



# Department of Health

Invitation to Negotiate (ITN) for:

NHS Electronic Staff Records System (ESR)

ITN Reference: 59342

Deadline: ITN Solutions by 12pm (Midday) Friday 22<sup>nd</sup> August 2014

OJEU Ref: 2013/S 243-422933

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## INTRODUCTION: Invitation to Negotiate (ITN)

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The Department of Health (“the Authority”) is issuing this Invitation to Negotiate (the “ITN”) in connection with a procurement conducted in accordance with the Negotiated Procedure under the Public Contracts Regulations 2006 (as amended). The NHS Electronic Staff Records System (ESR) reprocurement (“the Procurement”) was advertised in the Official Journal of the European Union (OJEU), reference 2013/S 243-422933. Bidders submitted their Pre-Qualification (PQQ) Responses, following which eight (8) Bidders were shortlisted and invited to submit Outline Solutions in response to the Preliminary Invitation to Negotiate issued by the Authority on 20<sup>th</sup> March 2014 (PITN).

Following submission and evaluation of the Outline Solutions at PITN stage, three (3) Bidders are now invited to develop and submit ITN Solutions as defined in the Glossary of Terms in Appendix 6 (**ITN – A6**) to this ITN for the Services, following a period of discussion and negotiation with the Authority in accordance with this ITN.

Supporting information relating to this ITN will be held in the Authority’s secure document storage facility, (the Data Room). All documents are provided along with the relevant Data Room document reference in bold type eg. (**ITN – A1**). Any queries relating to access to the Data Room should be sent to [esrreprocurement@dh.gsi.gov.uk](mailto:esrreprocurement@dh.gsi.gov.uk).

Any persons responding to this ITN should make their own investigations and their own independent assessment of the Authority and its requirements and should seek their own professional, financial and legal advice.

None of the Authority, its advisors, or the directors, officers, members, partners, employees, other staff, or agents of any such body or person:

- makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the ITN;
- accepts any responsibility for the information contained in the ITN or for its fairness, accuracy or completeness; and
- shall be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication.

Only the express terms of any written contract relating to the subject matter of this Procurement as and when it is executed (the "Agreement") shall have any contractual effect in connection with the matters to which it relates. English law will govern such Agreement.

Nothing in the ITN is, or should be, relied upon as a promissory or a representation as to the Authority's ultimate decisions in relation to the Services, which will depend at least in part on the outcome of this Procurement.

The PITN consists of:

Section	Title	Supporting Appendices	Data Room Reference
SECTION A	Introduction and Outline	None	n/a
SECTION B	Procurement Process and Timetable	None	n/a
SECTION C	Evaluation	APPENDIX 1: Award Criteria and Weightings	ITN – A1
SECTION D	Requirements and Instructions	APPENDIX 2: ITN Solution Requirements	ITN – A2
		APPENDIX 3: Assessed Draft Agreement	ITN – A3
		APPENDIX 4: Assumptions – Process and Instructions	ITN – A4
		APPENDIX 5a: Financial Submission Instructions	ITN – A5a
		APPENDIX 5b: Financial Model Rule Book	ITN – A5b
		APPENDIX 6: Glossary of Terms	ITN – A6
		APPENDIX 7: ITN Solution Checklist	ITN – A7
SECTION E	Declarations & Templates	APPENDIX 8: Non Collusion and Canvassing	ITN – A8
		APPENDIX 9: Commercially Sensitive or Confidential Information	ITN – A9
		APPENDIX 10: Conflicts of Interest Declaration	ITN – A10
		APPENDIX 11: Lead Bidder and Supply Chain Members	ITN – A11
		APPENDIX 12: ITN Financial Submission Template	ITN – A12
		APPENDIX 13: ITN Solution Template	ITN – A13
		APPENDIX 14: ITN Solution Assumption Template	ITN – A14
		APPENDIX 15: Transition Plan Template	ITN – A15
		APPENDIX 16: Improvement Plan Template	ITN – A16
		APPENDIX 17: Workpackage Definition Template	ITN – A17
		APPENDIX 18: Requirement Manifest Template	ITN – A18
		APPENDIX 19: Declaration of Compliant ITN Solution	ITN – A19

The Authority is using its electronic tendering portal, the Business Management System ("BMS") to carry out the Procurement. If you need any assistance using the BMS system please contact the helpdesk on 0113 254 5777 between 10am and 4pm, Monday to Friday (excluding public and bank holidays).

BMS can be accessed from the following link:

<https://www.gov.uk/government/organisations/department-of-health/about/procurement>

If you intend to participate in this stage of the Procurement, then you should acknowledge your participation (as quickly as possible) by selecting this option from the 'actions' drop down menu in the ITT on BMS. This is the sole responsibility of the Bidder and ensures that future updates etc. can be provided in an effective and timely manner. Failure to acknowledge your intention in this manner may lead to delays in receiving additional information and clarification updates.

Any questions regarding this ITN must be sent to the Authority using BMS (online messages). All questions must be received by the deadline for questions of 4pm, 8<sup>th</sup> August 2014. The Authority will copy all non-commercially sensitive answers to questions to all Bidders via BMS and will not respond to ITN questions received after the deadline.

As part of the ITN Solution, Bidders must provide all information set out in Section E to this ITN. All ITN Solutions must be returned no later than the deadline for receipt and must be submitted via BMS. Late ITN Solutions may not be accepted.

ITN CLARIFICATION QUESTION DEADLINE: 4pm, Friday 8<sup>th</sup> August 2014

ITN SOLUTION DEADLINE: 12pm (Midday), Friday 22<sup>nd</sup> August 2014

#### **IMPORTANT NOTE**

**The ITN Solutions may only be uploaded via the Sourcing Home Page, using the 'Actions' window and selecting the 'Create Quote' option.**

**Note that this option requires a total quote price to be entered. Occasionally, a total price will be unable to be calculated, for example, where the requirement is to provide day rates or in the award of Framework Agreements, or complex pricing requirements. In these circumstances, a numerical value of 1 should be entered, to enable the option to proceed.**

**If you upload your response by any other method for example by using the 'New Message/ Documents' tab, the ITN Solution will not be correctly linked to the ITN and will be rejected.**

**Detailed instructions relating to upload of ITN Solutions can be found in Section B**

## SECTION A: INTRODUCTION & OUTLINE

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### 1. Background

- 1.1. The Bidders receiving this ITN will be familiar with the background and context of this Procurement, having received the MOI and PITN and submitted PQQs and Outline Solutions in response to these documents respectively.

### 2. Compliance

- 2.1. This ITN sets out the information required by the Authority in order to assess the Bidders' ITN Solutions. The Authority has prepared this ITN on behalf of itself and the User Organisations identified in the OJEU notice. At the conclusion of the ITN stage, the intention is to identify one (1) Bidder, who will be taken forward to the Preferred Bidder stage of the procurement process. The Authority also reserves the right to appoint a reserve Preferred Bidder at its discretion.
- 2.2. ITN Solutions shall be submitted in accordance with the following instructions. It is important that all the information requested is provided in the format and order specified. If the Bidder does not provide all of the information the Authority has requested, the Authority may reject the ITN Solution as non-compliant, in which case the Bidder may be excluded from this Procurement.
- 2.3. The Bidder is expected to examine, and where necessary respond to, all of the documents that comprise the ITN. Bidders should acquaint themselves fully with the extent and nature of the requirements and the obligations.
- 2.4. Any ITN Solution submitted is governed by this ITN, which (except where the context requires and/or a cross-reference refers to the PITN or PQQ) represents the entire agreement and understanding between the Bidder and the Authority in relation to the development and submission of the Bidder's ITN Solution and the Authority's evaluation of that ITN Solution.
- 2.5. All specifications, plans, drawings, samples and patterns and anything else that the Authority issues in connection with the Procurement, remains the property of the Crown and are to be used solely for the purpose of tendering.
- 2.6. By participating in the ITN stage, Bidders agree and accept that they are bound by all of the terms of this ITN. Any attempt to qualify any of the provisions of this ITN may result in a Bidder being disqualified.
- 2.7. Bidders acting in contravention of the provisions set out in this ITN (or, where the context requires and/or a cross-reference refers, the PITN or PQQ) may, at the Authority's sole discretion, be disqualified from further participation in the Procurement (without prejudice to any other civil or legal remedies available and without prejudice to any criminal liability which such conduct by a Bidder may attract).
- 2.8. If information given by a Bidder in its ITN Solution is found to be false or misleading by the Authority, the Bidder may be disqualified.
- 2.9. For the avoidance of doubt, any Bidder disqualified pursuant to this ITN will be excluded from any further participation in the Procurement.
- 2.10. The information in this ITN, and any other information provided by or for the Authority, is provided in good faith. Such information is intended only as an explanation of the Authority's requirements and is not intended to form the basis of a Bidder's decision as to whether to enter into a relationship with the Authority.
- 2.11. Neither the issue of this ITN 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. Amendments to the Documentation and Termination

