**Document No. 02**

**Invitation to offer for National Framework Agreement for the Supply of Generic Pharmaceuticals – Tenofovir Disoproxil/Emtricitabine and Tenofovir Disoproxil/Emtricitabine/Efavirenz**

**Offer reference number: CM/PHG/17/5545**

**Period of framework agreement: The total maximum duration of the framework agreement to be no more than 36 months (18 months plus an option to extend (at the Authority's sole discretion) for a further 18 months)**

**Potential periods of call-offs under the framework agreement:**

**North West London: 21/05/2019 to 31/10/2020 (18 months)**

**North Central and North East London: 21/05/2019 to 31/10/2020 (18 months)**

**South London: 21/05/2019 to 31/10/2020 (18 months)**

**Midlands and East: 21/05/2019 to 31/10/2020 (18 months)**

**North of England: 21/05/2019 to 31/10/2020 (18 months)**

**South of England: 21/05/2019 to 31/10/2020 (18 months)**

**Terms of offer**

1. **The Authority and Participating Authorities**
   1. The NHS Commissioning Board, operating under the name of NHS England ("Authority") is conducting this procurement exercise as a central purchasing body for and on behalf of the organisations specified in Schedule 8 of Document No. 03 (Framework Agreement and Terms and Conditions) ("Participating Authorities"), to establish a framework agreement ("Framework Agreement") with the successful Offerors. Participating Authorities will enter into contracts under the Framework Agreement for the supply of the goods and/or services.
   2. The Authority will not be a party to any such subsequent contracts. In accordance with Regulation 37 of the Public Contracts Regulations 2015, each Participating Authority is and shall remain responsible for the conduct of its award of contracts under the Framework Agreement, including fulfilling the requirements imposed by Part 2 of the Public Contracts Regulations 2015, so far as applicable, when conducting an award of contract(s) under the Framework Agreement.
   3. The Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
      1. the conduct of Participating Authorities in relation to the Framework Agreement;
      2. the acts or omissions of a Participating Authority in connection with a contract between the successful Offeror and the Participating Authority entered into pursuant to the Framework Agreement; or
      3. the performance or non-performance of a contract between the successful Offeror and the Participating Authority entered into pursuant to the Framework Agreement.
   4. Offerors taking part in this competition consent to the terms set out in this Invitation to Offer as part of the competition process.
2. **The Framework Agreement**
   1. This procurement exercise concerns the conclusion of a Framework Agreement under which one or more successful Offerors will be appointed to supply goods and/or services on the terms agreed to such of the Participating Authorities as may place orders for such goods and/or services from time to time.
   2. The Authority cannot mandate the Participating Authorities to place any orders or any particular level of orders, nor can it require them to place orders with particular successful Offerors. It follows that the Authority can give no warranty that any successful Offeror will receive any business or any particular level of business under the Framework Agreement.
   3. Any volume estimates provided to Offerors by Authority staff are statements of opinion, provided in good faith and based on past experience and market knowledge, but they should not be relied upon by Offerors in formulating their Offers.
   4. By submitting an Offer, an Offeror is deemed to acknowledge and agree that:
      1. the supply of goods and/or services under any Framework Agreement resulting from this procurement exercise is not an exclusive arrangement; and
      2. notwithstanding the establishment of any Framework Agreement pursuant to this procurement exercise, the Authority and/or any of the Participating Authorities may at any time purchase goods and/or services from (and/or enter into other contracts and Framework Agreements with) any third party that are the same as, or similar to, the goods and/or services described in the Specification (Document No.04).
3. **Information and confidentiality**
   1. Information that is supplied to Offerors as part of the procurement exercise is supplied in good faith. However, Offerors must satisfy themselves as to the accuracy of such information and no responsibility is accepted for any loss or damage of whatever kind or howsoever caused arising from the use by the Offerors of such information, unless such information has been supplied fraudulently by the Authority.
   2. All information supplied to Offerors by the Authority in connection with this procurement exercise shall be regarded as confidential. By receiving information in any manner whatsoever in relation to this procurement exercise, Offerors agree to be bound by the obligation to preserve the confidentiality of all such information.
   3. 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.
   4. For these purposes, the Authority may disclose within Government any of the Offerors' documentation/information (including any that the Offeror considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Offeror to the Authority during this Procurement. The information will not be disclosed outside Government unless pursuant to any applicable legal obligation (see Section 4: Freedom of Information Act 2000, below).
   5. This invitation and its accompanying documents shall remain the property of the Authority and shall be returned to the Authority on demand.
4. **Freedom of Information Act 2000**
   1. The Freedom of Information Act 2000 ("FOIA") applies to the Authority.
   2. Offerors should be aware of the Authority’s obligations and responsibilities under FOIA to disclose, on request, recorded information held by the Authority. Information provided by Offerors in connection with this procurement exercise, or in connection with any Framework Agreement that may be concluded as a result of this exercise, may therefore have to be disclosed by the Authority in response to such a request, unless the Authority decides that one of the statutory exemptions under FOIA applies. The Authority may also include certain information in the NHS England Freedom of Information Publication Scheme (<https://www.england.nhs.uk/contact-us/pub-scheme/>).
   3. In certain circumstances, and in accordance with the Code of Practice issued under section 45 of FOIA or the Environmental Information Regulations 2004, the Authority may consider it appropriate to ask Offerors for their views as to the release of any information before a decision on how to respond to a request is made. In dealing with requests for information under FOIA, the Authority must comply with a strict timetable and the Authority would, therefore, expect a timely response to any such consultation within five (5) working days (a working day being any day of the week from Monday to Friday excluding Bank Holidays in the United Kingdom).
   4. If Offerors provide any information to the Authority in connection with this procurement exercise, or with any Framework Agreement that may be concluded as a result of this exercise, which is confidential in nature or which would be damaging to the Offeror's commercial interests if disclosed ("commercially sensitive") and which an Offeror wishes not to be disclosed, then Offerors must clearly identify in their offer documentation the information to which Offerors consider those exceptions under FOIA apply. Offerors must give a clear indication which material is to be considered confidential or commercially sensitive and why it is considered to be so, along with the time period for which it will remain confidential or commercially sensitive. Such indications by Offerors shall also include the section number in FOIA for the applicable exemption and where the proposed exemption is classified as a qualified exemption under FOIA, Offerors shall indicate clearly how they have determined that the result of the public interest test applicable under FOIA (where applicable) would be that the information is exempt. This information should be listed in Document No.8 (Confidential Information Schedule). The use of blanket protective markings such as “commercial in confidence” will not be accepted. In addition, marking any material as “confidential” or equivalent should not be taken to mean that the Authority accepts any duty of confidentiality by virtue of such marking. Please note that even where an Offeror has indicated that information is confidential or commercially sensitive, the Authority may be required to disclose it under FOIA if a request is received.
   5. The Authority cannot accept that trivial information or information which by its very nature cannot be regarded as confidential or commercially sensitive should be subject to any obligation of confidence.
   6. In certain circumstances where information has not been provided in confidence, the Authority may still wish to consult with Offerors about the application of any other exemption.
   7. The decision as to which information will be disclosed is reserved to the Authority, notwithstanding any consultation with Offerors.
5. **Right to publish – Transparency agenda**
   1. By submitting an Offer, an Offeror is deemed to acknowledge and agree that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, this Invitation to Offer and the content of any Framework Agreement resulting from this procurement exercise will be published in accordance with the Government's policies on transparency as set out in the Guidance published by the Cabinet Office. Further information on transparency can be found at:

