

**DPS01/OSMCS/18/IB – Off-Site Surgical and Medical Capacity Solutions
Dynamic Purchasing System Agreement**

Introduction and Instructions

Contents

Introduction.....	3
What is a Dynamic Purchasing System (DPS) Agreement?	3
What 'we' and 'you' means.....	4
Who can use the DPS as a Customer?	4
Who can apply to join the DPS as a Supplier?	4
How do we apply for a place on the DPS?	5
What are the SQ sections?	6
How will you assess my SQ response?	9
The DPS Agreement sign-off:	10
Call for Competition.....	11
Timelines for the request to participate.....	11
When and how to ask questions	11
Making the competition work.....	12
What you can expect from us:	12
What we expect from you:	12
General:	14
TUPE Transfer of undertakings (Protection of Employment).....	15

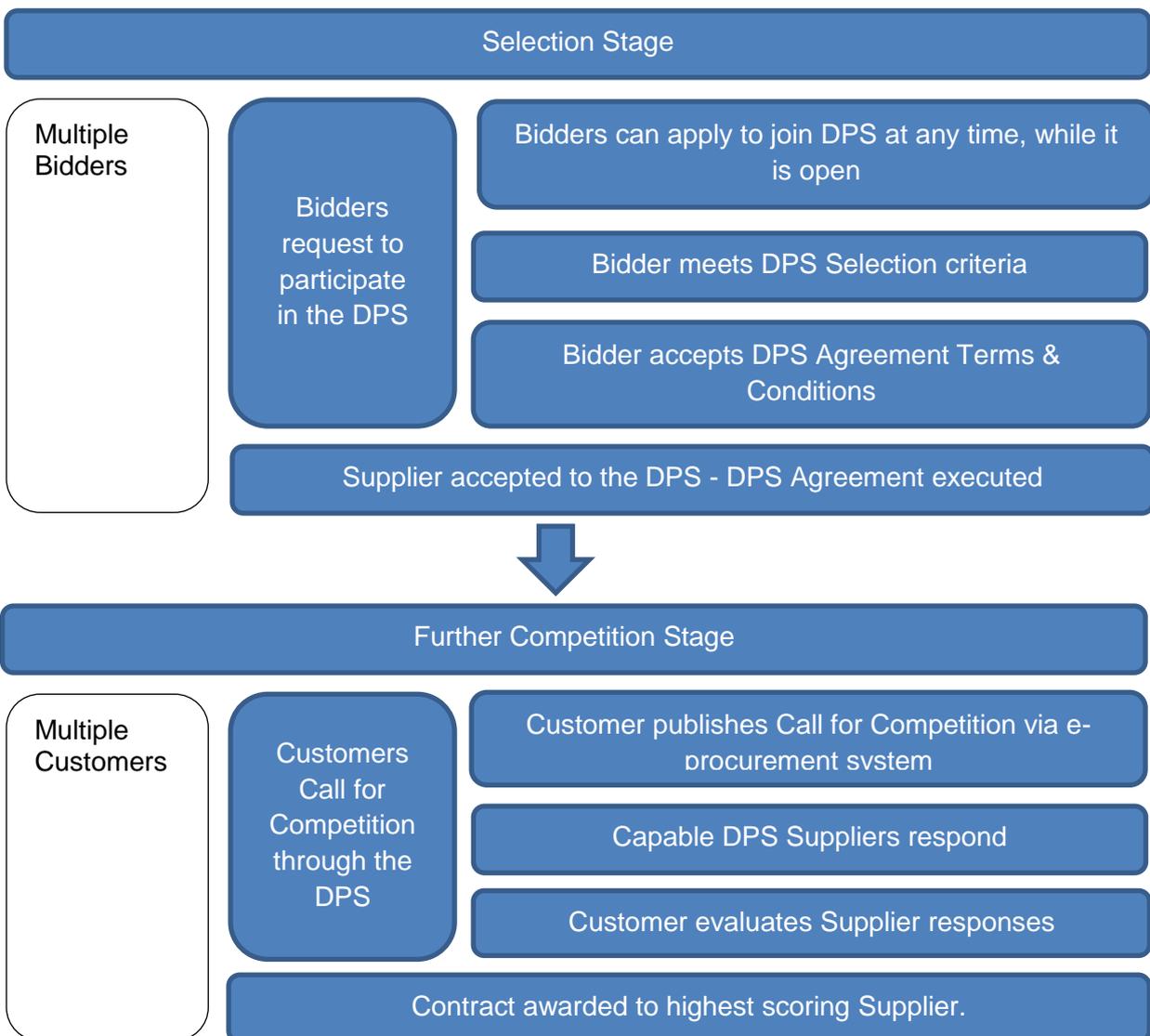
Introduction

Countess of Chester Hospital NHS Foundation Trust Commercial Procurement Services (CPS) invites applications to join a Dynamic Purchasing System (DPS) for Off-Site Surgical and Medical Capacity Solutions as described in the document “DPS01 Dynamic Purchasing System Outline Specification.”

What is a Dynamic Purchasing System (DPS)?

A DPS is a public sector sourcing tool for common goods and services under regulation 34 (Dynamic Purchasing Systems) of the Public Contracts Regulations ([PCR 2015](#)). Bidders can apply to join at any point, meaning that suppliers are not locked out for the duration as they are with traditional frameworks. The award of individual contracts can be quicker than under some other procedures. The DPS has to be run as a completely electronic process.

An illustrated example of a DPS system process is shown below:



In this document, when we use “CPS”, “Authority” “we”, “us” or “our” we mean Countess of Chester Hospital NHS Foundation Trust;

When we use “you”, “your” or “bidders” we mean your organisation, or the organisation you represent, in this competition.

We are a central purchasing body that procures goods and services for customers including NHS organisations and the wider public sector.

The Public Contracts Regulations 2015 regulate how we procure. This means that we and you have to follow processes that are fair, transparent and equitable for all bidders.

Who can use the DPS as a Customer?

This DPS can be used by any Public Sector body in England, Wales, Scotland and Northern Ireland. We expect that the most interest will come from NHS Trusts, NHS Foundation Trusts, NHS Health Boards and NHS Health and Social Care Boards. NHS bodies in the Isle of Man and the Channel Isles may also choose to use this DPS.

