



22 May 2020

Ref: CPD/0004/121/029

Dear Sir or Madam,

**INVITATION TO TENDER FOR MHCLG DEVELOPMENT OF THE NATIONAL MODEL  
DESIGN CODE**

I am pleased, on behalf of the Secretary of State for Housing, Communities and Local Government (MHCLG), to invite you to submit a Tender for the provision of the MHCLG Development of the National Model Design Code.

Your attention is drawn to the Invitation to Tender Information and Instructions (ITT) and the Terms of Participation overleaf. To ensure fairness all Potential Suppliers are required to submit their Tenders in accordance with the ITT and the Terms of Participation. Failure to do so could invalidate the Tender.

I look forward to hearing from you.

Yours faithfully

Michael Adu  
Commercial Lead – Policy and Capability



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## **PART 1 – INVITATION TO TENDER (ITT) INFORMATION AND INSTRUCTIONS**

### **1. INTRODUCTION**

- 1.1 Welcome to this Procurement which is being run by the Ministry of Housing, Communities and Local Government (MHCLG, referred to as the 'Authority' within this Invitation to Tender (ITT)). Further information on the Authority can be found at: <https://www.gov.uk/government/organisations/ministry-of-housing-communities-and-local-government>.
- 1.2 References to "you" in this ITT are references to your organisation, or the organisation you represent in this Procurement i.e. the legal entity responsible for the information provided.
- 1.3 This ITT contains the information and instructions required by the Potential Supplier to submit a compliant Tender. Words in this ITT which are capitalised have definitions either in the paragraph in which such words appear or in the glossary at paragraph 15 (Glossary) of this Part 1 ITT Information and Instructions.
- 1.4 You are advised to read this ITT carefully as non-compliance with the instructions contained in this document and all its Annexes may result in exclusion of your Tender from this Procurement. If you have read all the instructions and information carefully but are still unsure at any point how to respond, please submit a question following the guidance in paragraph 8 (Questions and Clarifications).
- 1.5 The Terms of Participation at Part 2 of this document will apply throughout this Procurement. They set further rights and obligations which apply to the Potential Supplier and the Authority. Failure to comply with these Terms of Participation will result in your tender being excluded from this Procurement.
- 1.6 If you are participating in this Procurement as a Group or Group of Economic Operators or intend on using Sub-Contractors please read the guidance in paragraph 10 (Contracting Arrangements (Sub-contractors and Groups of Economic Operators)).
- 1.7 The Authority is using an e-tendering portal to manage this Procurement and to communicate with Potential Suppliers. No hard copy documents will be issued and all communication with the Authority (including submissions of Tenders) must be conducted via the e-tendering portal. The Potential Supplier must ensure that the details of the point of contact nominated in the e-tendering portal are accurate at all times as the Authority will not be under any obligation to contact any other point of contact.



## **2. THE CONTRACT**

- 2.1 This Procurement will result in the award of the Contract to one (1) successful Potential Supplier. Once the Contract has been executed that successful Potential Supplier will become the Supplier.
- 2.2 The Contract will be for an initial period of five and a half (5.5) months commencing in June 2020 and expiring 30<sup>th</sup> November 2020. The Authority reserves the right to extend the Contract for a period of up to three (3) months. A key dependency for the duration of the Contract term is the length of the consultation and the Authority will keep the Supplier updated on this point.
- 2.3 The Authority has a maximum budget range of £60,000 to £80,000 exclusive of VAT for this requirement for the Contract period and any extension options that may be taken.
- 2.4 The Terms and Conditions that will govern the Contract are attached at Annex B. The Potential Supplier should carefully review these documents so that you fully understand the rights and obligations they confer on the parties.
- 2.5 The Contract terms are non-negotiable, whether during this Procurement or post award. However, the Potential Supplier may seek clarification of any points of ambiguity or apparent error in relation to the terms throughout the clarification period (see paragraph 8 (Questions and Clarifications)). If, in its sole discretion, the Authority accepts that there is either ambiguity or error, then it will make an appropriate amendment.
- 2.6 Following the Authority's decision to award, the Contract will be updated to incorporate elements of the Tender including (but not limited to) the successful Potential Supplier's charges and the approach to delivering the Services.

## **3. REQUIREMENT**

- 3.1 A previous competition for the services was set aside in May 2020 as the Authority had identified changes required to the original Specification and associated Award Criteria. The changes are now reflected in this Invitation to Tender.
- 3.2 A detailed description of the Services that the Supplier will be required to supply is set out in the Specification at Annex A.