<https://www.gov.uk/government/policies/buying-and-managing-government-goods-and-services-more-efficiently-and-effectively>

* 1. The Authority shall be ultimately and solely responsible for determining whether any of the content of this Invitation to Offer and any Framework Agreement that is concluded as a result of this procurement exercise is exempt from disclosure in accordance with the provisions of FOIA.

1. **Samples** 
   1. Offerors will be required to submit samples of each item offered. Such samples shall be provided free of charge.
   2. Samples should be despatched under separate cover as and when required by the Authority.
   3. Samples should be clearly marked with the name of the Offeror and the project code reference: **CM/PHG/17/5545.** Samples should be clearly labelled " **National Framework Agreement for the Supply of Generic Pharmaceuticals – Tenofovir Disoproxil/Emtricitabine and Tenofovir Disoproxil/Emtricitabine/Efavirenz.**
2. **Prices**
   1. A maximum upper price ("Ceiling Price") will be applied (as set out in Table 1 below this paragraph 7.1). Tendered prices must **not** exceed the Ceiling Price for the relevant Product. Tenders which exceed the Ceiling Price will **not** be evaluated and will be **disqualified**.

**Table 1**

|  |  |
| --- | --- |
| **Product** | **Ceiling Price** |
| Tenofovir Disoproxil/Emtricitabine (“Product 1”) | £40.00 (Price for 30 tablets) |
| Tenofovir Disoproxil/Emtricitabine/Efavirenz (“Product 2”) | £50.00 (Price for 30 tablets) |

* 1. Prices must be stated in the offer schedules, and must remain open for acceptance until ninety (90)days from the closing date for the receipt of offers.
  2. Prices must be firm (i.e. not subject to variation) for the duration of any Framework Agreement that may result from this procurement exercise subject only to any variation provisions contained in the Framework Agreement and documents incorporated within it.
  3. Prices must be quoted in sterling (GBP) and exclusive of Value Added Tax.

1. **Requirement and Lot Structure** 
   1. This procurement concerns the purchasing of two (2) generic products ("Products"). The first is **Tenofovir Disoproxil/Emtricitabine** (“Product 1”). The second is **Tenofovir Disoproxil/Emtricitabine/Efavirenz** (“Product 2”).
   2. To encourage competition and broaden the supply base, the geographic regions have been divided into two Lots as described below. Within each Lot are two Sub-Lots (one for Product 1 and one for Product 2). The Sub-Lots are divided into Regions, as shown in Table 2 below.