A list of potential users is provided as a separate document, for information.

Who can apply to join the DPS as a Supplier?

Anyone can submit a request to participate (submit a bid) in response to the published OJEU contract notice.

You can submit a request to participate as a single legal entity. Alternatively, you can work together with other legal entities to form a Group of Economic Operators. If you do, we ask the Group of Economic Operators to choose a lead member who will submit the bid on behalf of the Group of Economic Operators and you will have to identify what each of the parties is contributing to the bid. You can do this in your **Selection Questionnaire**.

Note on Groups of Economic Operators and Sub-Contractors

We do not require all Sub-Contractors to be disclosed. You need only disclose those Sub-Contractors who directly contribute to your ability to meet your obligations under the DPS Agreement (including under any Contract Agreement following a Call for Competition). There is no need to specify Sub-Contractors providing general services to the supplier (such as window cleaners etc.) that indirectly enable the supplier to perform the DPS Agreement. Please read the definition of Sub-Contractor in the DPS Agreement.

We recognise that arrangements in relation to Groups of Economic Operators and to Sub-Contracting may be subject to future change, and may not be finalised until a later date. However, any changes to those arrangements may affect your ability to deliver the Services. You must therefore tell us about any changes to the proposed Group of Economic Operators or to your Sub-Contractors. If you do not, you may be excluded from participating in this competition.

If you are successfully appointed to the DPS and are awarded a DPS Agreement, any changes to arrangements in relation to your Group of Economic Operators and/or Sub-Contracting which are made following the award will be dealt with in accordance with clause 12 (Transfer and Sub-contracting) of the DPS Agreement.

How do we apply for a place on the DPS?

Your application must be entered through the **NHS Sourcing portal** at: <https://www.nhssourcing.co.uk>

We can only accept applications that we receive through this route.

You must submit your response in English.