## **4. ACKNOWLEDGEMENT OF RECEIPT OF THIS ITT**

- 4.1 You are required to acknowledge receipt of the ITT and state whether or not a Tender will be submitted.
- 4.2 If you do not wish to submit a Tender the Authority would appreciate if you could also state the reasons for not tendering as this may assist future procurement exercises.
- 4.3 The acknowledgement should be made to via the messaging service in the e-tendering portal.



## 5. PROCUREMENT TIMETABLE

- 5.1 The timetable for this Procurement is set out in Table 1 below.
- 5.2 This timetable may be changed by the Authority at any time. You will be informed through the e-tendering portal if the Authority decides that changes to this timetable are necessary.

**TABLE 1 – PROCUREMENT TIMETABLE**

DATE	ACTIVITY
Friday 22/05/20	Release of ITT
Friday 22/05/20	Clarification period starts
Friday 29/05/20 17:00Hr	Clarification period closes ( <b>"Tender Clarifications Deadline"</b> )
Tuesday 02/06/20	Deadline for the publication of responses to Tender Clarification questions
Wednesday 03/06/20	Deadline to acknowledge intention to submit a Tender
Friday 05/06/20 16:00Hr	Deadline for submission of Tenders ( <b>"Tender Submission Deadline"</b> )
Monday 08/06/20 – Wednesday 10/06/20	Evaluation period
By Tuesday 16/06/20	Prospective contract award date
w/c 15/06/20	Prospective commencement date for Contract

## 6. COMPLETING AND SUBMITTING A TENDER

- 6.1 To participate in this competitive tendering exercise, you are required to submit a Tender which fully complies with the instructions in this ITT and its Annexes.
- 6.2 You are strongly advised to read through all documentation and all attachments to ensure understanding of how to submit a fully compliant Tender.
- 6.3 The Authority utilises an e-tendering portal to provide governance around the sourcing process. Your response must be managed through this tool. You are therefore advised of the following:
- 6.3.1 It is your responsibility to ensure that you have submitted a fully compliant Tender.
- 6.3.2 You must ensure that you are using the latest versions of this document and its Annexes, as the documentation may be updated from time to time.



- 6.3.3 Any incomplete or incorrect submissions may be deemed non-compliant, and as a result you may be unable to proceed further in the procurement process.
- 6.3.4 Allow plenty of time for completing the Tender. It is advised that this activity commences as soon as possible and is not left until the day of the Tender Submission Deadline.

## **7. CONTENT OF TENDER**

- 7.1 The tender must be submitted in the English (UK) language.
- 7.2 You are required to submit a Tender complying with the specified page or word limits for each question describing how you will meet the requirement set out in the Specification at Annex A having regard to each of the evaluation criterion set out at Annex E Award Criteria.
- 7.3 You must not answer questions by cross referring to other answers or to other materials (e.g. annual company reports located on a web site). Each question answered must be complete in its own right.
- 7.4 The Authority will disregard any part of a response to a question which exceeds the specified page limit or word limit (i.e. the excess will be disregarded, not the whole response). The stated page limit or word limit should be in A4 Arial size 10 font and includes spaces and punctuation.
- 7.5 You must complete the Price Schedule template at Annex C and submit the requested information for delivering the Services in accordance with the template and instructions provided. All pricing in the Tender must be in pounds sterling and excluding VAT. Estimates are not acceptable. Information regarding travel and subsistence is set out at Annex F.
- 7.6 You should not include price information in the main body of the Tender. Price information should be in Annex C only.
- 7.7 You are required to submit a completed and signed Form of Tender in accordance with the template at Annex D.
- 7.8 Where a conflict of interest exists or arises or may exist or arise during the Procurement you must inform the Authority and submit proposals to avoid such conflicts. In the event the Authority does not accept that your proposals will prevent a conflict of interest from arising the Authority may take such measures to prevent the conflict of interest from arising as it considers appropriate including, but not limited to, excluding you from this Procurement.

## **8. QUESTIONS AND CLARIFICATIONS**

- 8.1 You may raise questions or seek clarification regarding any aspect of this Procurement at any time prior to the Tender Clarifications Deadline as outlined in Section 5 Table 1 above. Questions must be submitted using the messaging facility provided within the e-tendering portal.