**Table 2**

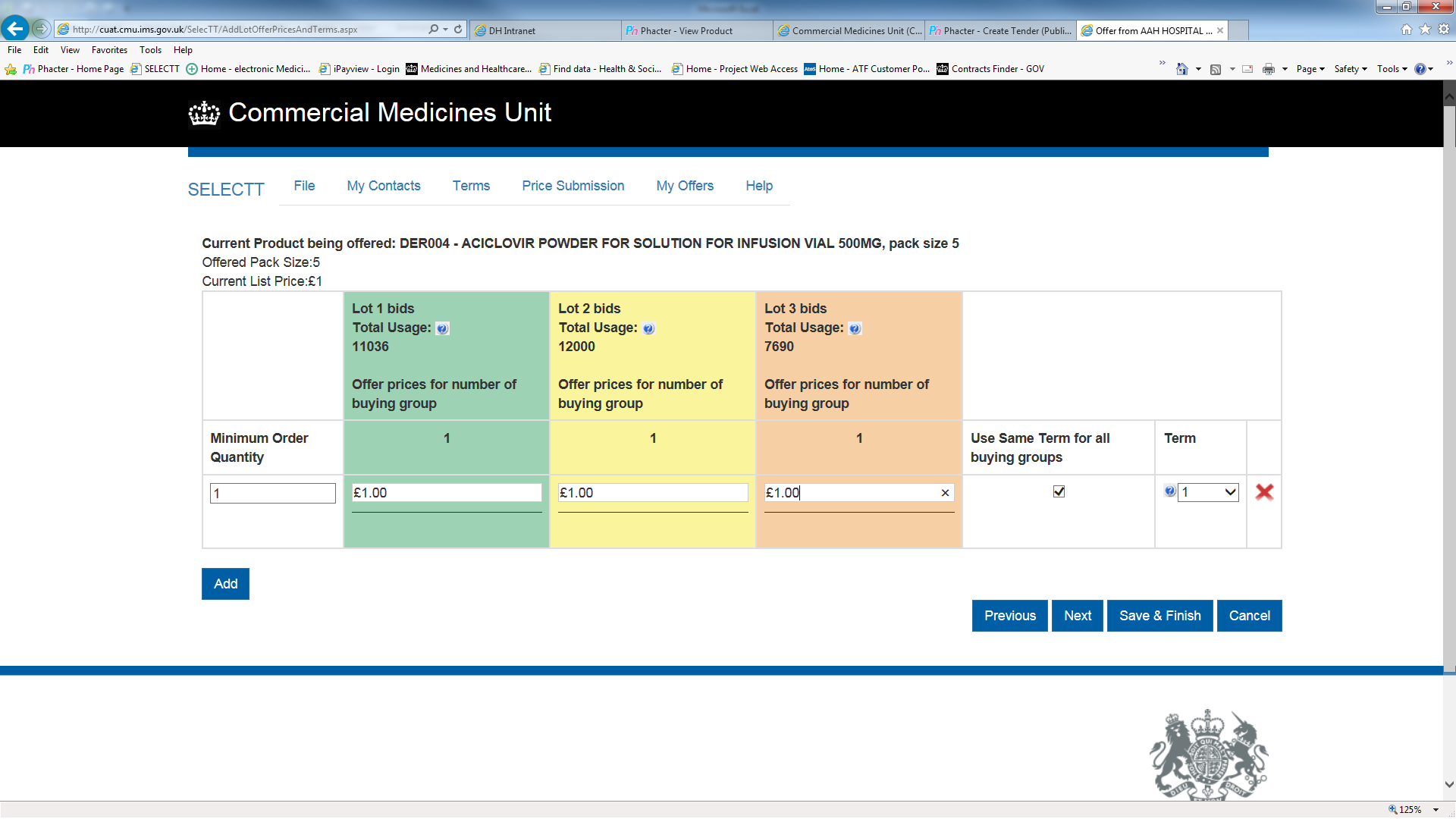
|  |  |  |
| --- | --- | --- |
| **Lot** | **Sub-Lot** | **Region** |
| Lot 1 - London | Lot 1a - Tenofovir Disoproxil/Emtricitabine (Product 1) | North Central London & North East London **(NCEL)**  North West London **(NWL)**  South London **(SEWL)** |
| Lot 1 - London | Lot 1b - Tenofovir Disoproxil/Emtricitabine/Efavirenz (Product 2) | North Central London & North East London **(NCEL)**  North West London **(NWL)**  South London **(SEWL)** |
| Lot 2 – Rest of England | Lot 2a - Tenofovir Disoproxil/Emtricitabine (Product 1) | Midlands and East **(MAE)**  North of England **(NOFE)**  South of England **(SOFE)** |
| Lot 2 – Rest of England | Lot 2b - Tenofovir Disoproxil/Emtricitabine/Efavirenz (Product 2) | Midlands and East **(MAE)**  North of England **(NOFE)**  South of England **(SOFE)** |

* 1. In Sub-Lot 1a and Sub-Lot 2a, one Framework Agreement will be awarded to a single supplier for **each** Region.
  2. In Sub-Lots 1b and 2b, a Framework Agreement will be awarded to a single supplier for **all three** Regions within **each** Sub-Lot.
  3. The number of Regions that may be awarded to an Offeror under Sub-Lots 1a and 2a is limited. No Offeror may be awarded more than one Region within a single Sub-Lot (for the avoidance of doubt a single Offeror may be awarded one Region in each of Sub-Lots 1a and 2a; i.e. two Regions in total). If less than three compliant tenders are received for either or both of Sub-Lots 1a and 2a, then the Regions will be allocated as set out in paragraph 12.2.2 (Allocating Regions).
  4. The mechanism for allocating Regions to successful Offerors is set out at paragraph 12.2.2 (Allocating Regions).
  5. Offerors may submit tenders for all (or any) of the Regions specified in the offer schedules for Lots 1a and 2a. If you intend only to bid for certain Regions, you **must** specify this clearly in your tender and state which Regions you are tendering for. Your tender will then only be evaluated in respect of those Regions.
  6. Different prices **may** be submitted for different Regions for Lot 1a and Lot 2a.
  7. One price must be submitted for **all three regions** for Lots 1b and 2b.
  8. The composition of each geographic buying group (and therefore the potential range of Participating Authorities in each Lot) is described in more detail in Schedule 8 (Participating Authorities)) of Document No. 03 (Framework Agreement and Terms and Conditions).
  9. A detailed description of the goods and/or services that an Offeror will be required to supply for a Region in which it has been successful is set out in the offer schedules and the Specification (Document No. 04).
  10. Each National Product Code product description (as listed in the relevant offer schedules) shall constitute a Product for the purposes of this Invitation to Offer.
  11. The tender comprises the following offer schedules:
      1. **CM/PHG/17/5545/01: London (Document No. 05a(ii)) and CM/PHG/17/5545/03: Rest of England (Document No. 05a (vi)- Tenofovir Disoproxil/Emtricitabine (Product 1)**
         1. For Product Line 1, Documents No. 05a(ii) and 05a(vi) specify the Sub-Lots and Regions being tendered.