Bid Pack

The DPS application bid pack includes the following documents:

- i) **Introduction and Instructions (this document):**
- ii) **Dynamic Purchasing System Specification** – an overview of the services that will be required.
- iii) **The Terms & Conditions** – DPS Agreement and Contract Order Form and Contract Terms. You will need to agree to electronically sign up to the Terms & Conditions which are non-negotiable.
- iv) **The Selection Questionnaire (SQ)** – This will be your application to join the DPS.
- v) **List of Eligible Users** (for information only) – An indication of who might call off contracts from the DPS.
- vi) **Services Matrix Template** – A list of the specialties that you can provide and the regions in which you can provide them.
- vii) **Management Information (MI) Reporting Template** – The document that you will use to report to us.
- viii) **Template Supplier Capability Assessment** – The document that Customers may use if they choose to carry out this stage in a Further Competition.

Make sure you read all the guidance, information and instructions that we provide – they are there to help you to complete your request to participate.

If there is anything that you don't understand, we explain in 'how to request to participate' when and how you can ask questions.

Your application must be completed by the organisation that will be responsible for providing the services, if appointed on to the DPS.

Any supporting evidence will be requested using the NHS Sourcing portal and/or the NHS Sourcing portal messaging facility.

Do not upload any attachments we haven't asked for.

Make sure you answer every applicable question within the SQ.

Only select the services in the Services Matrix that can be delivered by your organisation.

Only select the regions in the Services Matrix where you can provide services.

If you are unsure about how to complete any part of the SQ, you can raise a question via the NHS Sourcing messaging facility.

What are the SQ sections?

Section 1- Potential supplier information

This section tells us about your organisation's details. Your application must be completed by the organisation that will be responsible for providing the services, if appointed on to the DPS.

Section 2 - Grounds for mandatory exclusion

In certain circumstances we are required by law to exclude bidders from participating. If you cannot answer 'No' to every statement in Part 2 (Grounds for mandatory exclusion) of the Selection Questionnaire then your request to participate shall be excluded from further participation in the SQ (except where disproportionately small amounts of tax or social security obligations are involved).

Section 3- Grounds for discretionary exclusion

We are entitled (in our sole discretion) to exclude a bidder from further participation if any of the statements in response to Part 2 (Discretionary grounds for exclusion) of the Selection Questionnaire apply. If you cannot answer 'No' to every statement it is possible that you will be excluded from this request to participate.

'Self Cleaning' (Covering both mandatory and discretionary exclusion):

If you have answered 'Yes' to any question in Section 2 or Section 3 of the SQ but you can provide sufficient evidence that remedial action has taken place subsequently that effectively "self cleans" the situation, we may decide that you shall not be excluded from this request to participate. As a minimum, you will have to demonstrate that you have:

(a) paid or undertaken to pay compensation in respect of any damage caused by any 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.

The measures you have taken will be considered taking into account the gravity and particular circumstances of the criminal offence or misconduct.

The detailed grounds for mandatory and discretionary exclusion of an organisation are set out on this [web page](#), which should be referred to before completing these questions in the SQ.

Section 4- Economic and Financial Standing

We will undertake an assessment of your economic and financial standing using the DUNS number (as provided by Dun and Bradstreet) for your organisation which you input in Section 1 of the SQ.

We will look at your “Risk of business failure” score in the report provided by the credit reference agency (Dun and Bradstreet). If the score provided by the credit reference agency is 51 or more, then you will achieve a “Pass” for Section 4 of the SQ.

If you indicate as part of the SQ that a financial guarantor will be provided, as you do not initially meet the required credit reference agency score as described above, we will perform an assessment of the proposed financial guarantor’s economic and financial standing.

If any of the following circumstances arise:

- a. the score provided by the credit reference agency is less than 51 and/or;
- b. no standard credit reference agency score is available for your organisation,
- c. then we may ask you to provide a copy of your audited accounts for the most recent two years and/or one or more of the following in respect of your organisation or the proposed financial guarantor (as the case may be):
 - a statement of your turnover, profit and loss account/income statement, balance sheet/statement of financial position and statement of cash flow for the most recent year of trading;
 - a statement of your cash flow forecast for the current year and a bank letter outlining the current cash and credit position; and/or
 - an alternative means of demonstrating financial status.

