minutes setting out the key outcomes, conclusions and action points within 3 working days.

Project meetings

- 5.6 Attend subsequent regular (fortnightly) online progress meetings with the wider OEP delivery team.

- 5.7 If required, work closely with other suppliers (referred to in paragraph 4.7 above) who have been contracted by the OEP to carry out work that contributes to this project.

Main requirements

- 5.8 A report (to be delivered in regularly updated draft form for comment and feedback) on the HRA (if applicable), EIA, and SEA comparator assessment regimes in the agreed jurisdictions. Please include:
- a) The reasons for choosing the jurisdictions and regimes.
 - b) What the assessment regimes in those jurisdictions seek to achieve.
 - c) The extent to which these are successfully implemented and delivered (or otherwise).
 - d) The extent to which the assessment regimes deliver environmental outcomes and what those outcomes are, e.g. that protected sites are maintained in favourable condition.
 - e) The extent to which the assessment regimes work particularly well (or badly) for the parties involved in the process: regulators and other public authorities, developers and communities.
 - f) The reasons for c, d and e, i.e. your view on the key factors in delivering positives and on the root-causes for negatives. For example, is this due to the legislative framework, a strong focus on post consent monitoring, remedial measures, enforcement etc.
 - g) The extent to which these regimes in other jurisdictions might be applicable in a UK context, e.g. are there particular contextual or other factors that suggest they may be readily transferable, or unlikely to work if applied elsewhere.
 - h) Where available, evidence (or examples of good practice or case studies) to support your views.

Project and team management

- 5.9 Use appropriate project management techniques to ensure that all activities are undertaken on time, on budget and to a high standard of quality; manage budget and risks robustly, and resolve issues promptly.
- 5.10 If any services or elements of the delivery are subcontracted:
- 5.10.1 Agree each subcontractor with us in advance.
 - 5.10.2 Manage the subcontractor's activity and performance as if they were part of your own team.
- 5.11 Provide a single point of contact of appropriate seniority with whom we will liaise on all day-to-day matters throughout the duration of the contract.
- 5.12 Maintain an oversight of all work and propose opportunities for improved coordination and efficiency where possible to reduce overall costs and improve value for money.

- 5.13 Provide regular progress reporting and attend project progress and campaign meetings as agreed so that OEP can coordinate the efforts of the various Suppliers engaged in the wider project.

6. Tendering procedure

Tender submissions

- 6.1 This procurement is being undertaken through an Open procedure, i.e. any interested company can submit a tender.
- 6.2 The process the OEP uses to select its suppliers is a competitive one. You should keep your tender focussed on the specific requirements and objectives of the work, and we recommend that you also consider the assessment criteria.

- 6.3 **Tenders will only be accepted by email attachment to procurement@theoep.org.uk**

In the email subject line state:

CRO045-01 Non-UK EAR – Tender submission – YOUR COMPANY NAME

Tenders submitted by any other route, including postal, will not be accepted.

- 6.4 To constitute a compliant tender it is essential that all required information and documentation is fully completed, in the correct format, and your tender is received in our email inbox by the deadline date and time. It is your responsibility to ensure your tender arrives with us before the deadline date and time. We will not accept any tenders that arrive late.

Ensure you allow sufficient time before the deadline to submit your tender and for it to reach us.

- 6.5 Details not provided or not fully completed may constitute an admission of unsuitability/inability to fulfil requirements and may result in the tender being rejected at the OEP's absolute discretion.
- 6.6 We accept tenders from individuals, companies and from consortiums. Should you decide to tender as part of a consortium you will need to identify one member of the consortium (the "Lead Contractor") to act as the contracting party. All other consortium members will be sub-contractors to the Lead Contractor.
- 6.7 Your tender and all accompanying documents are to be in English.
- 6.8 All tenders will be treated on a confidential basis by the OEP and its advisers, subject to the provisions of the Freedom of Information Act 2000.
- 6.9 All tenders must remain valid for a minimum period of 90 days following the deadline for receipt.
- 6.10 Information in this ITT is offered in good faith for the guidance of interested parties, but no warranty or representation is given as to the accuracy or completeness of any of it. The OEP and its advisors shall not be liable for any