**NOTES ON THE OFFER SCHEDULE**

**The following note provides guidance for Offerors as to the way in which they should complete the offer schedule relating to the Product(s) Tenofovir Disoproxil/Emtricitabine (Product 1 ) for which they wish to tender.**

**Please note that this reference to "Lot" in the SELECTT tender tool equates to a Region, as identified in paragraphs 8.1 and 8.2 above.**



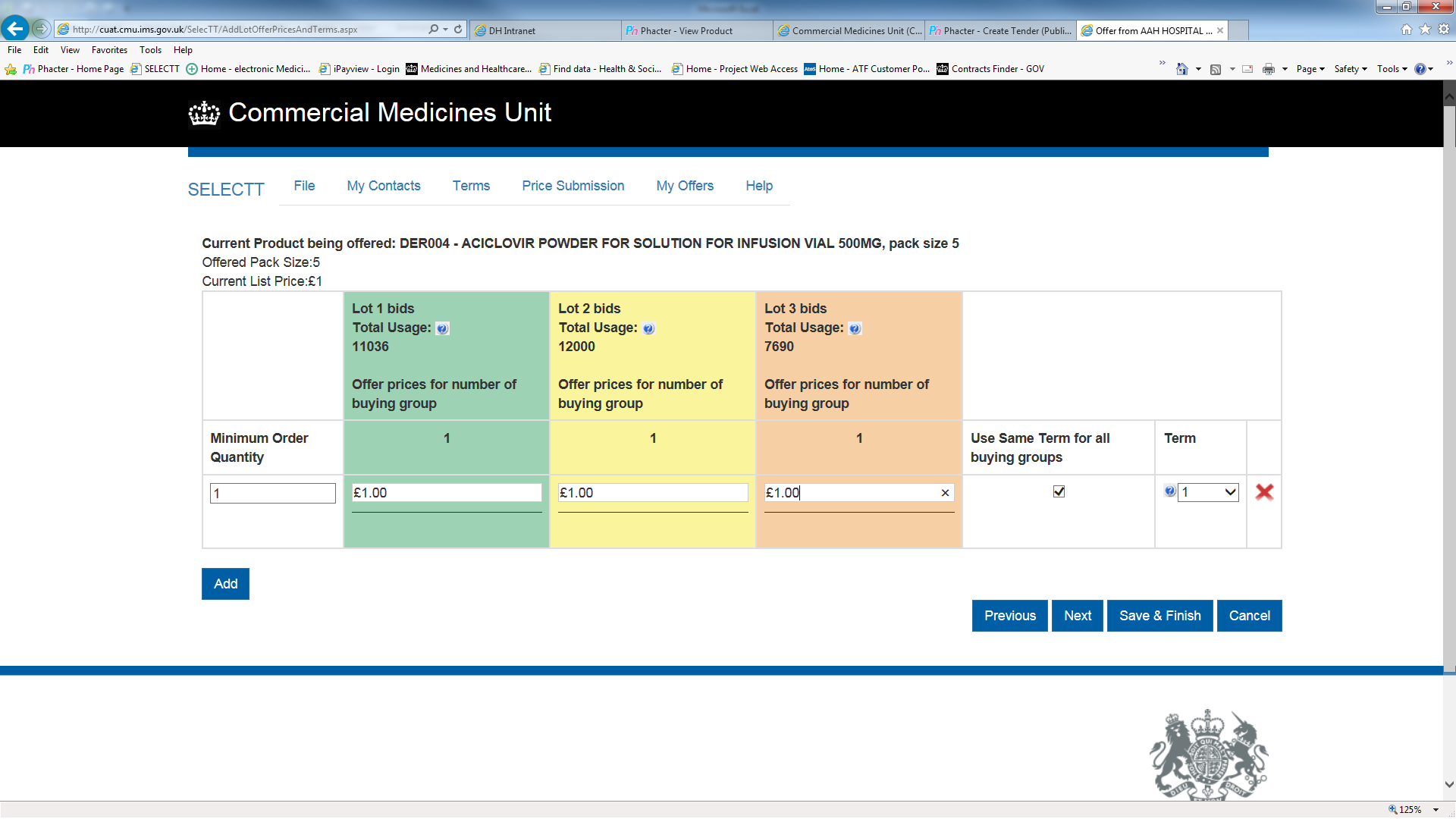
**In this example (and as described in paragraphs 8.1 and 8.2), each Lot relates to each of the specific Regions for Sub-Lots 1a and 2a within Product 1. Where Offerors are tendering for all Lots, they should insert a price against each of the Lots (i.e. Regions) above. Should an Offeror not wish to tender for all Lots but to restrict its offer to a specific Lot or Lots, then it should insert a price against the specific Lot(s) that it wishes to tender for only. The tendered price must not exceed the Ceiling Price.**

* + 1. **CM/PHG/17/5545/02: London (Document No. 05a(iv)) and CM/PHG/17/5545/04: Rest of England (Document No. 05a (viii)- Tenofovir Disoproxil/Emtricitabine/Efavirenz (Product 2)**
       1. For Product 2, Document No. 05a(iv) and 05a(viii) specify the Sub-Lots and Regions being tendered

**NOTES ON THE OFFER SCHEDULE**

**The following note provides guidance for Offerors as to the way in which they should complete the offer schedule relating to the Product(s) Tenofovir Disoproxil/Emtricitabine/Efavirenz (Product 2) for which they wish to tender.**