- 8.2 To ensure that all Potential Suppliers have equal access to information regarding this Procurement, the Authority will publish all its responses to questions asked and/or clarifications raised by Potential Suppliers.
- 8.3 Responses to questions asked and/or clarifications raised will not identify the originator of the question and may be answered in batches, rather than one at a time, with updates appearing at regular intervals.
- 8.4 If a Potential Supplier wishes to ask a question or seek clarification in confidence it must provide justification for withholding the question and any response. If the Authority does not consider that there is sufficient justification for withholding the question and the corresponding response, the Authority will inform the Potential Supplier and the Potential Supplier will have an opportunity to withdraw the question or clarification. If the question and or clarification is not withdrawn, then the response will be issued to all Potential Suppliers.
- 8.5 You are responsible for monitoring the e-tendering portal and the question and answer bulletins in particular, for any responses to questions, general clarifications or other information issued by the Authority. Answers to such questions may contain important information that could affect how you complete your Tender.
- 8.6 The Authority reserves the right to contact you at any time for clarification on all or any part of its Tender during this Procurement and you should respond promptly to such request.

## **9. TENDER RETURN AND VALIDITY**

- 9.1 All Tenders must be received by the Authority before the Tender Submission Deadline. It is your responsibility to ensure that the Tender arrives no later than the time and date stated in the Procurement Timetable (unless the time and/or date are subsequently amended in writing by the Authority).
- 9.2 All Tenders must be submitted to the Authority using the e-tendering portal.
- 9.3 Tenders received on or after the Tender Submission Deadline may be rejected by the Authority to ensure all Potential Suppliers are treated fairly. The decision whether to reject a Tender received after the Tender Submission Deadline is entirely at the Authority's discretion.
- 9.4 The Tender must be based upon the conditions and Specification(s) set out in the ITT and must contain all the information requested otherwise it may be rejected on the basis of being non-compliant.
- 9.5 By submitting a Tender, you agree that the Tender remains valid for acceptance for a period of 90 days from the Tender Submission Deadline.

## **10. CONTRACTING ARRANGEMENTS (SUB-CONTRACTORS AND GROUPS OF ECONOMIC OPERATORS)**

- 10.1 If the Potential Supplier wishes to submit a tender as part of a group or consortium of suppliers, the group or consortium must, prior to Contract award,





either nominate a lead party with legal personality or create a single legal entity with whom MHCLG can Contract.

- 10.2 In the event of a tender being submitted by a group or consortium the Potential Supplier must provide an undertaking within the tender that the group or consortium will, when required by MHCLG, nominate a lead party or create a single legal entity which will take on full legal liability for the Contract.

## 11. GREEN CLAIMS CODE

- 11.1 Any environmental claim made in the Tender must comply with the Green Claims Code, which is available at:

<https://www.gov.uk/government/publications/green-claims-guidance>

## 12. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 (“TUPE”)

- 12.1 The Potential Supplier is advised to consider potential implications of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) which may apply to this Contract. It is the responsibility of the successful Potential Supplier to determine if TUPE does apply.
- 12.2 It is the responsibility of the Potential Supplier to take your own advice and consider whether TUPE is likely to apply in the particular circumstances of the Contract and to act accordingly. The Potential Supplier is encouraged to carry out your own due diligence exercise.

## 13. OVERVIEW OF THE EVALUATION PROCESS

- 13.1 The evaluation procedure is divided into the following key stages, which the Authority may nevertheless decide to run concurrently;

13.1.1 **Compliance/validation** – all Tenders will be checked to ensure compliance with the ITT and that the responses are valid. Non-compliant Tenders may be excluded from this Procurement by the Authority following completion of this process.

13.1.2 **Award Stage evaluation** - All Tenders that pass the Compliance/validation Stage will be assessed against the Award Criteria at Annex E in accordance with paragraph 13.3 below.

### 13.2 Compliance/validation stage

13.2.1 Prior to commencing the formal evaluation process, Tenders will be checked to ensure they are compliant with the requirements of this ITT and its Annexes. Any non-compliant Tenders may, including in the event further questions are asked or clarification is sought by the Authority but fail to produce a satisfactory response, be excluded by the Authority without proceeding to the next stage of evaluation.

13.2.2 Potential Suppliers who are excluded on grounds of non-compliance will be notified accordingly.



### 13.3 Award Stage Evaluation

13.3.1 Those Potential Suppliers whose Tenders pass the compliance checks stated at paragraph 13.2 will proceed to the Award Stage evaluation.