- 3.1. At any time prior to the deadline for receipt of questions from Bidders (that is 4pm, 8 August 2014) the Authority may modify the ITN by amendment in writing.
- 3.2. Questions must be sent to the Authority through the BMS online messaging facility.
- 3.3. The Authority (at its sole discretion) may extend the deadline for receipt of the ITN Solutions.
- 3.4. The Authority reserves the right to:
  - 3.4.1. cancel this Procurement at any stage; and/or
  - 3.4.2. require a Bidder and/or any of its Supply Chain Members to clarify its/their ITN Solution in writing and/or provide additional information (failure to respond adequately may result in a Bidder not being taken through to the Preferred Bidder stage); and/ or
  - 3.4.3. amend the terms and conditions of the evaluation and award process.

### 4. Bidders

- 4.1. Bidders should note that the Authority reserves the right to disqualify Bidders and/or any Supply Chain Members where there is an actual or potential conflict of interest and Bidders are under a continuing obligation to notify the Authority of any actual or potential conflict of interest. Bidders are therefore advised to review carefully the prior or current involvement of the Bidder and its Supply Chain Members with the Authority, and to identify any such conflict, notifying the Authority through BMS prior to submission of the ITN Solution. For example, a potential conflict may arise where a key person (those individuals who have power to influence a competitive bid) has any relatives in senior positions within the Authority and should be disclosed as part of Appendix 10 - Conflict of Interests (**ITN – A10**), if not disclosed earlier at PQQ and/or PITN stage.

### 5. Provided Information

- 5.1. The Authority acts in good faith at all times. However, Bidders must satisfy themselves as to the accuracy of information the Authority provides. The Authority accepts no liability for any loss or damage of whatever kind or howsoever caused arising from Bidders use of such information, unless such information has been supplied fraudulently by the Authority (where the meaning of fraudulently is "the making of false representation knowingly, or without belief in its truth, or recklessly").
- 5.2. This ITN and its accompanying documents (including all documents in the Data Room) shall remain the property of the Authority and must be returned or destroyed on demand.

### 6. Freedom of Information Act 2000

- 6.1. As a Government Department, the Authority is subject to, and must comply, with the Freedom of Information Act 2000 ("FOIA").
- 6.2. In accordance with the obligations and duties placed upon public authorities by the FOIA and the Environmental Information Regulations 2004 ("EIR") the Authority may be required to disclose information submitted by the Bidder and in submitting a ITN Solution, the Bidder acknowledges and accepts the conditions of this paragraph 6.
- 6.3. In respect of any information submitted by a Bidder that it considers to be "commercially sensitive" or "confidential" the Bidder should:
  - 6.3.1. clearly identify such information as "commercially sensitive" or "confidential" in Appendix 9 (**ITN – A9**) of this ITN;
  - 6.3.2. explain its reasons why disclosure of such information would be likely to prejudice or would cause actual prejudice; and

- 6.3.3.** provide a reasoned estimate of the period of time during which the Bidder believes that such information will remain commercially sensitive and/or confidential
- 6.4.** The Bidder must complete the table in Appendix 9 fully and give full, valid and justifiable reasons for classing any information as “commercially sensitive” or “confidential”. The Authority will not accept any broad attempt to class all, or any broad categories of, information as “confidential” or “commercially sensitive” and may discard Bidder’s attempts to classify information in this way. Bidders are reminded that the Authority shall be responsible for determining in its absolute discretion whether and information is exempt from disclosure in accordance with the Freedom of Information Act and/or the Environmental Information Regulations (clause 22.2 of the ITN Assessed Draft Agreement).
- 6.5.** Where a Bidder identifies information as commercially sensitive or confidential, the Authority will take those views into account. Bidders should note, however, that, even where information is identified as "commercially sensitive" or "confidential", the Authority may require disclosure of such information in accordance with the FOIA or the EIR. It is the sole responsibility of the Authority to decide whether the information might be exempt from disclosure under the FOIA or the EIR and whether the public interest favours disclosure or not. Accordingly, the Authority cannot guarantee that any information marked “confidential” or “commercially sensitive” will not be disclosed.
- 6.6.** Where a Bidder receives a request for information under the FOIA or the EIR connected to this Procurement, the Authority requires the Bidder to consult with it to establish if the request is for the Authority.

## **7. Data Protection**

- 7.1.** The Authority will collect, hold and use personal data (as defined in the Data Protection Act 1998) obtained from and about the Bidder including Supply Chain Members and their staff during the course of the Procurement ("Personal Data"). The Bidder must agree to such Personal Data being collected, held and used in accordance with and for the purposes of administering the Procurement and for contract management of any Agreement subsequently awarded.
- 7.2.** The Bidder warrants, on a continuing basis, that it has:
- 7.2.1.** all requisite authority and has obtained and will maintain all necessary consents required under the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all relevant regulations together with any codes of conduct and guidance issued by the Information Commissioner (the "Data Protection Regulations"); and
- 7.2.2.** otherwise fully complied with all of its obligations under the Data Protection Regulations, in order to disclose to the Authority the Personal Data, and allow the Authority to carry out the Procurement.
- 7.3.** The Bidder shall immediately notify the Authority if any of the consents are revoked or changed in any way which impacts on the Authority's rights or obligations in relation to such Personal Data.

## **8. Provision of ITN Solution Submissions**

- 8.1.** Bidders should refer to Section B of this ITN for the detail as to what must be submitted as part of the ITN Solution.
- 8.2.** In submitting its ITN Solution, the Bidder further acknowledges that the Procurement is entirely independent of any other tender processes that have been run by the Authority. Bidders should not assume that the Authority has any prior knowledge of the Bidder, its practice or reputation, or its involvement in existing services, projects or procurements. Accordingly, no previous conduct of the Authority, including for example (but not limited to) its treatment of Bidders, assessment of

tenders or related processes can be relied upon by the Bidder as setting any precedent for the Authority's conduct in respect of this Procurement.

- 8.3. Notwithstanding paragraph 10.4 of this Section A and paragraph 4.9 of Section B, the Authority retains the right to clarify and/or verify the information submitted by the Bidders.
- 8.4. Neither the Authority nor any of its advisors, directors, officers, members, partners, employees, other staff, or agents of any such body or person, make any representation or give any warranty as to the adequacy, accuracy, reasonableness or completeness of the information provided. The ITN does not purport to be all-inclusive or to contain all of the information that a Bidder may require.
- 8.5. Neither the Authority (nor any professional advisers appointed by the Authority) shall be liable for any loss or damage arising as a result of reliance on the information published in connection with this Procurement or for any expenses incurred by Bidders.
- 8.6. After evaluation of the ITN Solutions is complete, the Authority will retain copies of the ITN Solutions for such time as it considers reasonable to satisfy the Authority's audit obligations and for any associated contract management purposes.
- 8.7. 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 Cabinet Office and the 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 practice. For these purposes, the Authority may disclose within government any of the Bidder's documentation/information (including any that the Bidder considers to be confidential and/or commercially sensitive, such as specific bid information) submitted by the Bidder to the Authority during this Procurement. The information will not be disclosed outside Government. Subject to paragraphs 6 and 17 of this Section A, Bidders taking part in this Procurement consent to these terms as part of this Procurement process.

## 9. Costs

- 9.1. Bidders remain responsible for all costs and expenses incurred by them or by any third party acting under instructions from the Bidder in connection with taking part in this Procurement and the development of their ITN Solution, whether incurred directly by them or their advisers or sub-contractors and regardless of whether such costs arise as a consequence direct or indirect of any amendments made to this ITN by the Authority at any time.
- 9.2. Under no circumstances will the Authority or any of its respective advisors be liable for any costs or expenses incurred by a Bidder or its Supply Chain Members, funders and/or its respective advisors arising directly or indirectly from the Procurement or termination thereof, including, without limitation, any changes or adjustments made to the Procurement or documentation or disqualification of a Bidder.
- 9.3. For the avoidance of doubt, where a disqualified Bidder is excluded from any further participation in the Procurement under no circumstances will the Authority or its advisors be liable for any costs or expenses incurred by the disqualified Bidder and/or its Supply Chain Members as a result, directly or indirectly, of such disqualification.