We will use this information as detailed above, in addition to a detailed credit reference agency report (where available) to assess whether your organisation’s or your proposed financial guarantor’s risk is acceptable. This will be performed using the financial assessment template that can be viewed as part of the Bid Pack, which covers a range of financial risk indicators.

If we then determine that the financial risk is acceptable, then you will achieve a “Pass” for Section 4 of the SQ.

If we determine that your financial risk is determined as being unacceptable, then we may (in our sole discretion) request that you nominate a financial guarantor. If you nominate a financial guarantor, we will undertake the steps as detailed above in respect of the proposed financial guarantor.

If, after evaluating all the information requested and provided, the level of financial risk is still deemed unacceptable, or where the requested information has not been provided, **then you will be rejected from further involvement in the procurement.** If your circumstances change, you may re-apply to join the DPS, at which time your application will be re-assessed as described above.

If you are bidding as Lead Contact for a Group of Economic Operators, the assessment of economic and financial standing will be carried out in respect of each member of the Group of Economic Operators. If one or more members of the Group of Economic Operators is determined as having an unacceptable risk level following this assessment, then the relevant member(s) will be required to obtain a DPS Guarantee. We will undertake the steps as detailed above in respect of the proposed financial guarantor. If a financial guarantor cannot be provided and the level of risk remains unacceptable, then the Group of Economic Operators will be excluded from further involvement in this Procurement.

Section 5

This section tells us about your wider group, if you are part of one. Leave this section blank if you are not applying as part of a wider group.

Section 6 - Technical and Professional Ability

We want to make sure that you have experience of performing the type of services covered by this DPS. This section lets you tell us about up to 3 contracts that you have run. Customers who want to call off contracts from the DPS may want to check these references for themselves.

If you don't have at least one example of a contract for the type of services covered by this DPS, you can use section 6.3 of the SQ to tell us about your ability. It is important to include enough detail to give us, and potential users of the DPS, confidence that you will be capable of performing the service.

Section 7 - Modern Slavery Act 2015

All relevant organisations have to develop a slavery and human trafficking statement each year. The slavery and human trafficking statement should set out what steps organisations have taken to ensure modern slavery is not taking place in their business or supply chains. These statements have to be linked to from the organisation's website home page.

Section 8 - Additional Questions

Insurance

This section asks you to confirm that you have at least the minimum level of insurance required for the DPS. If you don't already have the minimum insurances required, you must commit to getting these levels of insurance before you can be appointed to the DPS. Customers who want to call off contracts from the DPS may want to check your insurance certificates for themselves. Customers may ask for higher levels of insurance for their contracts. This will be detailed in their call for competition documents.

Regulatory Compliance

This section asks you to confirm that you meet all of the regulations described in the Dynamic Purchasing System Specification. Customers who want to call off contracts from the DPS may want to check evidence of your compliance.

Project Management Approach

This section asks you to confirm that you have the quality assurance systems and processes described in the Dynamic Purchasing System Specification. Customers who want to call off contracts from the DPS may want to check evidence of your systems and processes.

Corporate governance

This section asks you to confirm that you have the corporate governance systems and processes described in the Dynamic Purchasing System Specification to ensure patient safety. Customers who want to call off contracts from the DPS may want to check evidence of your systems and processes and the DBS certificates of any or all of your team who will come into contact with their patients.

Clinical governance

This section asks you to confirm that you have the clinical governance systems described in the Dynamic Purchasing System Specification to ensure patient safety. Customers who want to call off contracts from the DPS may want to check evidence of your systems.

Services Matrix Template

Please tick the surgical and/or medical specialities that you can offer to NHS Organisations and the UK regions in which you can offer these services. It will be possible to amend your template during the life of the DPS, if your circumstances change.

How will you assess my SQ response?

After you have completed your SQ, your DPS application will be assessed. This will be done as follows.

We will complete compliance checks of your SQ to ensure you have provided everything that we have requested as part of the selection criteria.

We will review all of your SQ responses.

We will undertake checks where applicable to validate and verify your responses.

We may ask for clarification of any information you provide. Don't forget to check for messages in the NHS Sourcing messaging facility.