13.3.2 The maximum score capable of being achieved by a Potential Supplier will be 100% which is the combined sum of the percentage breakdown for the quality evaluation (set out in paragraphs 13.4 -13.9 inclusive) and the price evaluation (set out in paragraph 13.10) respectively as set out below.

QUALITY	PRICE	MAXIMUM SCORE
80%	20%	100%

### 13.4 Quality Evaluation

13.4.1 The Quality Evaluation consists of:

13.4.1.1 Mandatory criteria – assessed on a ‘pass/fail’ basis. If a Potential Supplier receives a ‘fail’ for any of these questions their tender will be excluded from further participation in this Procurement.

13.4.1.2 Scoring criteria – assessed in accordance with the Scoring Guidance set out at Annex E. If a Potential Supplier fails to meet any specified minimum threshold stated in the Award Criteria at Annex E their tender will be excluded from further participation in this Procurement.

13.4.2 The evaluation of each response to the Quality questions will be conducted and consensus checked in accordance with paragraph 13.5 (Consensus Marking Procedure).

### 13.5 Consensus Marking Procedure

13.5.1 The Consensus Marking Procedure is a two-step process, comprising of:

13.5.1.1 Independent evaluation; and

13.5.1.2 Group consensus marking.

13.6 During the independent evaluation process each evaluator will separately (i.e. without conferring with other evaluators) scrutinise the quality of answers given in the Tender. Evaluators will apply the criteria applicable to the question as set out in the evaluation guidance to determine the overall quality of each answer. Each evaluator will then allocate a mark for the answer in accordance with the Scoring Guidance set out at Annex E and will also provide justification for that mark.

13.7 When the independent evaluation exercise has been completed by all of the evaluators, a group consensus marking exercise will be coordinated by an independent facilitator.



13.8 During the group consensus meeting, each evaluator will discuss the quality of the answers given to a question and review his/her justification for attributing the score in accordance with the Scoring Guidance set out at Annex E. The evaluators will continue to discuss the answers until a consensus score has been reached.

13.9 The independent facilitator will record the consensus score and the justification for the consensus score.

#### **13.10 Price Evaluation**

13.10.1 Failure to submit a completed Price Schedule Template at Annex C in accordance with the given instructions, may result in your Tender being deemed as non-compliant. Any Tender which is deemed non-compliant will be excluded from further participation for the purposes of this Procurement.

13.10.2 The Price Evaluation will be undertaken by different evaluators to those individuals involved with the Quality Evaluation.

13.10.3 The Price Schedule at Annex C will be scored in accordance with the Authority's 'Lowest Cost Price Scoring' methodology.

13.10.4 The Authority will evaluate the total fixed prices submitted by the Potential Suppliers. The Tender with the lowest total fixed price achieves the maximum score and all other Tenders are reduced by reference to the lowest price using the formula below.

$$\frac{\text{Lowest Price Tendered}}{\text{Tender price}} \times \text{Maximum Score Available}$$

#### **13.11 Final Score**

13.11.1 The Quality Score awarded will be added to the Price Score to determine the final score for each Potential Supplier ("Final Score").

### **14. FINAL DECISION TO AWARD**

14.1 Following evaluation of Potential Suppliers' Tenders in accordance with the evaluation process set out in this ITT, the Potential Supplier who offers the most economically advantageous Tender will be awarded the Contract.

14.2 The most economically advantageous Tender will be the Potential Supplier scoring the highest Final Score and that Potential Supplier shall be ranked first.

14.3 Where the Final Score achieved by multiple Potential Suppliers ranks them equal, then the scores for each sub-criterion in order of importance will be considered. Where the sub-criteria are of equal weight an average of the scores across those criteria will be taken.

14.4 The Authority will inform all Potential Suppliers of its intention to award the Contract via the e-tendering portal.



14.5 Should the successful Potential Supplier decline to accept a Contract, then it will be offered to the next ranked Potential Supplier, until it has been accepted.