## 10. Evaluation of ITN Solutions

- 10.1. The Authority will evaluate the ITN Solutions in accordance with the evaluation methodology set out in Section C of this ITN.
- 10.2. An ITN Solution shall only be compliant if it is submitted by the applicable deadline and complies with the requirements set out in this ITN.

- 10.3. Bidders who do not submit a compliant ITN Solution or fail to comply with any of the instructions set out in the ITN may be liable to disqualification at the sole discretion of the Authority.
- 10.4. In assessing ITN Solutions, the Authority will only consider information provided in response to this ITN (or, where the context requires and/or a cross-reference refers, the PITN) and in accordance with its terms.
- 10.5. All relevant information required to support the ITN Solution should be included in the Bidder's ITN Solution or, where necessary, cross-referenced in it. General corporate material and non-specific supporting documentation not requested as part of the ITN will not be considered.

## 11. Non Collusion and Canvassing

- 11.1. Unless otherwise permitted pursuant to this ITN, including pursuant to Section A paragraph 16, Bidders must neither disclose to, nor discuss with any other Bidder (whether directly or indirectly) any aspect of any response to any documents relating to this Procurement, including this ITN.
- 11.2. Any such collusion with another Bidder may constitute an infringement of the Chapter 1 prohibition contained in Section 2(1) of the Competition Act 1998 and the Bidder shall also be liable to disqualification.
- 11.3. Bidders and any of their Supply Chain Members shall not:
  - 11.3.1. canvass, solicit or offer any gift or consideration whatsoever as an inducement, fee or reward to any officer, employee or contractor of the Authority or any the User Organisations, or any person acting as an adviser to any of them in connection with this Procurement; or
  - 11.3.2. do anything which would constitute a breach of the Bribery Act 2010.
- 11.4. Other than where specifically permitted by this ITN, no attempt should be made to contact the Project Team or NHS Central Team or any project advisers. Any enquiries made to persons connected with the Procurement other than in accordance with the instructions in this ITN may be regarded as prima facie evidence of canvassing.
- 11.5. Bidders are advised not to contact any member of the Project Team via telephone **under any circumstance**. Formal documentation submissions and clarification requests should be sent through the Authority's BMS. Any enquiry in relation to day to day logistical issues should be sent to the [esrreprocurement@dh.gsi.gov.uk](mailto:esrreprocurement@dh.gsi.gov.uk) inbox

## 12. Non-Solicitation of Staff

- 12.1. The Bidder agrees that it shall not, for so long as it is a party to the bidding process concerning the Procurement and for a period of six months thereafter, canvass or solicit any member of staff of the Authority (or its advisors or any person employed or engaged by it) for the purpose of offering that person employment, or any other form of remunerated engagement in connection with this Procurement or otherwise for the purposes of the business of the Bidder. This undertaking shall be deemed to be given on behalf of each Bidder and any Supply Chain Member to the Bidder who is material to the progression of that Bidder's Solution.

## 13. Changes to Circumstances

- 13.1. Bidders are subject to an on-going obligation to notify the Authority of any material changes in their financial or other circumstances, including but not limited to, changes to the Bidders' proposed Supply Chain Members or Key Supply Chain Members. The Authority should be notified of any material change in writing as soon as it becomes apparent. Notification should be submitted to the Authority via the BMS system. Failure to notify the Authority of any material changes or to comply with any of these provisions may lead to a Bidder being disqualified (in which case the provisions of paragraph 2 of this Section A shall apply).

- 13.2. If a Bidder changes its legal status or any other factor that would have changed a material element of its PQQ Response, the Bidder must notify the Authority of the change in order that that Authority may re-assess the Bidder against the PQQ requirements. If the Bidder fails to do this, they may be disqualified.
- 13.3. Following submission, if a Bidder's Solution is subject to change of any material element including, but not limited to, changes to the Bidder's proposed Supply Chain Members or Key Supply Chain Members, the Bidder must inform the Authority. In such circumstances, the Authority may contact the Bidder for additional information to confirm the assessment of their Solution. This obligation applies to all Bidders until such time that they are no longer involved in the Procurement process.
- 13.4. The Authority reserves the right to refuse to allow such a change and to disqualify any Bidder from further participation in the Procurement in the event that such a change is made. In exercising its absolute discretion to either refuse or allow such a change, the Authority may take into account whether such change is material to the delivery of the Services and whether the change would have impacted upon the evaluation of the Bidder as part of the PQQ, PITN or ITN stage of the Procurement.
- 13.5. In the event that the Authority is prepared to consider such a change, further qualification of the Bidder, including its Supply Chain Members and Key Supply Chain Members, is likely to be required and Bidders should note that such further qualification may result in the Authority refusing to allow the change.
- 13.6. If upon its re-assessment, pursuant to paragraphs 13.2 or 13.3, the Bidder's PQQ Response and/or Outline Solution is deemed to be unsuccessful or any conditions of contract award are not met, the Authority will not permit the Bidder to proceed in the Procurement.

#### 14. Modification and Withdrawal of ITN Solution Submission

- 14.1. The Bidder may only modify the ITN Solution prior to the deadline for receipt. Any Bidder wishing to submit a new or modified ITN Solution after uploading on BMS, prior to the deadline for receipt, should contact the Authority using BMS 'Online Message' facility to advise that a replacement Solution is being submitted. Bidders will then be advised of the process of re-submission. It is the Bidder's responsibility to contact the BMS helpdesk to resolve any problems with the electronic submission of the Solution and should leave itself sufficient time to do so before the relevant submission deadline.
- 14.2. The Bidder may withdraw a Solution after the deadline for receipt, providing such intention is notified to the Authority using BMS or in writing when BMS cannot be used.

#### 15. Small and Medium Enterprises

- 15.1. The Authority is fully committed to supporting the Government's Small and Medium Enterprises ("SME") initiative<sup>1</sup>; for the Authority the target is that 18% of its spend will go to SMEs by 2015. All Bidders will be encouraged to support this initiative both directly and through their supply chains.
- 15.2. The Authority, when appropriate, may ask for proposals as part of this Procurement on how Bidders are intending to support the SME initiative.
- 15.3. Bidders must also be aware that as part of this initiative, the Authority will expect that any Supply Chain Members are paid promptly. For certain contracts, the Authority reserves the right to validate that prompt payment is taking place.

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<sup>1</sup> [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm)

- 15.4. Bidders are encouraged to make their own commitment on prompt payment by registering with the Prompt Payment Code<sup>2</sup>.

## 16. Consortium and Prime-Sub-contractor bids

- 16.1. Where organisations wish to collaborate to form a consortium, at the discretion of the Authority, the consortium may be required to form a legal entity which will enter into the proposed Agreement. However, this does not preclude a single organisation offering to contract for the supply of all the Services as a prime contractor or lead consortium member ("Lead Bidder") (whether supported by sub-contract arrangements or otherwise).
- 16.2. Where a consortium or sub-contracting approach is proposed, all information requested should be given in respect of the proposed Lead Bidder and the relevant Supply Chain Members and those roles within the Solutions. Bidders are to complete Appendix 11 (ITN – A11) of this ITN.
- 16.3. The Authority is expecting the Bidders' Supply Chains to be in place and remain reasonably stable at ITN stage as this will be important to give the Authority confidence in the ITN Solutions being developed. Where, in exceptional circumstances, any changes to Bidders' Supply Chains are proposed, these must be promptly notified to the Authority. Paragraph 13 will apply in these circumstances.
- 16.4. Details should also be provided in relation to the proportion of any contract awarded that the Bidder proposes to sub-contract.
- 16.5. The Authority may, at its discretion, allow an organisation to participate in the Procurement as Supply Chain Member in respect of more than one Bidder, provided that at all times the Authority is satisfied that there is no negative effect on the competition caused by such arrangements and also that its requirements in relation to the management of any conflicts of interest have been met. The Authority reserves the right to require sub-contractors or consortium members to put into place appropriate arrangements to provide additional reassurance around non-collusion and avoiding conflicts of interest in such circumstances.

