



**South West**

**Maintenance and Response Contract**

**Instructions for Tenderers**

**Volume 1B: Supporting Information**



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## **1 SUPPORTING INFORMATION**

Tenderers must submit the following Supporting Information in Volume 1B via the Bravo Technical Envelope.

### **1.3 Small and Medium Sized Enterprises (SME) Subcontracting Statement (if applicable)**

1.3.1 Highways England is committed to removing barriers to SME participation in its contracts and this includes subcontracting opportunities. If you are proposing to subcontract part of this contract, you should provide assurance that you have considered how SMEs could play a part and details of the measures you have put in place to encourage and enable their participation as your subcontractors. If you are awarded the contract, we will ask you to provide regular information about your spend with SMEs under the contract and may publicise good practice on our websites and report such expenditure to other Government Department.

### **1.4 Proposed Information Assurance Solutions**

1.4.1 Every Government Department is required to take suitable precautions to safeguard its information. Information Assurance is the confidence that information and communications systems will protect the information they handle, and will function as and when they need to under the control of legitimate users. Tenderers are to provide a description of their proposals for handling information so that the suitability of their proposed Information Assurance solutions can be assessed.

1.4.2 Tenderers are to answer the questions in the table provided in the Bravo Technical Envelope, giving descriptions where appropriate. This section is not scored as such, but is a straight pass/fail against all these questions generally. If tenderers answer 'no' to any of the questions it does not necessarily mean they would fail however they must provide enough information to show that their policies and processes would align to the *Employer's* policy, and how. The Procurement Officer may request further information to clarify any aspect of the response.

- 1.3 Completed Fair Payment Charter (confirmation)**
- 1.4 Completed Anti Fraud Code of Conduct (confirmation)**
- 1.5 Completed Anti Bribery Code of Conduct (confirmation)**
- 1.6 Anti-Collusion Certificate (confirmation)**
- 1.7 Summary of relevant insurance policies and certificates where appropriate**
- 1.8 Statement undertaking responsibility for dealing with insurance claims (or parts of such claims) within the excess amount**
- 1.9 Confirmation of registration under the Inland Revenue Construction Industry Scheme**
- 1.10 Statement confirming willingness, if awarded the contract, to accept the appointment and duties of Principal Contractor**
- 1.11 Any request for non-disclosure under the Freedom of Information Act 2000**
- 1.12 Confirmation that the Named Parent Company(s) will enter into the Parent Company Guarantee (if required)**
  - 1.12.1 For the purposes of this provision, “Tenderer” shall be construed as referring separately to each party comprising the Tenderer, if more than one.
  - 1.12.2 The Tenderer must identify and propose a Guarantor that meets the financial standing test set out in these Instructions. The proposed Guarantor will be checked for financial standing. If the proposed Guarantor does not meet the financial standing tests set out in these Instructions, the tender may be rejected. The Tenderer must note that the contract allows for Highways England to request a Parent Company Guarantee prior to contract award or at any point during the contract period.
  - 1.12.3 Highways England will contact the Tenderer if a Parent Company Guarantee is required before a tender can be accepted and will specify the parent company from whom a Parent Company Guarantee must be provided (the “Guarantor”).
  - 1.12.4 If the Tenderer does not have a parent company that meets the financial standing test set out in these Instructions, the Tenderer must contact the Procurement Officer prior to tender return to discuss an acceptable Guarantor or other form of performance security. If an acceptable Guarantor or other form of performance security cannot be agreed, the tender may be rejected.
  - 1.12.5 The Tenderer must submit from the stated Guarantor either

(1) A certified copy of a Board minute of the Guarantor clearly and unambiguously confirming that it will enter into the Parent Company Guarantee when requested, or