## 15. GLOSSARY

Term	Definition
Authority	means the Ministry for Housing, Communities and Local Government as described in paragraph 1.1 whose offices are located at Fry Building, 2 Marsham Street, London, SW1P 4DF.
Contract	means the contractually-binding Terms and Conditions set out at Annex B of this ITT to be entered into between the Authority and the successful Potential Supplier at the conclusion of this Procurement;
Supplier	means a Potential Supplier with whom the Authority has concluded a Contract;
e-tendering Portal	means the online tender management and administration system used by the Authority ( <a href="https://dclg.bravosolution.co.uk">https://dclg.bravosolution.co.uk</a> );
FoIA	means the Freedom of Information Act 2000 as amended and any subordinate legislation made thereunder from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
EIR	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
Group	means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Holding company and subsidiary shall mean a "holding company" and "subsidiary" that latter term being defined in section 1159 of the Companies Act 2006;
Group of Economic Operators	means a group of economic operators acting jointly and severally to provide the Services
Invitation to Tender or ITT	means this invitation to tender document together with its Annexes, published by the Authority in relation to this Procurement;



Term	Definition
Lead Contact	means the member of the Group of Economic Operators who is authorised in writing by each of the other members to that Group of Economic Operators to provide the Tender;
Potential Supplier	means an organisation participating in this Procurement;
Procurement	means the process used to establish a Contract that facilitates the supply of the Services to Contracting Authorities;
Procurement Timetable	means the timetable set out in paragraph 5 as amended in writing from time to time by the Authority;
Tender	means the Potential Supplier's formal offer in response to the Invitation to Tender;



## **PART 2 –TERMS OF PARTICIPATION**

### **1. INTRODUCTION**

- 1.1 These Terms of Participation set out the conditions of participation in this Procurement, including:
  - 1.1.1 rules in relation to the conduct of Potential Suppliers; and
  - 1.1.2 specific rights of the Authority and limits to the Authority's liability, which apply throughout this Procurement.

### **2. CONDUCT - GENERAL**

- 2.1 The Potential Supplier shall abide by these Terms of Participation and any instructions given in the Invitation to Tender.
- 2.2 An obligation on the Potential Supplier to do, or to refrain from doing, any act or thing under the Invitation to Tender including these Terms of Participation shall include an obligation upon the Potential Supplier to procure that all its directors, office holders, staff, members of its Group of Economic Operators (if it acts as Lead Contact), companies within its Group, Sub-Contractors, advisers or agents involved or connected with this Procurement also do, or refrain from doing, such act or thing.

### **3. CONDUCT - SPECIFIC OBLIGATIONS**

- 3.1 Contact during this Procurement exercise and canvassing
  - 3.1.1 The Potential Supplier must not directly or indirectly canvass any Minister, officer, public sector employee, member or agent regarding this Procurement or attempt to obtain any information from the same regarding this Procurement (except where and as permitted by the Invitation to Tender). Any attempt by the Potential Supplier to do so may result in the Potential Supplier's disqualification from this Procurement.
- 3.2 Involvement in multiple tenders
  - 3.2.1 If a Potential Supplier is connected with the submission of multiple tenders for the same requirement or Lot (as applicable), including (without limit) where:
    - 3.2.1.1 it submits a Tender in its own name and as a Sub-Contractor and/or a member of a Group of Economic Operators connected with a separate tender or
    - 3.2.1.2 it submits a Tender in its own name which is similar to a separate tender from another Potential Supplier within its Group,then the Authority retains the right to make further enquiries regarding each tender to satisfy itself that such involvement does not cause potential or actual conflicts of interest, Supplier capacity problems, restrictions or distortions in competition between Potential Suppliers in this Procurement. The Authority may require the Potential Supplier or withdraw all or part of its



Tender if, in the Authority's reasonable opinion and at its sole discretion, any of the above issues have arisen or may arise.

### 3.3 Collusive Behaviour

#### 3.3.1 A Potential Supplier must not:

- 3.3.1.1 collude with nor disclose the fact of their intention to submit a tender to other Potential Suppliers;
- 3.3.1.2 fix or adjust any element of its Tender by agreement or arrangement with any other person, except where, but subject always to paragraph 3.2, such prohibited acts are undertaken with persons who are also participants in the Potential Suppliers' Tender, such as members of its Group of Economic Operators (if it acts as a Lead Contact), companies within its Group or Sub-Contractors, or where disclosure to such person is made in confidence in order to obtain quotations necessary for the preparation of its Tender or obtain any necessary security;
- 3.3.1.3 communicate with any person other than the Authority the value, price or rates set out in its Tender or information which would enable the precise or approximate value, price or rates to be calculated by any other person, except where such communication is undertaken with persons who are also participants in the Potential Suppliers' Tender, such as members of its Group of Economic Operators (if it acts as a Lead Contact), companies within its Group or Sub-Contractors, or where disclosure to such person is made in confidence in order to obtain quotations necessary for the preparation of its Tender or obtain any necessary security;
- 3.3.1.4 offer or agree to pay or give or do pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any other person for doing or having done or causing or having caused to be done in relation to its Tender, any other tender or proposed tender, any act or omission.