## 17. Transparency

- 17.1. In accordance with the Government's policy on transparency, Bidders should be aware that the Authority intends to make the ITN main body document and any subsequent Procurement Documentation including the resulting Agreement publicly available, by publishing it on the Government portal: [Contracts Finder](#)<sup>3</sup>.
- 17.2. By participating in this Procurement, the Bidder acknowledges and agrees that the Authority will publish the Procurement Documentation and the resulting Agreement (including the Preferred Bidder's final tender at this ITN stage) in their entirety, including from time to time any agreed changes to the Agreement (i.e. Changes made pursuant to a Change Request), to the general public.
- 17.3. The Authority shall be responsible for determining in its absolute discretion, whether the content of the Agreement (including the Preferred Bidder's final tender at this ITN stage), as per paragraph 6 of Section A or pursuant to the Agreement, is exempt from disclosure, also taking into account the Data Protection Act 1998. If the Solution is submitted as a PDF by the Preferred Bidder, then following this ITN stage, the Preferred Bidder may be requested to provide the final tender in an editable format (such as a Microsoft Word) in order to allow the Authority to redact any information deemed "commercially sensitive" or "confidential".

## 18. Warranties

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<sup>2</sup> <http://www.promptpaymentcode.org.uk>

<sup>3</sup> <http://www.businesslink.gov.uk/contractsfinder>

- 18.1.** A Bidder in taking part in this Procurement (and submitting its ITN Solution) warrants and undertakes to the Authority that:
- 18.1.1.** by submitting an ITN Solution unless otherwise disclosed in writing to the Authority with the ITN Solution, any information supplied by the Bidder shall be true and accurate at the time of bidding and remained so (or correctly updated) during the procurement process;
  - 18.1.2.** it has complied with the conditions set out in this ITN in all respects;
  - 18.1.3.** all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Authority by the Bidder or its employees in connection with the dialogue and/or any Solution are true, complete and accurate in all respects; and
  - 18.1.4.** it has not submitted an ITN Solution (and will not enter into the contract) in reliance upon any representation or statement (whether made orally, in writing or otherwise) which may have been made by the Authority's advisors, or the directors, officers, members, partners, employees, other staff, or agents of any such body or person.

## **19. Contractual Issues**

- 19.1.** Without prejudice to any warranties given, this ITN does not form a separate, collateral or implied contract between the Bidder and the Authority. The relevant parts of the Bidder's Solution may form part of an Agreement subsequently awarded.
- 19.2.** The subject matter of this Procurement shall only have contractual effect when, and to the extent that, it is contained in the express terms of an executed written contract.
- 19.3.** No information contained in this ITN, or in any communication made between the Authority and any Bidder in connection with this ITN, shall be relied upon as constituting a contract, agreement or representation that any contract shall be offered in accordance with this ITN.

## **20. Publicity**

- 20.1.** Bidders must obtain approval from the Authority before any disclosures are made to the press or are in any other way made available to the public in respect of this Procurement. Bidders must not undertake any publicity activities in relation to this Procurement without the express written permission of the Authority.

## **21. Copyright**

- 21.1.** This ITN is the copyright of the Authority and its professional advisers. Bidders shall not reproduce, copy, distribute or otherwise make available to any third party the whole or any part of this ITN in any material form (including photocopying it or storing it in any medium including electronic means) without the written permission of the Authority other than for use strictly for the purpose of preparing their Solution in relation to this Procurement.
- 21.2.** This ITN, including all supporting documents/materials, and all copies thereof are and shall remain the property of the Authority and must be returned or destroyed on demand.

## **22. Confidentiality**

- 22.1.** The information provided in (and in connection with) this ITN is made available on the condition that it is treated by Bidders as confidential (except any such information as may already be in the public domain or may come into the public domain otherwise than by reason of a breach of a confidentiality obligation).
- 22.2.** The Bidder (and any of its directors, officers, employees, agents, contractors or advisers) must not disclose, copy, reproduce, distribute or pass to any other person at any time any Information (except for the purposes of enabling a response to this ITN). In any case any disclosure to any person shall only be made to a person who needs to receive the same and who has given an

undertaking at the time of receipt of the relevant Information to keep such information confidential.

- 22.3.** This ITN and all supporting document/materials, is subject to the Non-Disclosure Agreement signed by the Bidders to gain access to the Data Room.

### **23. Communications**

- 23.1.** All documents and all correspondence relating to the Procurement must be written in English.
- 23.2.** It is the Bidder's responsibility to monitor email messages received from the Authority, and the Authority accepts no liability where this is not done. All electronic communication with Bidders will be deemed to have been received by the Bidder at the time of transmission.
- 23.3.** Questions and answers notified to Bidders will form part of, and may update, the ITN and must be considered by Bidders.
- 23.4.** It is each Bidder's sole responsibility to ensure that the named contact provided at PQQ stage of the Procurement, or any replacement named contact subsequently notified to the Authority, responds to any such requests within the specified time period. Unless advised to the contrary, the Authority will use the e-mail address linked to the supplier record held in BMS.
- 23.5.** Where the Authority contacts the Bidder to seek clarification or further information, the Bidder must provide the information requested by the date specified by the Authority. If the Bidder fails to provide the information requested by the date specified by the Authority, this may result in the Bidder being disqualified. Any information provided by the Bidder after the specified date will not be taken into account by the Authority.
- 23.6.** All responses received and any communication from Bidders will be treated in confidence but will be subject to paragraph 6 and paragraph 17 of this Section A. Bidders are reminded that clarifications should only be requested in respect of information contained in this ITN.

### **24. TUPE**

- 24.1.** Bidders should assume that the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply to the award of this Agreement.
- 24.2.** Details relating to staff that may be within scope of TUPE were provided in Appendix 4: Authority Provided Assumptions (**PITN – A4**).

### **25. Variant Bids (“Variant Bids”)**

- 25.1.** The Authority is not inviting variant bids as part of this ITN.

### **26. General**

- 26.1.** In any documentation issued as part of this Procurement, except where the context otherwise requires:
- 26.1.1.** defined terms shall have the meaning given to them in the Glossary of Terms - See Appendix 6 (**ITN – A6**);
- 26.1.2.** words importing one gender include all other genders and words importing the singular include the plural and vice versa;
- 26.1.3.** enactment means any statute or statutory provision (whether of the United Kingdom or elsewhere), subordinate legislation (as defined by Section 21(1) Interpretation Act 1978) and any other subordinate legislation made under any such statute or statutory provision;
- 26.1.4.** a reference to any enactment shall be construed as including a reference to:

- any enactment which that enactment has directly or indirectly replaced (whether with or without modification); and
- that enactment as re-enacted, replaced or modified from time to time, whether before, on or after the date of the document.

**26.2.** This ITN shall be governed by and construed in accordance with English law.

## SECTION B: PROCUREMENT PROCESS & TIMETABLE

### 1. Procurement Process and Timetable

- 1.1. The Authority is using a two stage process to select its Preferred Bidder. The first stage of the process was set out in the PITN and has been completed. The outcome of that stage was the shortlisting of three (3) Bidders to whom this ITN has been issued.
- 1.2. During this ITN stage, the Authority will engage with all Bidders in the manner set out in this ITN, with the purpose of enabling the Bidders to develop ITN Solutions that meet the Authority requirements. This stage of the Procurement will culminate in Bidders finalising and submitting their detailed ITN Solutions, which will then be evaluated using the approach defined in Section C, with the intention of identifying the Bidder who scores the highest at ITN stage and who will be taken forward as Preferred Bidder to Contract Award. The Authority reserves the right to appoint a reserve Preferred Bidder whom the Authority would take forward to Contract Award if negotiations with the Preferred Bidder are unsuccessful. The ITN award criteria set out in Section C of this ITN will be used to identify and select the Preferred Bidder.
- 1.3. An indicative timetable for the procurement is set out below. This is intended as a guide, and whilst the Authority does not intend to depart from the timetable, it reserves the right to do so at any time acting in accordance with the Regulations.