Note for Suppliers applying to join the DPS while it is open

The Public Contracts Regulations set a maximum time of 10 days for us to assess DPS applications made while the DPS is open. This can be extended to 15 days if this is necessary to validate and verify your responses. If you do not respond promptly to a clarification request and this causes us to go over the maximum allowable time, we will reject your application at that time. You will be able to re-apply at any time during the life of the DPS.

We will score the sections of the SQ where we have asked for specific information about your ability to meet the **Dynamic Purchasing System Specification**.

If we are satisfied with the responses provided and you have achieved at least the minimum score needed, we will appoint you to the DPS.

We may reject your bid or exclude you from the competition at the selection stage for any of the following reasons:

- i) If you receive a "Fail" for any of the selection questions.
- ii) Where any of the information you have provided proves to be false or misleading.
- iii) Where you have broken any of the competition rules (as detailed in this document), or not followed the instructions given.

We will tell you if your bid has been rejected or if your organisation has been excluded from the DPS at this time through the NHS Sourcing portal messaging facility. You will be able to re-apply at any time during the life of the DPS.

The DPS Agreement sign-off:

If you are a successful and therefore 'appointed' on to the DPS, the DPS Agreement will be electronically signed and managed by CPS and you.

The DPS Agreement Terms and Conditions that you agreed to comply with at the beginning of the SQ will require your final sign off.

We will send you a summary of your DPS Agreement through the NHS Sourcing portal messaging facility.

To ensure a legally binding DPS Agreement between CPS and you is complete, you must select 'Yes' in the required box on the summary page that you are sent and return the summary through the NHS Sourcing portal messaging facility prior to appointment.

Failure to select 'Yes' at this stage will prevent you from securing your appointment on to the DPS as there will be no legally binding DPS Agreement between CPS and you.

Call for Competition:

Customers may award contracts by inviting all suppliers to the relevant category to bid in accordance with regulation 54, with the minimum timescale for return of tenders being ten (10) days. They will do this in line with the DPS Agreement Section 4 - How Services Will be Bought (Call for Competition Process), Clause 4.10 (Call for Competition Procedure).

Timelines for the request to participate

These are our intended timelines. We will try to achieve these but, for a range of reasons, dates can change as the competition progresses. We will tell you if and when timelines change:

Publication of the OJEU Contract Notice	27 July 2018
Start Date - Open DPS to bidders to request to participate	1 August 2018 (subject to actual publication of OJEU Contract Notice)
DPS Open to Contracting Authorities for call for competition	Midnight on 14 September 2018
DPS Open for further bidder applications to join	Midnight on 14 September 2018

When and how to ask questions

If you have any questions you need to ask them as soon as possible after the publication of the OJEU Contract Notice. This will give you the chance to check that you understand everything before you submit your request to participate via the link detailed above.

You need to send your questions through the NHS Sourcing portal messaging system. We will not answer questions sent by any other route. Try to ensure that any questions are specific and clear.

The NHS Sourcing portal facilitates all messages sent between CPS and you in relation to this DPS. It is your responsibility to access messages during this procurement process. The NHS Sourcing portal sends automated email alerts when new information has been posted but you should check to make sure that your email system hasn't sent these messages to a spam folder. Please ensure that you access and review messages through the NHS

Sourcing portal on a regular basis. This will ensure you have sight of all relevant information and have access to all messages that we have sent to you.

We will usually publish every question and its response to all applicants to ensure that everybody has equal access to information. If you feel that a particular question should not be published, you must tell us why when you ask the question. We will decide whether or not to publish the question and response or return a response to you in confidence via the NHS Sourcing portal messaging system.

Remember that you can ask us questions about the DPS Agreement and contract terms but please do not try to 'negotiate' the terms as this is not permitted within the Public Contract Regulations (PCR). All DPS appointments will be made under identical terms.

Making the competition work

We run our competitions so that they are fair and transparent for all bidders. This section (Making the competition work) sets out the conditions of participation for this competition. It needs to be read together with the DPS Agreement and with the Dynamic Purchasing System Specification.

What you can expect from us:

We will not share any information from your request to participate bid, which you have identified as being confidential or commercially sensitive, with third parties, apart from other Public Sector bodies (and their related bodies) where this is necessary to make the DPS work. In certain circumstances, we may share this information with other organisations but only in line with the Public Contracts Regulations, the Freedom of Information Act 2000 (FOIA) or any other law as applicable.