3.3.2 If a Potential Supplier breaches paragraph 3.3.1, the Authority may exclude the Potential Supplier from further participation in this Procurement.

3.3.3 The Authority may require a Potential Supplier to put in place any procedures or undertake any such action(s) that the Authority in its sole discretion considers necessary to prevent or curtail any collusive behaviour.

## 4. RIGHT TO VERIFY INFORMATION

4.1 The Authority may contact (or may require the Potential Supplier to contact on its behalf) any of the Potential Supplier's customers, members of its Group of Economic Operators (if it acts as Lead Contact), Sub-Contractors or other third parties to whom



information relates in the Potential Supplier's Tender, to ask that they testify that such information is accurate and true.

- 4.2 The Authority reserves the right to seek third party independent advice or assistance to validate information submitted by a Potential Supplier and/or to assist in the tender evaluation process.
- 4.3 The Authority reserves the right to conduct site visits of any premises indicated by the Potential Supplier to be used in connection with the Potential Supplier's provision of the Services and/or audits at any time during this Procurement.
- 4.4 The Authority may require the Potential Supplier to clarify aspects of its Tender in writing and/or provide additional information. Failure to respond adequately may result in the rejection of the Potential Supplier's Tender and its elimination from further participation in all or part of this Procurement.

## **5. RIGHT TO CANCEL OR VARY THIS PROCUREMENT**

- 5.1 The Authority reserves the right to:
  - 5.1.1 change the basis of or the procedures for this Procurement at any time;
  - 5.1.2 amend, clarify, add to or withdraw all or any part of the Invitation to Tender at any time during this Procurement, including varying any timetable or deadlines set out in the Invitation to Tender; and
  - 5.1.3 cancel all or part of this Procurement at any stage at any time, including for the reason stated in paragraph 5.3 below; and
  - 5.1.4 not conclude a Contract or award a contract for some or all of the Services for which tenders are invited; and
- 5.2 Potential Suppliers accept and acknowledge that the Authority is not bound to accept any Tender or obliged to conclude a Contract or award a Contract with any Potential Supplier at all.
- 5.3 If the Authority deems that none of the tenders received in response to the Invitation to Tender are satisfactory, it reserves the right to terminate all or part of this Procurement.

## **6. RIGHT TO EXCLUDE**

- 6.1 The Authority may exclude a Potential Supplier's Tender from this Procurement if the Potential Supplier fails to provide to the Authority:
  - 6.1.1 any information requested;
  - 6.1.2 a full and satisfactory response to any question or information request;
  - 6.1.3 a Tender, or response to the Authority's queries, within any specified timescales; and/or
  - 6.1.4 documentation referred to in its Tender.
- 6.2 The Authority may exclude a Potential Supplier from any participation in this Procurement at any stage, if the Potential Supplier:





- 6.2.1 fails to comply fully with the requirements of this Procurement as set out in the Invitation to Tender;
  - 6.2.2 has breached these Terms of Participation; or
  - 6.2.3 has committed a wilful omission or misrepresentation in its Tender.
- 6.3 If the Authority has the right to exclude a Potential Supplier under these Terms of Participation or the Invitation to Tender it may (in its sole discretion):
  - 6.3.1 exclude the affected Tender but allow the Potential Supplier to participate as member of a Group of Economic Operators or Sub-Contractor in another Tender; or
  - 6.3.2 completely exclude the Potential Supplier from any involvement in this Procurement in its own name, or as member of a Group of Economic Operators or Sub-Contractor in another Tender.
- 6.4 The Authority may exclude a Potential Supplier from participation in this Procurement where there is a change in identity, control, financial standing or other factor impacting on the selection and/or award process, which would affect or would have affected the Authority's evaluation of the Potential Supplier's Tender.
- 7. STATUS OF THE INVITATION TO TENDER**
- 7.1 No information contained in the Invitation to Tender or in any communication made between the Authority and a Potential Supplier in connection with this Procurement shall be relied upon as constituting agreement or representation that a Contract shall be concluded or any contract be entered into in accordance with the Potential Supplier's Tender or at all.
- 7.2 The Authority shall not be committed to any course of action as a result of:
  - 7.2.1 issuing the Invitation to Tender relating to this Procurement;
  - 7.2.2 any communications with Potential Suppliers or their representatives, agents or advisers in respect of this Procurement; and/or
  - 7.2.3 any communications between Potential Suppliers, the Authority and/or any relevant Contracting Authority and any other party (whether directly or through their agents or representatives) in respect of this Procurement.
- 7.3 The Invitation to Tender have been prepared in good faith but do not purport to be a comprehensive statement of all matters relevant to this Procurement nor has it been independently verified. Neither the Authority nor its advisers, directors, officers, members, employees or other staff or agents:
  - 7.3.1 accept any liability or responsibility for the adequacy, accuracy or completeness of the Invitation to Tender,
  - 7.3.2 make any representation or warranty, express or implied, with respect to the information the Invitation to Tender contains nor shall any of them be liable for any loss of damage arising as a result of reliance on such information or any subsequent communication.