Key Actions	Dates
Issue of ITN	04/07/14
Individual Bidder meetings Cycle 1	08/07/14 – 10/07/14
Individual Bidder meetings Cycle 2	15/07/14 – 17/07/14
Individual Bidder meetings Cycle 3	22/07/14 – 24/07/14
Individual Bidder meetings Cycle 4	05/08/14 – 07/08/14
Deadline for submission of clarification questions	08/08/14 – 16:00
Deadline for return of ITN	22/08/14 – 12:00 (midday)
Bidders notified of outcome and Standstill period	14/11/14*
Contract Award date	16/01/15*

\* Dates are indicative and may be subject to change

### 2. Information

- 2.1. Notwithstanding any other provisions in this ITN, should Bidders require clarification or identify any conflicting statements within this ITN that may affect their ITN Solutions, they should query or clarify such statements as soon as possible by submitting a message on BMS.
- 2.2. Clarification questions raised will only be viewed by the Authority and its professional advisers and will be responded to accordingly. The identity of the Bidder raising the questions will not form part of the response.
- 2.3. Where clarification questions are raised, the responses to which may be applicable or of interest to all Bidders, the Authority will circulate the clarification questions and the answers to all Bidders. Such circulation of questions and answers is subject to, in so far as possible, such information not being commercially sensitive in relation to a potential Bid. Where Bidders consider their questions to be commercially confidential, their question should be clearly marked

as such in accordance with paragraph 6.3 of Section A, for the Authority to consider the same at its own discretion.

- 2.4. Questions/ issues may also be raised during the course of any meetings which might be of legitimate interest to all Bidders. In that situation the Authority reserves the right to circulate the questions and answers to all Bidders, subject to the Authority's confidentiality duties under the Regulations. The Authority will, where possible, anonymise and redact all information to the extent necessary prior to circulation, so as to ensure the identity of the Bidder raising the question/issue is not identifiable from the information to be circulated by the Authority.

### 3. Bidder Engagement

- 3.1. In order to support Bidders in the development of their Solutions, the Authority is planning to hold a series of face-to-face negotiation sessions in July and August, in London. It is envisaged that there will be 4 days of negotiation time offered to each Bidder over a five (5) week period.
- 3.2. Each Bidder will be offered a full day (9am - 4:30pm) each week during which the Bidder will be able to engage with representatives from the Authority, its advisors and the NHS Central Team in respect of different aspects of the Bidder's developing Solution. The same day each week will be offered to each Bidder, i.e.:
- Bidder A – Tuesdays
  - Bidder B – Wednesdays
  - Bidder C – Thursdays

The Authority will randomly determine which bidder is allocated to which day.

Week	Tuesday – Bidder A	Wednesday – Bidder B	Thursday – Bidder C
1	8 <sup>th</sup> July	9 <sup>th</sup> July	10 <sup>th</sup> July
	Bidder A (1 <sup>st</sup> Session)	Bidder B (1 <sup>st</sup> Session)	Bidder C (1 <sup>st</sup> Session)
	Wellington House*		
2	15 <sup>th</sup> July	16 <sup>th</sup> July	17 <sup>th</sup> July
	Bidder A (2 <sup>nd</sup> Session)	Bidder B (2 <sup>nd</sup> Session)	Bidder C (2 <sup>nd</sup> Session)
	Wellington House*		
3	22 <sup>th</sup> July	23 <sup>th</sup> July	24 <sup>th</sup> July
	Bidder A (3 <sup>rd</sup> Session)	Bidder B (3 <sup>rd</sup> Session)	Bidder C (3 <sup>rd</sup> Session)
	Wellington House*		
4	No Sessions	No Sessions	No Sessions
5	5 <sup>th</sup> August	6 <sup>th</sup> August	7 <sup>th</sup> August
	Bidder A (4 <sup>th</sup> Session)	Bidder B (4 <sup>th</sup> Session)	Bidder C (4 <sup>th</sup> Session)
	Skipton House*		

\* Wellington House, 135-155 Waterloo Road, London. SE1 8UG / Skipton House, 80 London Road, London. SE1 6LH

- 3.3. The first of these engagement days will focus on feedback on, and challenge of, the Bidders' Outline Solutions arising from evaluation of the PITN submissions. No specific preparation or pre-work is required on behalf of bidders.
- 3.4. The focus of the subsequent engagement days will in part be determined by the Authority identifying areas for discussion and in part be determined by each Bidder. Different areas, such as Legal and Commercial, finance or technical, may use different formats for engaging with Bidders such as mainly face to face meetings, telephone conferences, video conferences or exchange of documents.
- 3.5. Bidders are encouraged to ensure that they use the time available to cover all aspects of their developing Solutions and to invite feedback and challenge from the Authority in all areas.

- 3.6. The Authority envisages that a smaller number of attendees may allow more focussed engagement.
- 3.7. A pre-negotiation call will be held with each Bidder to confirm logistics, agendas and practical arrangements for the session. This will include maximum number of attendees for session.
- 3.8. The Bidder engagement days will take place in London, with the specific location to be advised in the table above. Bidders will have the opportunity for engagement with the Authority from 9 am-4.30pm each day. It is envisaged that there may be more than one session arranged on each engagement day, with some running parallel with different attendees to allow each Bidder to make best use of the time available to them. Lunch will be provided

#### 4. ITN Solution Submission

- 4.1. Bidders are required to submit an ITN Solution in line with the requirements set out by the Authority by 12pm (midday) on 22<sup>nd</sup> August 2014. See Appendix 2 – ITN Solution Requirements (ITN – A2) and Appendix 7 - ITN Solution Checklist (ITN – A7).
- 4.2. Bidders must submit a single copy of their ITN Solution using BMS. Bidders must ensure that they allow for sufficient time to upload the ITN Solution, particularly where there are large documents. If Bidders have any problems with BMS, they must contact the helpdesk on 0113 254 5777 prior to the return time.

#### IMPORTANT NOTE

**Bidders must use the 'create quote' option to upload the Solution submission.**

**Note that this option requires a total quote price to be entered. Occasionally, a total price will be unable to be calculated, for example, where the requirement is to provide day rates or in the award of Framework Agreements, or complex pricing requirements. In these circumstances, a numerical value of 1 should be entered, to enable the option to proceed.**

**If you upload your response by any other method, for example by using the 'New Message/ Documents' tab, the Solution will not be correctly linked to the ITN and your Solution will be rejected.**

**At the deadline for submission of Solution, the 'create quote' option will be made unavailable for ITN Ref [59342].**

**Online discussions up-to this point will remain visible.**

**If this is not clear, please seek clarity via the questions (online discussions) process in good time.**

- 4.3. The helpdesk is open Monday to Friday between 10am and 4pm excluding public and bank holidays. It is important to note that the Authority is not obliged to accept any Solution that is submitted after the deadline for the receipt of Solutions has passed.
- 4.4. The ITN Solution Checklist - Appendix 7 (ITN – A7) lists all items of information requested from Bidders as part of their Solutions.
- 4.5. In addition to the Authority's requirements- Appendix 2 (ITN – A2), Bidders have been provided with the following appendices in order to support and inform Bidders' Solutions:
  - Appendix 1 (ITN – A1): Award Criteria and Weightings – this details the award criteria and associated weightings to be applied by the Authority when evaluating the Solutions at ITN stage
  - Appendix 3 (ITN – A3): Assessed Draft Agreement – this provides the details of which provisions of the Draft Agreement will be evaluated at the ITN
  - Appendix 4 (ITN – A4): Assumptions Process and Instructions – this details the process and instructions for completion of the ITN Solution Assumptions Template (ITN – A14)