**Please note that this reference to "Lot" in the SELECTT tender tool equates to all 3 Regions within the relevant Sub-Lot, as identified in paragraphs 8.1 and 8.2 above.**



**In this example (and as described in paragraphs 8.1 and 8.2), each Lot relates to all three of the specific Regions for Sub-Lots 1b and 2b within Product 2. The tendered price must be the same for all three Regions within each Sub-Lot. Where Offerors are tendering for both Sub-Lots, they should insert a price against each of the Sub-Lots (i.e. all three Regions for Product 2 in Sub-Lots 1b and 2b) above. Should an Offeror not wish to tender for both Sub-Lots but to restrict its offer to Sub-Lot 1b or 2b, then it should insert a price against the specific Sub-Lot that it wishes to tender for only. The tendered price must not exceed the Ceiling Price.**

1. **Tender documentation and submission**
   1. The goods and/or services offered by Offerors must be strictly in accordance with the Specification (Document No. 04). Goods and/or services of essential similarity may be offered but all differences between such items and the Specification must be indicated in detail in the offer schedule.
   2. Offerors may, **in addition to** submitting prices as required by paragraphs 7, 8 and 9, submit discounts (for instance, but not limited to, discounts based on being appointed to more than one Region or Sub-Lot in accordance with the provisions of this Invitation to Offer). Any such proposals **will not be evaluated**, but will form part of any resulting framework agreement, and must meet the minimum requirements set out in paragraph 9.3 below.
   3. Only a discount proposal meeting the following minimum requirements will be acceptable to the Authority:
      1. the proposal must include a bid price for each National Product Code (NPC) product line in respect of which the Offeror is submitting an offer at which Participating Authorities can purchase such National Product Code (NPC) product line under any resulting framework agreement. Such price must be clearly and transparently related to the award of multiple Regions and/or Sub-Lots, for any given bid price or discount to apply.
   4. Proposals submitted by Offerors under paragraph 9.3 above will be **not** be evaluated against the award criteria, although any discount proposals which meet the above requirement will be incorporated into the relevant Framework Agreement(s) awarded to a successful Offeror.
   5. For the avoidance of doubt, proposals under paragraph 9.3 are **not** to be considered as alternatives to or in substitution for a compliant tender meeting the price and other requirements of this Invitation to Offer.
   6. CMU’s Selectt programme must be used by Offerors to create the tender documents for this procurement exercise. Instructions on accessing and using this system can be found at the following web link:

<https://www.gov.uk/government/publications/drugs-and-pharmaceutical-supplier-tender-submission>

* 1. Tenders **must** comprise:
     1. the completed Response form on the BravoSolution website – found under “My Response”;
     2. the offer schedules in .cmu format - Document No. 05a(ii), (iv), (vi) and (viii) of the tender pack, Selectt bid file(s), with the title:

CM\_PHG\_17\_5545\_01\_xxx.cmu

CM\_PHG\_17\_5545\_02\_xxx.cmu

CM\_PHG\_17\_5545\_03\_xxx.cmu

CM\_PHG\_17\_5545\_04.xxx.cmu

where xxx represents your organisation's tendering supplier code;

* + 1. the Form of Offer (Document No. 06) to be completed on the Bravo website;
    2. the Quality Control technical sheet (Document No. 07a) to be completed on the Bravo website;
    3. the responses to the questions set out in the Qualification Questionnaire 1.19 Technical Questionnaire – Goods Specific ITT Questions –Information Only
    4. the Commercially Sensitive Information Schedule, if any types of information are considered to be confidential by the Offeror;
    5. a statement of prompt settlement discounts, if available;
    6. details of the Offeror’s ability, if any, to trade electronically; and
    7. confirmation that any information previously supplied to the Authority in connection with the tender is still accurate and is incorporated by reference into the tender.
  1. The Form of Offer must be approved via the Authority’s electronic tendering system by an officer authorised by the Offeror.
  2. The Form of Offer and other documents referred to in paragraph 9.7 above must be completed in full. Any tender may be rejected which:
     1. contains gaps, omissions or obvious errors; or
     2. is received after the closing time and date for the receipt of tenders.
     3. For clarification about completing the tender documentation, commercial and / or technical queries please send a message via the Bravosolution messaging portal:

[https://nhsengland.bravosolution.co.uk/web/login.shtml](https://cmu.bravosolution.co.uk/web/login.shtml)

* 1. Please note that any queries raised by Offerors and the responses to those queries by the Authority may be published anonymously to all Offerors in order to ensure transparency, fairness and equal treatment of Offerors throughout the procurement exercise. If you are concerned that your query and/or the response to it may disclose confidential information or information which is commercially sensitive, then you may submit the query marked "Confidential" and setting out clearly the reasons why you believe that the query and/or the response are or will be confidential or commercially sensitive. The Authority will consider your request and make its decision at its sole discretion. If the Authority determines that the query or response should not be disclosed to other Offerors, it will answer your query and not disclose it or the response (as appropriate) to the other Offerors. If the Authority determines that the query and/or the response should be disclosed to other Offerors, it will give you the chance either to withdraw your query or have it answered. If the latter, then the Authority will disclose the query and the response to all other Offerors.
  2. Tenders and all documents relating to the tenders must be written in English and submitted to the Authority via the Authority’s electronic tendering system by **13:00 on 20 December 2018**