- 7.4 The Potential Supplier shall form its own conclusions and make its own independent assessment of the requirements of the terms and conditions of the draft Contract (Annex B) and should seek its own financial and legal advice about the methods and resources needed to meet the Authority's requirements.
- 7.5 It is the Potential Supplier's sole responsibility to undertake such investigations and take such advice (including professional advice) as it considers appropriate in order to make decisions regarding the content of its Tender and in order to verify any information provided to it during the Procurement and to query any ambiguity, whether actual or potential.
- 7.6 The Authority does not accept responsibility for the Potential Suppliers' assessment of the requirements of this Procurement.
- 7.7 The Potential Supplier is responsible at its own expense, for obtaining all information required to prepare its Tender.
- 7.8 Any exclusions of liability of the Authority in this paragraph 7 do not apply to the extent of any deceit or fraudulent misrepresentation made by or on behalf of the Authority.

## **8. CONCLUDING THE CONTRACT**

- 8.1 The Potential Supplier undertakes that, in the event of a Potential Supplier's Tender being accepted by the Authority and the Authority confirming in writing such acceptance to the Potential Supplier, the Potential Supplier shall execute the Contract as amended to accommodate aspects of the Tender within 7 calendar days, (or any other longer period of time as determined by the Authority at its sole discretion) of being called upon to do so by the Authority.

## **9. COSTS**

- 9.1 The Authority will not reimburse any costs incurred by a Potential Supplier (including the costs or expenses of any members of its Group of Economic Operators (if acting as a Lead Contact), Sub-Contractors or advisors) in connection with the preparation and/or submission of the Potential Supplier's Tender, including (without limit) where:
- 9.1.1 this Procurement is cancelled, shortened or delayed for any reason (including, without limitation, where such action is necessary due to non-compliance or potential non-compliance with the law);
- 9.1.2 all or any part of the Invitation to Tender is at any time amended, clarified, added to or withdrawn for any reason;
- 9.1.3 a Contract is not concluded or a Contract is not awarded in respect of some or all of the Services for which tenders are invited; or
- 9.1.4 the Potential Supplier and/or its Tender is disqualified from participation in this Procurement for any reason, including breach of these Terms of Participation.



## 10. CONFIDENTIALITY

- 10.1 Subject to the exceptions referred to in paragraph 10.2, the contents of the Invitation to Tender are being made available by the Authority on the conditions that the Potential Supplier:
- 10.1.1 treats the Invitation to Tender (the “**Information**”) as confidential at all times, unless the Information is already in the public domain;
  - 10.1.2 does not disclose, copy, reproduce, distribute or pass any of the Information to any other person at any time or allow any of these things to happen, except where, and to the extent that, the Information has been publicised in accordance with paragraph 11 (Freedom of Information) or paragraph 12 (Transparency);
  - 10.1.3 only uses the Information for the purposes of preparing a Tender (or deciding whether to respond); and
  - 10.1.4 does not undertake any promotional or similar activity related to this Procurement within any section of the media during this Procurement.
- 10.2 A Potential Supplier may disclose, distribute or pass any of the Information to its members of its Group of Economic Operators (if acting as a Lead Contact), Sub-Contractors, advisers or to any other person provided that:
- 10.2.1 this is done for the sole purpose of enabling the Potential Supplier to submit its Tender and the person receiving the Information undertakes in writing (such written undertaking to be made available to the Authority on the Authority’s request) to keep the Information confidential on the same terms imposed by these Terms of Participation; or
  - 10.2.2 it obtains the Authority’s prior written consent in relation to such disclosure, distribution or passing of Information; or
  - 10.2.3 the disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to this Procurement; or
  - 10.2.4 the Potential Supplier is legally required to make such a disclosure; or
  - 10.2.5 the Information has been published in accordance with paragraphs 11 (Freedom of Information) and 12 (Transparency).
- 10.3 The Authority may disclose information submitted by Potential Suppliers during this Procurement to its officers, employees, agents or advisers or other government departments who are stakeholders in this Procurement.
- 10.4 All 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 procurement practice.