- Appendix 5a (**ITN – A5a**): Financial Submission Instructions – this details instructions of how to complete the Financial Submission Template
  - Appendix 5b (**ITN – A5b**): Financial Model Rule Book – this details Best Practice Modelling principles that are to be adhered to
- 4.6.** The information to be returned by Bidders as part of the Solution is set out in Section E of this ITN. In particular, the following are to be used by the Bidders to form the substantive part of their Solution:
- Appendix 12 (**ITN – A12**): Financial Submission Template – for the pricing of the ITN Solution
  - Appendix 13 (**ITN – A13**): ITN Solution Template – for the main written response to this ITN
  - Appendix 14 (**ITN – A14**): ITN Assumptions Template – to detail any assumptions associated with the ITN Solution
  - Appendix 15 (**ITN – A15**): Transition Plan Template – to detail the Transition Plan associated with the ITN Solution
  - Appendix 16 (**ITN – A16**): Improvement Plan Template – to detail the Improvement Plan associated with the ITN Solution
  - Appendix 17 (**ITN – A17**): Workpackage Definition Template – to detail the Workpackages associated with the ITN Solution
  - Appendix 18 (**ITN – A18**): Requirements Manifest Template – to provide reference to information associated with each of the Authority's Requirements
- 4.7.** The Authority expects the ITN Solutions to be consistent with and reflect a development of the PITN Outline Solutions submitted by the Bidder, as further discussed and developed with the Authority, and reflecting the Authority's feedback, through the ITN engagement process. Where a Bidder intends to change or withdraw an aspect of their PITN Solution, other than in response to the Authority's feedback on that PITN Solution, that Bidder should ensure that it discusses such changes with the Authority during the ITN engagement sessions to ensure that it has invited Authority feedback on its proposals.
- 4.8.** The Authority expects that some areas of the Bidders' PITN Solutions, particularly areas that are not specifically assessed again at this ITN stage, would form part of the Supplier's contractual obligations under the agreement entered into between the Authority and the chosen Supplier. These areas may include (but are not limited to):
- Vision
  - Skills and Key Personnel
  - Regular Operational Cycle
  - Continuous Improvement
  - Mid Term Strategic Review
  - Value add
- 4.9.** The appendices contain the format, structure, instructions, page limits (if applicable) and supporting documentation required for each element of the ITN Solutions. Use of diagrams is encouraged where relevant and diagrams are included within the page limit (if applicable). Annexes, attachments and supporting materials (other than those specifically requested) will not

be considered as part of the evaluation process and the development of the contract, and if provided will be ignored.

- 4.10.** The Authority reserves the right to reject any ITN Solution if the Bidder has failed to complete and return relevant parts of the ITN; or fails to provide the information requested; or the Bidder has submitted qualifications to its response.
- 4.11.** All pages of the written submission part of the ITN Solution must be sequentially numbered (including any forms to be completed and returned).
- 4.12.** All Bidders must submit the written part of their ITN Solutions in machine-readable format (preferably non-PDF).
- 4.13.** Subject to the Authority's absolute discretion the Authority will not ordinarily consider (i) any requests by the Bidder to amend or submit the Solution after the deadline or (ii) any requests by the Bidder for an extension of the time or deadline stated for the submission of the Solution.

## 5. Clarification of ITN Solutions

- 5.1. The Authority does not envisage the need to hold formal clarification sessions with the Bidders following the submission of their ITN Solutions, given the engagement days that will have been held during the ITN stage, the result of which should be the submission of ITN Solutions that the Authority understands and is expecting to receive. Therefore, there will be no Clarification Sessions similar to those held at PITN stage. The Authority may still require written clarifications from Bidders following submission of their ITN Solutions.

## 6. Evaluation

- 6.1. Following submission of the ITN Solutions, the Authority will evaluate the ITN Solutions in accordance with the evaluation methodology set out in Section C of this ITN. Should the Authority require any clarification of ITN Solutions, this will take the form of written queries and responses managed via BMS.

## SECTION C: EVALUATION

### 1. Summary

- 1.1. This section addresses evaluation of the ITN Solutions. The purpose of ITN evaluation is for the Authority to identify the Bidder that offers the Most Economically Advantageous Tender (MEAT) in respect of the Services.
- 1.2. As part of the ITN stage of the procurement, the Authority may, at its absolute discretion, decide to:
- invite Best and Final Offer Submissions (BAFO) from the Bidders; and/or
  - appoint a reserve Preferred Bidder, with whom the Authority would take forward to Contract Award if negotiations with the Preferred Bidder are unsuccessful.

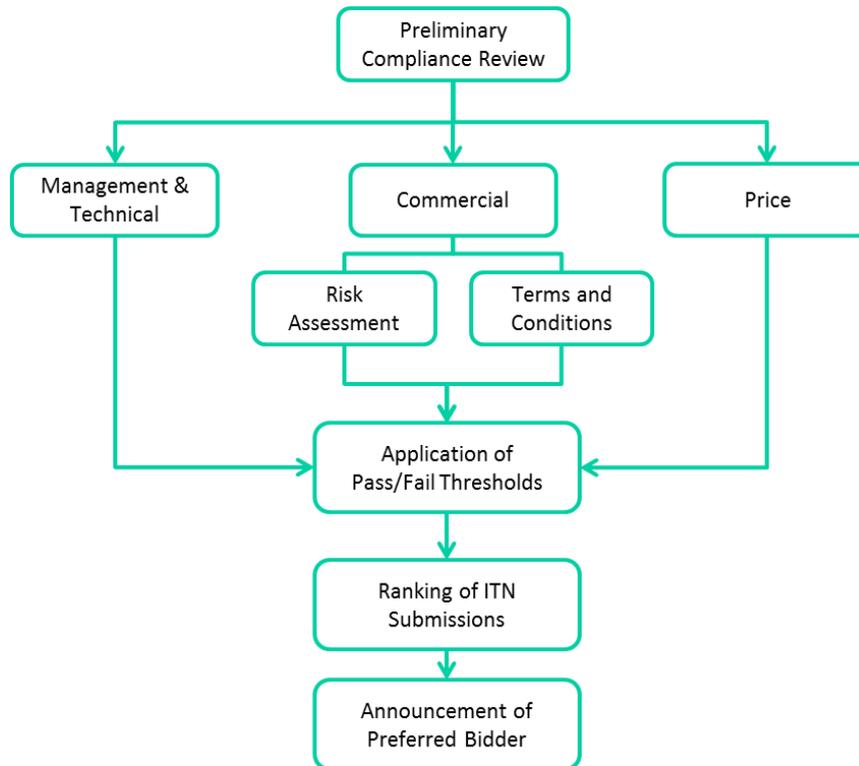
### 2. Award Criteria and Weightings

- 2.1. The award criteria and weightings that will be applied at ITN are set out below and further provided in Appendix 1- Award Criteria and Weightings (ITN – A1).

Criteria	Weighting	Sub-criteria	Sub-weighting
Management	10%	Governance	10%
Technical	45%	Component 1 - Transition	Pass / Fail
		Component 2 - Operate	22%
		Component 3 - Enhance	23%
Commercial	15%	Terms and Conditions	10%
		Risk assessment	5%
Price	30%	Profit Margin	Pass/Fail
		NPC	23%
		Change	7%

### 3. Evaluation Structure

- 3.1. The overall evaluation approach is outlined in the diagram below and further described in subsequent paragraphs.



### 4. Preliminary Compliance Review

- 4.1. Each of the Solutions will initially be checked for completeness and compliance with the requirements of the ITN as listed in ITN Section E. The preliminary compliance review will check that each Solution:
- 4.1.1. satisfies the document submission requirements of the ITN;
  - 4.1.2. answers all questions (or explain satisfactorily where questions are not answered or marked "not applicable"); and
  - 4.1.3. is provided in the format, medium and quantity requested.
- 4.2. If a Solution satisfies the preliminary compliance review the Authority will proceed to evaluate it as set out below. If the Solution fails to satisfy the preliminary compliance review then the Authority reserves the right to exclude the Bidder from the process, or seek immediate further clarification and amendment of the Solution.
- 4.3. Solutions that pass the preliminary compliance review will then be subject to full evaluation.

### 5. Management and Technical Evaluation

- 5.1. Each Solution will be independently evaluated by members of the ITN evaluation panel against each of the criteria defined in Appendix 1 (ITN – A1). When scoring a specific response to a particular question/section of the Solution, the ITN evaluation panel may cross refer to responses of other questions/sections and take those responses into account, but Bidders should not assume that the evaluation panel will cross refer when scoring.
- 5.2. During the evaluation of specific criteria in Appendix 1 (ITN – A1), Bidders' amendments of Schedules will be used for supporting information. Where supplied these will be the same

Schedules submitted in the Bidder Revised Draft Agreement. In addition to those schedules in the Bidder Revised Draft Agreement, Bidders should supply amendments to Schedules, as identified in Column 4, Annex1 of Appendix 3 (ITN – A3).