1. **Authority’s Rights**
   1. The Authority reserves the right to:
      1. waive or change the requirements of this Invitation to Offer from time to time without prior (or any) notice being given by the Authority;
      2. seek clarification (including further information or documents) in respect of an Offeror's submission;
      3. disqualify any Offeror that does not submit a compliant tender in accordance with the instructions in this Invitation to Offer;
      4. disqualify any Offeror that is guilty of serious misrepresentation in relation to its tender or the procurement process;
      5. withdraw this Invitation to Offer at any time, or re-invite tenders on the same or any alternative basis;
      6. accept a tender either in whole or in part, each item being for this purpose treated as tendered separately;
      7. choose not to award any Framework Agreement as a result of the procurement process for any reason;
      8. make whatever changes it sees fit to the timetable, structure or content of the procurement process, depending on approvals processes or for any other reason; and/or
      9. at any time terminate the procurement process for any reason.
   2. For the avoidance of doubt, the Authority will not be liable to any Offeror for its costs of participating in this tender process in any of the circumstances listed in paragraph 10.1 above, or in any other circumstances.
2. **Warnings and disclaimers**
   1. While the information contained in this Invitation to Offer is believed to be correct at the time of issue, neither the Authority, its advisors, nor any other awarding authorities give any warranty (express or implied), make any representation or accept any liability (whether in contract, quasi- or implied contract, tort (including negligence), misrepresentation, breach of statutory duty, judicial review or other public law cause of action, restitution, legitimate expectation or any equitable cause of action, or any other cause of action whatsoever) in respect of its accuracy, adequacy or completeness. This exclusion extends to liability in relation to any statement, opinion or conclusion contained in or any omission from this Invitation to Offer and in respect of any other written or oral communication transmitted (or otherwise made available) to any Offeror. This exclusion does not extend to any fraud or fraudulent misrepresentation made by or on behalf of the Authority.
   2. If an Offeror proposes to enter into a Framework Agreement with the Authority, it must rely solely on its own enquiries and on the terms and conditions set out in the Framework Agreement(s) (as and when finally executed), subject to the limitations and restrictions specified in such agreement.
   3. Neither the issue of this Invitation to Offer, nor any of the information presented in it, should be regarded as a commitment or representation on the part of the Authority (or any other person) to enter into a contractual arrangement.
3. **Contract award criteria and award methodology** 
   1. **Award Criteria** 
      1. Any Framework Agreement(s) awarded as a result of this procurement shall be awarded on the basis of the tender that is the lowest priced against the Price Criterion and which satisfies the Quality Criteria, each as set out in paragraph 12.1.4 and Table 3 below.
      2. The Award Criteria (as described in paragraph 12.1.4 and Table 3 below) will be applied in relation to each Region separately in relation to Lots 1a and 2a, and to all three Regions together for Lots 1b and 2b.
      3. Any award will be made in accordance with:
         1. the award criteria described at paragraph 12.1.4 below; and
         2. the award methodology described at paragraph 12.2 to 12.4 below.
      4. The Award Criteria are as follows:

**Price criterion**

Cost of Product (calculated as set out in Table 3 below)

**Quality criteria**

sub-criterion (1) – QA assessment of risk to patient;

sub-criterion (2) – QC assessment of risk to a patient across a range of products; and

sub-criterion (3) – Supply route and associated cost – **only to be used in the event of a tie on price, as described in Table 3 below**.

**Table 3**

|  |  |  |
| --- | --- | --- |
| **Criteria** | **Sub-Criteria** | **Rationale** |
| **Price** | **Sub-criterion (1)**  Cost of product  Cost will be calculated by multiplying the tender price tendered by the Offeror for the Product by the estimated volumes (anticipated for the duration of the Framework Agreement **excluding** any extension period) for the Region(s) in respect of which that Product is tendered. The estimated volumes of Product for each Region are set out in the relevant offer schedule.  For Sub-Lots 1a and 2a, this calculation will be done for each individual Region.  For Sub-Lots 1b and 2b, the calculation above will be done for each individual Region and then costs for the three Regions will be added together and the tenders will be ranked according to the lowest total price for all three Regions. | The Offeror's tender was below the Ceiling Price and was the Lowest Priced Compliant Tender received. |
| **Quality** – to include QA assessment of risk to **patient** | **Sub-criterion (1)**  Assessed according to the approach documented in the ‘Guidance for performing a pharmaceutical quality assessment of licensed medicines for the NHS’. A copy of this document is available at Document No. 7b. Product QC assessments that are confirmed by the evaluation panel as “Low Risk” or “Medium Risk” will be deemed to be acceptable for award of a Framework Agreement (subject to satisfying all other award criteria). Any Product QC assessments that are confirmed by the evaluation panel as “High Risk” will only be awarded a Framework Agreement in the absence of any other qualifying tenders (and subject to satisfying all other award criteria). | PASS/FAIL  The successful supplier’s packaging is in accordance with the criteria detailed in the "Guidance for performing a pharmaceutical quality assessment of licensed medicines for the NHS” and therefore less likely to give rise to an increased risk of a medication error and the PQA assessment for their product reflects this. |
| **Sub-criterion (2)**  Assessed according to the approach documented in “Guidance for performing a pharmaceutical quality assessment of licensed medicines for the NHS”. A copy of this document is available at Document No.07b within the Invitation to Offer pack. | PASS/FAIL  The successful supplier's packaging for the complete range of products under consideration is more distinctive and is, in accordance with the criteria detailed in the “Guidance for performing a pharmaceutical quality assessment of licensed medicines for the NHS”, less likely to give rise to a risk of a medication error. |
| **Sub-criterion (3) – only used in the event that the two or more Lowest Priced Compliant Tenders for the same Region (Sub-Lots 1a & 2a) or Sub-Lot (Sub-Lots 1b & 2b) are tied on price**  Supply route  In the event of a tie on price for a Region in Lot 1a or 2a, or for Lot 1b or 2b, then preference will be given according to supply routes, in the following order, and the award will be made to the tender which ranks highest in accordance with the order of preference below:  Combination of three or more wholesalers and direct distribution  Combination of two wholesalers and direct distribution  Combination of wholesaler and direct distribution  Three or more wholesalers  Two wholesalers  One wholesaler  Direct distribution only | The successful supplier’s distribution routes ranked highest in the order of preference set out opposite. |