(2) If the Guarantor is

- registered in the United Kingdom under the Companies Act 2006, a letter signed by the company secretary and a director (or two directors) of the Guarantor clearly and unambiguously confirming that it will enter into the Parent Company Guarantee when requested, or
- not registered in the United Kingdom under the Companies Act 2006
  - a letter signed by the equivalent under the law applicable to the Guarantor of the company secretary and a director (or two directors) of the Guarantor clearly and unambiguously confirming that it will enter into the Parent Company Guarantee when requested and
  - a legal opinion from a lawyer or law firm acceptable to Highways England) which is qualified and registered to practise in the jurisdiction in which the Guarantor is incorporated, confirming the validity of the Guarantor's commitment under applicable local law; the legal opinion must be addressed to Highways England on a full reliance basis and the liability of the lawyer or law firm giving the opinion must not be subject to any financial limitation unless otherwise agreed by Highways England.

1.12.6 If the Tenderer does not return a certified copy of a Board minute or a signed letter and evidence of authority (and, where paragraph 1.12.5 applies, a legal opinion) as may be required above, then its tender will not be considered and will be rejected.

#### **Legal Opinion for non-United Kingdom Registered Companies**

1.12.7 If the Tenderer, or a consortium member of the Tenderer, or a proposed Guarantor is not a company incorporated in and subject to the laws of England and Wales (a "Foreign Entity"), then the Tenderer provides a legal opinion from a lawyer or law firm which is

- qualified and registered to practise in the jurisdiction in which the Foreign Entity is incorporated and
- accepted by Highways England (the Tenderer must discuss this with the Procurement Officer prior to tender return).

The legal opinion must be submitted via the Bravo Qualification Envelope and addressed to Highways England on a full reliance basis and the liability of the lawyers or law firm giving the opinion is not to be subject to any financial limitation unless otherwise agreed by Highways England in writing (the Tenderer must discuss this with the Procurement Officer prior to tender return).

1.12.8 The legal opinion must also cover the following matters:

(a) confirmation that:

- the Foreign Entity is a corporation duly incorporated in the relevant jurisdiction, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated;
- the Foreign Entity has full power to execute, deliver, enter into and perform its obligations under the Agreement/Guarantee;
- all necessary corporate, shareholder and other action required to authorize the execution and delivery by the Foreign Entity of the Agreement/Guarantee and the performance by it of its obligations under it have been duly taken;
- confirmation of the proposed signatories/method of execution and confirmation that this will constitute valid execution by the Foreign Entity;
- the execution and delivery by the Foreign Entity of the Agreement/Guarantee and the performance of the obligations will not conflict with or violate:
  - the constitutional documents of the Foreign Entity;
  - any provision of the laws of the jurisdiction in which it is incorporated;
  - any order of any judicial or other authority in the jurisdiction in which it is incorporated; or
  - any mortgage, contract or other undertaking which is binding on the Foreign Entity or its assets; and
- (assuming that the Agreement/Guarantee is binding under English law), the agreement constitutes legal, valid and binding obligations of the Foreign Entity enforceable in accordance with its terms;

(b) notification of any other formalities to be complied with under local law which may be necessary to enforce the Agreement/Guarantee in

the Foreign Entity's place of incorporation, including for example notarisation, legalisation or registration of the Agreement/Guarantee;

- (c) notification of whether withholding is required to be made by the Foreign Entity in relation to any monies payable to Highways England under the Agreement/Guarantee;
- (d) confirmation that Highways England will not be deemed to be resident or domiciled in the foreign jurisdiction by reason of its entry into the Agreement or the Guarantor's entry into the Guarantee; and
- (e) confirmation that the Foreign Entity and its assets are not entitled to immunity from suit, pre-judgment attachment or restraint or enforcement of a judgment on grounds of sovereignty or otherwise in the courts of England and Wales in respect of proceedings against it in relation to the Agreement/Guarantee.

#### 1.12.9 If a legal opinion

- (a) does not confirm all the matters listed in paragraph 1.11.8(a),
- (b) does not include the notification required by paragraph 1.11.8(b),
- (c) indicates that withholding is required to be made under paragraph 1.11.8(c) or
- (d) does not provide the confirmations required by paragraphs 1.11.8(d) and 1.11.8(e)

then the tender may be rejected.