- 5.3. Bidders are advised that variant bids are not allowed (See paragraph 25 of Section A) although it is recognised that aspects of Bidder solutions may justify limited reflection in these Schedules.
- 5.4. Each independent set of scores will be consolidated. A reconciliation and moderation exercise will be undertaken to ensure any material differences between scores are understood and addressed.
- 5.5. Updated scores will then be averaged (mean) to determine each response score against each of the evaluation criteria.
- 5.6. The average score will then be multiplied by the relevant percentage weighting. Averaged scores and contribution percentages will be rounded to 2 decimal places.
- 5.7. Unless otherwise specifically provided in paragraphs 6, 7 or 8 below, responses will be scored using the following scoring methodology:

**Scoring Table – Management & Technical**

Grade label	Grade	Definition of Grade
<b>Unacceptable</b>	<b>0</b>	Failure to understand and/or failure or substantial failure to provide information and / or provides no /little confidence that the requirements will be delivered
<b>Weak</b>	<b>1</b>	Some misunderstandings and a generally low level of information and detail provided. Fails to meet requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to deliver
<b>Satisfactory</b>	<b>2</b>	Generally understands the issues and addresses them appropriately with sufficient information, but some areas demonstrate a misunderstanding, a low level of detail, and/or provides more of a “model answer” than a true commitment, and so only provides some confidence that they will be able deliver in line with requirements
<b>Good</b>	<b>3</b>	Good understanding of the issues, good level of detail, and demonstration that proposals are feasible so that there is a good level of confidence that they will deliver the requirements
<b>Very Good</b>	<b>4</b>	High degree of confidence that the Bidder’s proposals will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
<b>Excellent</b>	<b>5</b>	Excellent, the response is of a quality and level of detail and understanding that provides extreme confidence that the Bidder’s proposals will meet all requirements, demonstrated by a thorough understanding of the issues and what is being asked for. Proposals clearly set out how and what will be delivered.

- 5.8. The following specific instructions are applied to the Transition questions (T-T-1 and T-T-2):
  - 5.8.1. These questions will be marked using the scoring system outlined above.
  - 5.8.2. Suppliers must achieve a moderated score above 2 on each of these questions to have passed this section.

**5.8.3.** Scores for these questions will not contribute to the overall score for each Bidder's solution.

**5.9.** The Authority may, and at its sole discretion and in compliance with the Regulations, exclude from the Procurement a Solution where the Management and Technical section:

**5.9.1.** fails on the transition questions (see 5.8 above);

**5.9.2.** has any responses which are evaluated as 'unacceptable' (i.e. below 1); or

**5.9.3.** has three or more responses which are 'weak' (i.e below 2).

**6. Commercial Evaluation– Terms and Conditions**

**6.1.** Responses to the 'Commercial –Terms and Conditions' will follow the same process as above, but will use a different grading system.

**6.2.** Terms and Conditions - Main Evaluation Model

**6.2.1.** The ITN Assessed Draft Agreement as defined in Appendix 3 (**ITN – A3**) sets out the requirements that Bidders need to comply with in respect of the "Legal" and "Commercial" requirements as part of their ITN Solution.

**6.2.2.** Amendments made to the ITN Assessed Draft Agreement by each Bidder as set out in each Bidder Revised Draft Agreement will be evaluated in accordance with the evaluation criteria and scoring mechanisms set out below.

**6.2.3.** In assessing the Bidder Revised Draft Agreement, the scored responses will be awarded a score out of a maximum of three (3). The Authority will assess the extent to which the Bidder Revised Draft Agreement differs from the ITN Assessed Draft Agreement and the impact of the amendments made by the Bidders to each of the 2 categories of terms set out in Paragraph 6.2.4 below. The assessors will be unable to give partial scores (for example 2.5) however, when aggregating scores the score for the Bidder Revised Draft Agreement will be rounded to two decimal places.

**6.2.4.** The weighting for the evaluation of Bidder Revised Draft Agreement is 10% applying the following sub-criteria:

Sub-criteria	Sub-weighting	Specific evaluation areas
Key Commercial Terms	7%	Pay and Performance Mechanism (4%)
		Liability and financial robustness (1.5%)
		IPR (1.5%)
All other Clauses and Schedules	3%	Same as Sub-criteria

**6.3.** Evaluation of the Key Commercial Terms

**6.3.1.** Whilst the Authority's aim is to review the Bidders Revised Draft Agreement as a whole, certain areas will be assessed based on their specific criteria. The provisions of the ITN Assessed Draft Agreement which are subject to this area based evaluation are described as Key Commercial Terms and set out in Appendix 3 (**ITN – A3**).

**6.3.2.** The Authority may in its discretion take into account other information submitted elsewhere in the Bidder's Solution including in the ITN Contract and Commercial

Compliance Matrix where relevant to demonstrate acceptance of the Key Commercial Terms.

**6.3.3.** Some further information on the evaluation of some of the Key Commercial Terms is set out below.

**6.3.4.** Pay and Performance Mechanism

**6.3.4.1.** Financial Reports and Audit Rights, Schedule 7.5.

Any material change to this Schedule will result in a score of 0 for the Pay and Performance Mechanism. The Bidder's approach to sharing cost information in its Financial Submission, including that of its sub-contractors, may be taken into account in the evaluation of this provision.

**6.3.4.2.** Subject to Section **Error! Reference source not found.**, all amendments to the provisions of the Pay and Performance Mechanism forming part of the Key Commercial Terms (as set out in Appendix 3 (ITN – A3)) will be evaluated as whole and be given one score in accordance with the grading scale below.

**Scoring Table - Key Commercial Terms (Pay & Performance Mechanisms)**

<b>A score of:</b>	<b>Means</b>
<b>3</b>	The Bidder has made no material changes to the contract provisions including no changes to the proposed sums at risk OR The Bidder has proposed changes which improve the commercial position and/ or the risk profile of the Authority and/or the Authority's interests.
<b>2</b>	The Bidder has adjusted the proposed sums at risk in the relevant sections and/or has made any changes to the contract provisions which do not have a significant material adverse impact on the commercial position in that category and/ or the risk profile of the Authority and/or the Authority's interests.
<b>1</b>	The Bidder has adjusted the proposed sums at risk in the relevant sections and/or has made changes to the contract provisions which have a significant material adverse effect on the commercial position in that category and/ or the risk profile of the Authority and/or the Authority's interests.
<b>0</b>	The Bidder has proposed changes to the contract provisions which would completely undermine either the Authority's contractual rights in that category and/ or the level of risk being taken by the Bidder.

**6.3.5.** Limitations of liability and financial robustness

**6.3.5.1.** The provisions in scope for this specific area of evaluation are set out in Appendix 3.

**6.3.5.2.** Any amendments to these provisions should have the aims and the objectives of the Authority (as detailed in Appendix 3) in mind and should be necessary for Solution-specific or other sound reason.

**Scoring Table - Key Commercial Terms (Limits of Liability & Financial Robustness)**

<b>A score of:</b>	<b>Means</b>
<b>3</b>	The Bidder agrees to the proposed percentage caps on liability and proposes a fixed amount which corresponds to the anticipated 12 months spend as a cap for that period with minor changes to the other contract provisions in that category OR The Bidder has proposed changes which materially improve the commercial position and/ or the risk profile of the Authority and/or the Authority's interests.
<b>2</b>	The Bidder has proposed changes to the contract provisions, including but not limited to the caps on liability, which do not have a substantial material adverse

A score of:	Means
	impact on the commercial position in that category and/ or the risk profile of the Authority and/or the Authority's interests.
1	The Bidder has proposed changes to the contract provisions including but not limited to the caps on liability which have a substantial material adverse effect on the commercial position in that category and/ or the risk profile of the Authority and/or the Authority's interests.
0	The Bidder has proposed changes to the contract provisions which would completely undermine either the Authority's contractual rights and/or commercial position in that category and/ or the level of risk being taken by the Bidder.

6.3.6. IPR

6.3.6.1. The provisions in scope for this specific area of evaluation are set out in Appendix 3.

6.3.6.2. Any amendments to these provisions should have the aims and the objectives of the Authority (as detailed in Appendix 3) in mind and should be necessary for Solution-specific or other sound reason.

**Scoring Table - Key Commercial Terms (IPR)**

A score of:	Means
3	The Bidder's solution has a clearly outlined IPR position which reflects the position stated in the ITN Assessed Draft Agreement including Schedules 5.1 to 5.3 or has stated a position with only minor changes to the position outlined by the Authority in the contract provisions OR The Bidder has proposed changes which materially improve the commercial position and/ or the risk profile of the Authority and/or the Authority's interests.
2	The Bidder proposes a solution which is consistent with the Authority's requirement to retain maximum flexibility both during the term of the Agreement and after but with changes to the contract provisions which do not have a material adverse effect on the commercial position and/ or the risk profile of the Authority and/or the Authority's interests.
1	The Bidder's solution does not clearly outline the position regarding IPRs or The Bidder has proposed changes to the contract provisions which have a material adverse effect on the commercial position and/ or the risk profile of the Authority and/or the Authority's interests.
0	The Bidder has proposed changes to the contract provisions which would completely undermine either the Authority's contractual and/or commercial rights and/or the level of risk being taken by the Bidder.