* 1. **Award Methodology**

**Identification of Lowest Priced Compliant Tender**

* + 1. The evaluation will comprise the following:

1. tenders for a Region (Sub-Lots 1a and 2a) or Sub-Lot (Sub-Lots 1b and 2b) will (provided they are below the Ceiling Price) initially be ranked on price against the Price Criterion (the lowest price earning the highest rank). Such highest ranking tender for that Region or Sub-Lot shall be the Lowest Priced Tender;
2. the Lowest Priced Tender will then be assessed against the Quality Criteria (being Quality Sub-criteria (1) and (2)) according to the approach documented in the "Guidance for performing a pharmaceutical quality assessment of licensed medicines for the NHS". A copy of this document is available at Document No. 07b;
3. where the Lowest Priced Tender:
4. fulfils the Quality Criteria, that tender will be the **Lowest Priced Compliant Tender** for the relevant Region or Sub-Lot;
5. fails to fulfil the Quality Criteria, the tender will be **rejected**. In that event, the process set out in paragraphs 12.2.1(a) and (b) above will be repeated (starting with the tender ranked second on Price) until a tender that fulfils the Quality Criteria is identified. Such tender shall be the **Lowest Priced Compliant Tender** for the relevant Region or Sub-Lot;
6. where two or more tenders are received at the same price in respect of a single Region (in the case of Sub-Lots 1a and 2a) or Sub-Lot (in the case of Sub-Lots 1b and 2b) and all such tenders fulfil the Quality Criteria then Quality Sub-criterion (3) will be applied as set out in Table 3 above. The tender which ranks the highest (according to the order of preference in Quality Sub-criterion (3) will be the Lowest Priced Compliant Tender.
   * 1. **Allocating Regions (Sub-Lots 1a and 2a)**
        1. Each Region will be allocated to the Offeror which submitted the Lowest-Priced Compliant Tender for that Region, subject to the following sub-paragraphs of this paragraph 12.2.2.
        2. In respect of Sub-Lots 1a and 2a, Offerors may not be awarded more than one Region within the same Sub-Lot, nor more than two Regions overall, unless a compliant tender from a different Offeror is not submitted for each of the three Regions within either or both Sub-Lots, in which case the Regions will be awarded in accordance with paragraph 12.2.2.6 below.
        3. If an Offeror has submitted the Lowest Priced Compliant Tender in respect of more than one Region in the same Sub-Lot, then that Offeror will be awarded the Region with the highest estimated volume (anticipated for the duration of the Framework Agreement excluding any extension period) for which that Offeror submitted a tender.
        4. Where (pursuant to paragraph 12.2.2.3 above), an Offeror has submitted the Lowest-Priced Compliant Tender for more than one Region in a Sub-Lot, and has been awarded the Region with the higher estimated volume, then the Region with the next-highest estimated volume will be awarded to the second-placed Offeror for that Region (i.e. the one which submitted the next Lowest Priced Compliant Tender), and so on.
        5. For example –

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Region** | **Offeror A** | **Offeror B** | **Offeror C** | **Offeror D** |
| 1. (10,000) | 7 | 9 | 10 | No offer |
| 2. (7,500) | 8 | 9 | 10 | No offer |
| 3. (5,000) | 10 | 9 | 10 | 8 |

In the above example –

* + - * Offeror A submitted the Lowest-Priced Compliant Tender for Regions 1 and 2, and so A is awarded Region 1 as that is the highest volume Region.
      * Offeror B submitted the second Lowest-Priced Compliant Tender for Region 2, and so is awarded Region 2.
      * Offeror C did not submit the Lowest-Priced Compliant Tender for any of the Regions, and so is awarded nothing.
      * Offeror D did not bid for Regions 1 and 2, but submitted the Lowest-Priced Compliant Tender for Region 3, and so is awarded Region 3.
      1. If at least one compliant tender from a different Offeror is not received for each Region in either or both Sub-Lots 1a and/or 2a, then –
         1. if compliant tenders are received from two different Offerors, then –