- 10.5 For these purposes, the Authority may disclose within HM Government any of the Potential Supplier's documentation or information (including any that the Potential Supplier considers to be confidential and/or commercially sensitive such as specific information in its Tender) submitted by the Potential Supplier to the Authority during this Procurement. Potential Suppliers taking part in this competition consent to such disclosure as part of their participation in the competition process.

## **11. FREEDOM OF INFORMATION**

- 11.1 In accordance with the obligations and duties placed upon public authorities by the FoIA and the EIR and in accordance with any government Code of Practice on the discharge of public authorities' functions under the FoIA (as defined in the glossary in paragraph 15 of the ITT), all information submitted to the Authority may be disclosed under a request for information made pursuant to the FoIA and the EIR (as defined in the glossary in paragraph 15 of the ITT).
- 11.2 A Potential Supplier should note that the information disclosed pursuant to a FoIA or EIR request may include, but is not limited to, the disclosure of its Tender (including any attachments or embedded documents) and/or any score or details of the evaluation of its Tender.
- 11.3 If the Potential Supplier considers any part of its Tender or any other information it submits to be confidential or commercially sensitive, the Potential Supplier should:
- 11.3.1 clearly identify such information as confidential or commercially sensitive;
  - 11.3.2 explain the potential implications of disclosure of such information taking into account and specifically addressing the public interest test as set out in the FoIA; and
  - 11.3.3 provide an estimate of the period of time during which it believes that such information will remain confidential or commercially sensitive.
- 11.4 If the Potential Supplier identifies that part of its Tender or other information it submits is confidential or commercially sensitive, the Authority in its sole discretion will consider whether or not to withhold such information from publication. The Potential Suppliers should note that, even where information is identified as confidential or commercially sensitive, the Authority may be required to disclose such information in accordance with the FoIA or the EIR.
- 11.5 The Authority is required to form an independent judgement of whether the Potential Supplier's information referred to in paragraph 11.4 is exempt from disclosure under the FoIA or the EIR and whether the public interest favours disclosure or not. The Authority cannot guarantee that any information indicated as being confidential or commercially sensitive by the Potential Supplier will be withheld from publication.
- 11.6 If the Potential Supplier receives a request for information under the FoIA or the EIR during and in relation to this Procurement, it should be immediately referred to the Authority.



## **12. TRANSPARENCY**

- 12.1 Potential Suppliers should be aware that in accordance with the Government's transparency agenda, it is the Authority's intention to publish the resultant Contract (except any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR) on the Contracts Finder website:

<https://www.contractsfinder.service.gov.uk/Search>

## **13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1 The Invitation to Tender issued in connection with this Procurement shall remain the property of the Authority and shall be used by the Potential Supplier only for the purposes of this Procurement.
- 13.2 The Potential Supplier grants the Authority an irrevocable, perpetual, non-exclusive licence to copy, amend and reproduce any intellectual property contained within its Tender for the purposes of carrying out this Procurement; complying with the law and/or any government guidance; and/or carrying out the Authority's business activities. This licence shall also permit the Authority to sublicense the use of the Potential Supplier's Tender to its advisers or sub-contractors or other Contracting Authorities for the same purposes.

## **14. NO INDUCEMENT OR INCENTIVE**

The Potential Supplier acknowledges and agrees that nothing contained within the Invitation to Tender shall constitute an inducement or incentive nor shall have in any other way persuaded a Potential Supplier to submit a Tender or enter into the Contract or any other contractual agreement.

## **15. LAW AND JURISDICTION**

- 15.1 Any dispute (including non-contractual disputes or claims) relating to this Procurement shall be governed by and construed in accordance with the laws of England and Wales.
- 15.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Procurement (including non-contractual disputes or claims).