error, misstatement or omission. No aspect of this procedure shall constitute a contract or part of a contract. Tenderers participate in this process on the strict understanding that the procedure may be altered or that the OEP may not proceed for any reason. The OEP reserves the right not to follow up this ITT in any way and in particular not to enter into any contractual arrangement with any of the tenderers. The OEP does not bind itself to enter into negotiations or proceed with or accept any tender. Any decision to tender is at the sole discretion of the tenderer and the OEP excludes all liability in respect of any tendering costs incurred.

- 6.11 To be considered for assessment, suppliers must have sufficient and suitable insurance covers in place at the time of tendering or must include (as part of the tender submission) a commitment to take out such cover in the event of being appointed. See section 7 of the contract terms (6.19 below).
- 6.12 We reserve the right to reject tenders from suppliers where there are circumstances which in our reasonable opinion could impact upon the supplier's ability to deliver the services required. Such circumstances could include:
- A financial report or other financial information about a tenderer suggesting it is at risk of insolvency;
 - A tenderer is subject to relevant legal proceedings;
 - A tenderer has a conflict of interest for which there is no feasible remedy.
- We would initially seek to clarify the circumstances with the tenderer.
- 6.13 We reserve the right to reject any tender if any information provided is found to be false, misleading, incomplete or inaccurate.

Enquiries about this ITT

- 6.14 If you wish to submit questions relating to this ITT please do so by email to procurement@theoep.org.uk
In the email subject line state:
CRO045-01 Non-UK EAR – ITT query – YOUR COMPANY NAME
Questions submitted in any other way will not receive a response.
- 6.15 Responses and the nature of the questions will be shared with all tenderers (unless we decide there is a specific reason not to) without disclosing the name of the tenderer who raised the question.
- 6.16 At our discretion, questions/requests for clarification on any element of this ITT or the procurement process submitted after the deadline stated in paragraph 2 will not be responded to.

Tender assessment and award of contract

- 6.17 All tenders will be assessed against the evaluation criteria set out in section 8 of this ITT.
- 6.18 All tenderers will receive written notification of our decision.

- 6.19 **Any contract entered into as a result of this procurement process shall be in accordance with the OEP's standard contract terms available at www.theoep.org.uk/suppliers.** We will not negotiate on these terms or accept any additional terms so by submitting a tender you are accepting that our standard contract terms will apply to any contract awarded to you.
- 6.20 Following award we will issue to the successful tenderer a contract. Once signed by both parties we will issue a purchase order to instruct the commencement of the work. The successful tenderer shall not undertake any work on this contract unless and until instructed by the purchase order.
- We reserve the right to extend the contract to include additional work within or closely related to the original scope.
- If additional work is required the specification and price will be agreed between us and the Supplier, the work will then be contracted by us issuing a variation to the contract and/or a variation to the purchase order or a separate purchase order(s) prior to that work commencing.
- 6.21 We also reserve the right to direct award further contracts to the successful tenderer (the Supplier) for additional services related to the subject of this project.
- If further contracts are required the specification and price for each will be agreed between us and the Supplier, the work will then be contracted by us issuing a contract and purchase order to instruct the work; the OEP Standard Contract Terms will apply, and we may require additional specific terms where necessary for the contract services.
- 6.22 If the successful tenderer operates through an 'intermediary' (e.g. a personal service company or a partnership) and has conditions of liability as defined at [HMRC ESM10003](#) we will undertake a determination of IR35 applicability or employment status for tax using the HMRC CEST tool.
- If our determination concludes that IR35 applies or the contract is employment for tax purposes, we may require an alternative contracting method so that the required tax and National Insurance Contributions can be deducted from our contract payments.
- We cannot contract with sole traders not operating through a registered company.
- 6.23 Tenderers taking part in this process acknowledge and accept that we may publish contract information about the winning tender (including the contract value and the name and contact details of the winning tenderer) on the OEP website and any mandatory registers (e.g. Contracts Finder and Find a Tender Service as applicable) or elsewhere, as required of Contracting Authorities by legislation, government, our funders, or in line with recognised industry good practice.