1. if an Offeror has submitted the Lowest-Priced Compliant Tender for all three Regions, then that Offeror will be awarded the two Regions with the highest estimated volumes and the Offeror of the second Lowest-Priced Compliant Tender will be awarded the Region with the lowest estimated volume; or otherwise,
2. each Offeror will be awarded the Region(s) for which it submitted the Lowest-Priced Compliant Tender, subject to a maximum of two Regions; and
   * + - 1. if the only compliant tender received for each of the three Regions is from the same Offeror, then that Offeror will be awarded all three Regions in that Sub-Lot.
       1. For the avoidance of doubt, in respect of Sub-Lots 1b and 2b, there is no allocation process or restriction – the Sub-Lots will be awarded in accordance with the Award Criteria to the Lowest Priced Compliant Tender and an Offeror may be awarded one or both Sub-Lots.
   1. **Evaluation Panel**
      1. Tenders will be evaluated by an evaluation panel against the award criteria. The evaluation panel may comprise members of the NHS England Commercial Medicines Unit, the Pharmaceutical Market Support Group, NHS Trust pharmacy procurement group representatives, NHS England commissioners and clinical experts.
   2. **Final Decision to Award**
      1. Following evaluation of tenders in accordance with the evaluation process set out in this Invitation to Offer, the Offerors who submit the most economically advantageous tenders shall be awarded Framework Agreements for the relevant Region(s) and/or Sub-Lot(s).
      2. Once the Authority has decided to make an award of a Framework Agreement the Authority will inform the successful Offeror, along with all other tenderers via the bravosolutions eTendering Portal of its intention to award the Framework Agreements.
      3. Should the successful Offeror for a particular Product within a Lot decline to accept a Framework Agreement then, subject to the award methodology and lotting strategy outlined above, it may be offered to the next ranked Offeror for that Product within the relevant Region or Sub-Lot, until it has been accepted.
      4. A 10-day standstill period will follow the announcement by the Authority in accordance with paragraph 12.4.3. The standstill period will commence at midnight at the end of the date on which the Authority makes the announcement under paragraph 12.4.3 above, and will end at midnight at the end of the tenth day following that date, unless the tenth day is not a working day, in which case the standstill period will end at midnight at the end of the next working day. At any time following the standstill period, subject always to paragraph 10 above (and subject to there being no substantive challenge to that intention), the Framework Agreements may be entered into between the Authority and the successful Offeror(s).
3. **Contract monitoring**
   1. The Authority is committed to helping improve the efficiency of contracted suppliers through sharing information on performance measurement. The criteria for measuring performance shall be agreed with the selected Offerors and formally documented. It is possible that measurement criteria will develop during the term of the framework agreement - this will also be documented following agreement with the Offerors.
4. **Costs and expenses**
   1. The Authority will not be liable for any bid costs, expenditure, work or effort incurred by an Offeror in proceeding with or participating in this procurement, including if the procurement process is terminated or amended by the Authority.
5. **Amendments to Invitation to Offer** 
   1. At any time prior to the closing time and date for the return of tenders, the Authority may modify the documents comprising the Invitation to Offer by notifying Offerors of the same in writing.
   2. The Authority may extend the closing time and date for the return of tenders to allow for significant amendments made by the Authority to be fully assessed and taken into account by Offerors.
6. **Procurement exercise timetable**
   1. The following is the timetable for the procurement exercise and Offerors shall note that these dates are indicative and are subject to change upon notice from the Authority. Offerors should also note and observe the timetable for the receipt of clarification queries under this procurement exercise as shown on the Bravo website.

|  |  |
| --- | --- |
| **Tender Stage** | **Date** |
| Tender Documents Returned to CMU via Bravo | 20 December 2018 |
| Evaluation Period | 21 December to 20 January 2019 |
| Award notification issued to Offerors | 21 January 2019 |
| Agreement Commences | 21 May 2019 |

1. **Continuity of Supply post-Award of Framework Agreements**
   1. The Authority will take a number of measures (set out in the Framework Agreement) with the aim of ensuring continuity of supply and the maintenance of sufficient reserve stocks to avoid disruption to supply.
   2. Offerors' attention is particularly drawn to the following Clauses in Schedule 2 to the Framework Agreement –

Clauses 3.2 and 3.3 (Ordering Procedure)

Clause 6 (Initial Stock Levels – Condition Precedent)

Clause 7 (Contract Stock Levels)

Clause 8 (Mobilisation Plan)

Clause 9 (Business Continuity)

Clause 12 (Management Information); and

Clause 22 (Service Failures).

* 1. Offerors must ensure that they are capable of complying with the above. Failure to comply with the above may lead to sanctions against the relevant Supplier, including the issue of Service Failure Notices (which shall be deemed to be a "comparable sanction" for the purposes of Regulation 57(8)(g) of the Public Contracts Regulations 2015, and thus may be taken into account in deciding whether the relevant Supplier is eligible to tender in future public procurements), suspension and/or termination of the Framework Agreement.
  2. If the Framework Agreement is terminated, or where a Supplier declines or is unable to fulfil an Order, then the Authority may (at its option) re-tender the relevant Region or Sub-Lot, or replace the Supplier with an alternative supplier without re-opening competition (and the limitations above on the number of Regions which an Offeror may be awarded shall not apply in this case). If the Authority chooses the latter option, the order of preference in which alternative suppliers will be invited to replace the Supplier will be as follows –
     1. where the Supplier being replaced submitted the Lowest-Priced Compliant Tender for the Region or Sub-Lot in question; the Offeror which submitted the second Lowest-Priced Compliant Tender for the Product for the Region or Sub-Lot in question; and then (if that Offeror does not accept the Authority's invitation) the other Offerors who submitted compliant tenders for the Region or Sub-Lot in question, in order of price (lowest first);
     2. where the Supplier being replaced did not submit the Lowest-Priced Compliant Tender for the Region or Sub-Lot in question; the Offeror which submitted the Lowest-Priced Compliant Tender for the Product for the Region or Sub-Lot in question and then (if that Offeror does not accept the Authority's invitation) the other Offerors who submitted compliant tenders for the Region or Sub-Lot in question, in order of price (lowest first);
     3. any other supplier of the Product to other Regions or Sub-Lots, in order of the Lowest-Priced Compliant Bid first; and
     4. any supplier which submitted a compliant tender for the Product but was not successful in being awarded any Region or Sub-Lot, in order of the Lowest-Priced Compliant Bid first.
  3. Where an alternative supplier is appointed by one of the means above, upon acceptance, such alternative supplier shall be appointed in place of the Supplier for the remainder of the Term of the Framework Agreement plus any extension of that Framework Agreement.
  4. By participating in this procurement process, Offerors acknowledge and agree that the processes set out in this section 17 and in the relevant provisions of the Framework Agreement referred to above are clear, precise and unequivocal review clauses which fully satisfy the requirements of Regulation 72(1)(a) of the Public Contracts Regulations 2015.