What we expect from you:

Make sure you have read and understood the request to participate and corresponding participation bid pack before you complete the SQ.

Please make sure you have read through all the information available to you. This includes any of the responses provided by us to any of your questions raised.

You must comply with the rules in this participation bid pack and any other instructions given by us. You must also ensure (where applicable) members of your Group of Economic Operators or sub-contractors comply also.

You have not fixed or adjusted any element of the response by agreement or arrangement with any other person.

You have only selected the filters for the services and areas that your organisation can deliver.

Involvement in multiple bids

If you are connected with another bid for this procurement, we may make further enquiries. For example, where:

- you submit a bid in your own name or as member of a Group of Economic Operators connected with a separate bid; or
- you submit a bid in your own name which is similar to a separate bid from another bidder within your group of companies.

This is so we can be sure that your involvement does not cause:

- potential or actual conflicts of interest;
- supplier capacity problems; or
- restrictions or distortions in competition.

We may require you to amend or withdraw all or part of your request to participate if, in our reasonable opinion, any of the above issues have arisen or may arise.

Contracting Arrangements

Only you, your nominated sub-contractors or Group of Economic Operators (as set out in your SQ) can provide services through this DPS Agreement.

Contracting Arrangements for Group of Economic Operators

We may require a Group of Economic Operators to form a specific legal entity when signing a DPS Agreement as per the PCR. We may also require a member of the Group of Economic Operators to sign a DPS Agreement guarantee on behalf of the legal entity.

Bidder conduct and conflicts of interest

You must not attempt to influence the Request to Participate process. For example, you must not directly or indirectly at any time:

- Collude with others over the content and submission of bids. However, you may work in good faith with a proposed supplier, Group of Economic Operators member or provider of finance in the event that a guarantor is required.
- Canvass our staff or advisors in relation to this competition.
- Attempt to obtain information from any of our staff or advisors about another bidder or bid.

You must ensure that no conflicts of interest exist between you and us. If you do not tell us about a known conflict, we may exclude you from the competition. We may also exclude you if a conflict cannot be dealt with in any other way.

Confidentiality and Freedom of Information

You must keep the contents of this bid pack confidential (including the fact that you have received it). This obligation shall not apply insofar as:

- enabling you to submit a bid; or

- compliance with a legal obligation.

Publicity

You must not publicise the services or the award of any individual contract unless we have given express written consent. For example, you are not allowed to make statements to the media regarding any bid or its contents

Our rights:

We reserve the right to:

- Waive or change the requirements of this bid pack from time to time without notice.
- Verify information, seek clarification or require evidence or further information in respect of your bid.
- Exclude you if:
 - you submit a non-compliant bid
 - your bid contains false or misleading information
 - you fail to tell us of any change in the contracting arrangements between your request to participate and appointment onto the DPS. Or, if you do tell us, allowing the change in the contracting arrangements would result in a breach of law
 - for any other reason set out elsewhere in this bid pack
 - for any reason set out in the Public Contract Regulations 2015
- Terminate the DPS Agreement at any time.
- Make any changes to the timetable, structure or content of the competition.

General:

Bid costs

We will not pay your bid costs for any reason e.g. if we terminate or amend the competition.

Warnings and disclaimers

We will not be liable:

- where parts of the bid pack are not accurate, adequate or complete; or
- for any written or verbal communications.

You must carry out your own due diligence and rely on your own enquiries.

This bid pack is not a commitment by us to enter into a contract.

Intellectual Property Rights

The bid pack remains our property. You must use the bid pack only for this competition.

You allow us to copy, amend and reproduce your bid so we can:

- run the competition;
- comply with law and guidance;
- carry out our business.

Our advisors, sub-contractors and other government bodies can use your bid for the same purposes.

TUPE Transfer of undertakings (Protection of Employment):

We consider that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) may apply at the Call for Competition stage.

It is your responsibility to take your own advice and consider whether TUPE is likely to apply in the particular circumstances of the contract and to act accordingly, you are therefore encouraged to carry out your own due diligence exercise.