7. Please provide the following in your tender

7.1 Your tender shall comprise the following elements:

- A written proposal
- Tender quotation
- Supporting documents:
 - Quality management policy
- Tenderer information and declaration

Details about each of these are given in the sections below.

7.2 Ensure that you provide ALL of the information and documents requested.

- Documents must be separate not as a single combined document.
- Provide your *Tender Quotation* in Microsoft Excel format and all other documents in PDF format.
- You are not required to submit any other information than that requested. Any information that is not specifically requested will be disregarded.

Written proposal

7.3 Your written proposal should be limited to no more than 10 x A4 sides at minimum 10pt font (excl. cover page, index, executive summary and appendices). You should keep your responses focussed on the requirements and specific objectives, and we recommend you also consider the assessment criteria.

7.4 The assessment panel may not assess beyond the stated maximum number of sides, so if your submission exceeds that number, this may result in your tender being deemed non-compliant.

7.5 Do not provide information by linking to websites or external sources as the assessors will not refer to these.

7.6 Include the following in your written proposal:

- (1) Briefly describe your organisation.** You may wish to highlight relevant services you provide and outline how you are differentiated from other organisations.
- (2) Demonstrate your understanding of the project,** what we are trying to achieve and why.
- (3) Describe the project team that would manage and deliver the work.**
 - a. Identify your proposed key personnel and provide a short pen portrait for each.

As an appendix provide concise professional CVs. Do not include personal information (e.g. contact details, age, nationality etc).
 - b. Demonstrate their relevant experience and expertise, supported by examples of previous similar work they have undertaken, including:

- Practical implementation of environmental assessment regimes outside of the UK.
- Legislative, policy and implementation analysis more broadly.
- Providing analysis to organisations similar to the OEP.

Where you cite examples, it would be useful to include comment on how you would translate your experience of these to our project.

(4) Explain your approach for delivering the work. Separately address:

- A clear statement of the number of jurisdictions you will assess for HRA, EIA and SEA equivalent regimes, and an indication of which jurisdictions and regimes you anticipate proposing in the project inception.
- Your approach for identifying and shortlisting the jurisdictions and regimes to be evaluated.
- Your approach for evaluating the regimes including the sources you will draw from.
- A description of the outputs you would deliver.

(5) Explain your approach for project management. Include:

- Ensuring delivery on time and to budget.
- Quality management.
- Risk management.
- Team and subcontractor management.

(6) A project schedule of work, showing tasks and timescales.

(7) State if your company arrangement is that you do or do not operate through an ‘intermediary’ (e.g. a personal service company or a partnership).

(8) Identify any conflicts of interest which might arise if you were selected to undertake the work and if such a conflict were to arise, an indication of how this conflict would be addressed.

7.7 Do not state your quotation or day rates in your written proposal.

Quotation & rates schedule

7.8 You must provide your pricing by completing the template *Tender Quotation*

Tenders not using this template or which have reformatted or modified the template may be deemed non-compliant and may not be assessed. However, you may add additional lines to the tables if there are insufficient for your number of tasks or roles being proposed.

7.9 All price values must be stated **both exclusive and inclusive of VAT**, and the applicable VAT amount shown.

7.10 Provide your **quotation** by completing the template worksheet *Quotation*.

- Enter a full breakdown of your fixed price quotation showing your price for each activity/task and deliverable. This should include mobilisation and

project management. If expenses (travel etc) are not included in your task costs then include an estimate as a separate cost item.

(NB: Quotations using a payment model other than fixed price will not be accepted.)

7.11 Summarise your **proposed team** by completing the template worksheet *Personnel Involvement and Rates*.

- Enter the role titles and names of the individuals you are proposing for this project, and your estimate for the percentage of the total time each role/individual will be involved in delivering this project.
- This will assist the assessors with understanding how your project team is structured and the likely allocation of resources into the project.
- Your proposed team should be described in full in your written bid.
- Also enter your day rate for each person. We require this information for reference if we consider extending the contract to include additional related work. If your tender is successful the individuals and day rates you have submitted in the Rates Schedule will form part of the contract and will apply to any further quotation we request for a contract variation.

7.12 Provide an **invoicing schedule** by completing the template worksheet *Invoicing Schedule*.

- Propose what the payment milestones would be and when. These should be linked to defined deliverables.

Tenderer information and declaration

7.13 Use the *Tenderer Information and Declaration* template.

7.14 Fully complete all sections of the template.

7.15 The declaration must be confirmed by a person in your organisation with appropriate and sufficient authority.

Supporting documents

7.16 Provide your quality management policy. This will support your description (in your written proposal) of approaches you will use to ensure quality of deliverables.

8. Assessment criteria

8.1 We must be satisfied that each potential Supplier has the appropriate capabilities and resources available to undertake the work to our requirements and provide the necessary services.

Your tender will be assessed using the assessment criteria below. We may use information from any part of your tender when assessing any criterion.

| Criteria • <i>Sub-criteria</i> | % weighting | Maximum possible score |
|---|--------------------|-------------------------------|
| Your understanding of the project, what we are trying to achieve and why | 10% | 140 |
| Your project team that would manage and deliver the work | 35% | 245 |
| • <i>Their relevant experience and expertise</i> | 25% | 175 |
| • <i>Effective team structure and allocation of roles and responsibilities</i> | 10% | 35 |
| Approach and methodology (including allocation of time and resources) that will most effectively deliver the objectives, requirements and value to the OEP | 35% | 245 |
| • <i>The proposed number of jurisdictions and regimes to be evaluated</i> | 5% | 35 |
| • <i>The suitability of the anticipated jurisdictions and regimes</i> | 5% | 35 |
| • <i>Approach for identifying and shortlisting the jurisdictions and regimes to be evaluated</i> | 5% | 35 |
| • <i>Approach for evaluating the regimes; and the outputs to be delivered.</i> | 15% | 105 |
| • <i>Project and team management that ensures delivery on time, on budget and to a high quality</i> | 5% | 35 |
| Price | 20% | 140 |
| | 100% | 700 |

- 8.1 Price will each be assessed relative to the lowest compliant tender using the formula:

Lowest compliant tender price / tender price x maximum score available.

All other criteria will be assessed by being marked in the range 0 – 7, with 0 being non-compliant and 7 being Excellent.

- 8.2 Scoring guide for assessment criteria

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| 7: Excellent | The response demonstrates a complete understanding of the work requirements and meets them in full |
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| 6: Very good | The response is relevant and very good. It is well detailed, demonstrates a very good understanding of the work and provides robust details on how the requirements will be fulfilled. |
| 5: Good | The response demonstrates a good understanding of the work and aligns well with the requirements and there are no concerns. |
| 4: Acceptable | The response demonstrates an acceptable understanding of the work and aligns sufficiently with the requirements and although it may raise some queries, there are no notable concerns |
| 3: Poor | The response is partially relevant but generally poor. It addresses some elements of the work requirements but contains insufficient detail or explanation to demonstrate how the requirements will be fulfilled. Tender may be rejected |
| 2: Very poor | The response demonstrates very limited understanding of the work and/or has a very poor alignment with the requirements and/or raises strong concerns. Tender may be rejected |
| 1: Unacceptable | The response fails to demonstrate any real understanding of the work and/or does not align with the requirements and/or raises very strong concerns. Tender may be rejected |
| 0: Non-compliant | The response provides insufficient information such that it is not possible to make an assessment of the suppliers' understanding of the work or demonstration of meeting the requirements. Tender may be rejected |

- 8.3 During assessment of tenders we may request further information or evidence from the tenderers, or from other sources, to support statements made or to conduct sufficient due diligence.