6.4. Evaluation of the all other Clauses and Schedules will be conducted using the following grading system:

**Scoring Table - All other Clauses & Schedules**

A score of:	Means
3	The Bidder has made no material changes to the contract provisions (in substance and/or in number) OR The Bidder has proposed changes which improve the commercial position and/ or the risk profile of the Authority and/or the Authority's interests.
2	The Bidder has proposed changes to the contract provisions which do not have a substantial adverse impact on the commercial position and/ or the risk profile of the Authority and/or the Authority's interests and/or will not require further material negotiation at Preferred Bidder stage.

A score of:	Means
1	The Bidder has proposed changes to the contract provisions which may have a substantial adverse impact on the commercial position and/or the risk profile of the Authority and/or the Authority's Interests and/or will require further material negotiation at Preferred Bidder stage.
0	The Bidder has proposed changes to the contract provisions which would completely undermine either the Authority's contractual rights and/ or the level of risk being taken by the Bidder and create a risk that the Parties may not agree on a final form of contract at Preferred Bidder stage.

#### 6.5. Commercial Evaluation - Terms and Conditions - Thresholds

6.5.1. A minimum score of 2 is expected for each of the specific evaluation areas within the Commercial Evaluation - Terms and Conditions.

6.5.2. Failure to achieve a minimum scoring of 2 in any of the Key Commercial Terms' specific evaluation areas will result in the Bidder scoring a 0 for the 7% allocated to the evaluation of the Key Commercial Terms.

6.5.3. A score of 0 in any of the Key Commercial Terms or the Other Clauses and Schedules will result in the Bidder scoring a 0 for the 10% allocated to the evaluation of the Commercial Evaluation - Terms and Conditions and may result in the Bidder being excluded.

### 7. Commercial Evaluation– Risk Assessment

7.1. Question C-R-1 will be marked in accordance with the process set out for Management and Technical Evaluation above (Section 5 above).

7.2. Question C-R-2 will be marked on the same basis as the Management and Technical evaluation except that the following table of grades will be used:

#### Scoring Table - Risk (Authority Assessment)

Grade Label	Grade	Definition
Unacceptable Risk	0	The overall assessment of solution risk is <b>unacceptable</b> . There is either evidence that the Solution: <ul style="list-style-type: none"> <li>is not reasonably internally consistent and aligned; or</li> <li>does not evidence appropriate flow down / cascade of risks through the supply chain; or</li> <li>has sought to unduly transfer risk to the Authority; or</li> <li>has poorly failed to identify or mitigate the risks.</li> </ul>
High Risk	1	The overall assessment of solution risk is <b>high</b> . To achieve this score responses must be: <ul style="list-style-type: none"> <li>reasonably internally consistent and aligned; and</li> <li>evidence appropriate flow down / cascade of risks through the supply chain.</li> </ul> In addition the response demonstrates, on balance, a poor response in one or more areas of: <ul style="list-style-type: none"> <li>risk transfer to the Authority;</li> <li>identification of risks (both at component and programme level); and</li> <li>planning for risk mitigation.</li> </ul>
Moderate Risk	2	The overall assessment of solution risk is <b>moderate</b> . To achieve this score responses must be: <ul style="list-style-type: none"> <li>reasonably internally consistent and aligned; and</li> <li>evidence appropriate flow down / cascade of risks through the supply</li> </ul>

		<p>chain.</p> <p>In addition the response demonstrates, on balance, a neutral response across the areas of:</p> <ul style="list-style-type: none"> <li>• risk transfer to the Authority;</li> <li>• identification of risks (both at component and programme level); and</li> <li>• planning for risk mitigation.</li> </ul>
<b>Low Risk</b>	<b>3</b>	<p>The overall assessment of solution risk is <b>low</b>. To achieve this score responses must:</p> <ul style="list-style-type: none"> <li>• be internally consistent and aligned;</li> <li>• evidence appropriate flow down / cascade of risks through the supply chain; and</li> <li>• not have unduly transferred risk to the Authority in their assumptions.</li> </ul> <p>In addition the response demonstrates a strong response across all of the following areas:</p> <ul style="list-style-type: none"> <li>• risk transfer to the Authority;</li> <li>• identification of risks (both at component and programme level); and</li> <li>• planning for risk mitigation.</li> </ul>

7.3. Any Solution that does not score 1 or more for both questions C-R-1 and C-R-2 may, at the Authority’s sole discretion and in compliance with the Regulations, be excluded from the Procurement.

**8. Price Evaluation**

8.1. 30 per cent of the total available evaluation marks will be attributed based on evaluation of Bidders’ Financial Submissions. The price evaluation is comprised of the following sub-criteria:

Sub-criteria	Percentage Breakdown
<b>Profit Margin</b>	<b>Pass / Fail</b>
<b>Components 1, 2 &amp; 3 Net Present Cost (NPC1,2&amp;3)</b>	<b>23%</b>
<b>Price of Change</b>	<b>7%</b>

8.2. The format and page guidance applicable, and the templates to be used in respect of Bidders’ Financial Submissions are set out in Appendix 5a, 5b and 12 of this ITN respectively (**ITN – A5a, ITN – A5b, ITN – A12**).

8.3. The approach to evaluating Bidders’ proposals against each of the Price sub-criteria is set out below.

8.4. Profit Margin

8.4.1. Bidders were required to provide Maximum Profit Margins (stated as percentages) separately for each of Components 1, 2 and 3 as part of their PITN Financial Submissions, and instructed that at later stages of the Procurement these could be reduced but not increased. A Pass / Fail criterion is therefore included at this ITN stage, where Bidders may, at DH’s discretion, be excluded from the competition where they have proposed at ITN increases in one or more of their Component Profit Margins beyond the Maximum Margins proposed at PITN.

8.5. Components1, 2 & 3 Net Present Cost (NPC1, 2&3)

- 8.5.1.** The Indexed Price for Components 1, 2 & 3 will be taken from each Bidder's completed Financial Submission Template.
- 8.5.2.** This Indexed Price will be subject to adjustment (at the Authority's discretion) for any or all of the following that are identified to relation to Components 1, 2 & 3, to give a 'Risk Adjusted Price' for the whole life cost to the Authority of the Component 1, 2 & 3 services:
- Adjustment of all prices under the GMPTC mechanism to reflect the Maximum Price;
  - Adding the indexed financial value of the Reward Pool as proposed by each Bidder as set out in the Bidder's Financial Submission Template worksheet "Commercial Terms";
  - Any identified Manifest Errors (e.g. due to incorrect formulae or calculations within the submission template);
  - Any Assumptions proposed by Bidders within their populated ITN Solution Assumptions Template (Appendix 14; ITN – A14) and where those assumptions are determined by the Authority to be either 'rejected' or 'allowable' in accordance with the process and instructions detailed in Appendix 4 (ITN – A4);
  - The impact of any deviations from the Authority's default position in respect of Key Commercial Terms, as detailed by Bidders in the Financial Submission Template Worksheet "Commercial Terms" and where these deviations are accepted by the Authority;
  - Comparability factors as determined by the Authority; and
  - Differential internal costs to the Authority resulting from a Bidder's solution.
- 8.5.3.** The Risk Adjusted Price will be discounted to give a Net Present Cost for the Component 1, 2 & 3 Services (NPC1, 2&3). Each Bidder's NPC1, 2&3 will be used to generate a score, with the Bidder who has submitted the lowest NPC1, 2&3 ("Lowest NPC1, 2&3") awarded the full score available (23%). Each Bidder will be awarded an NPC1, 2&3 Score out of 23% as follows:

Bidder NPC1, 2&3 Score = Max Score Available x (1-Deduction); where

$$\text{Deduction} = \frac{(\text{Bidder NPC1, 2\&3} - \text{Lowest NPC1,2\&3})}{\text{Lowest NPC1, 2\&3}}$$

- 8.5.4.** The Deduction will be calculated to 2 decimal places, and the maximum value of the Deduction is 1 (i.e. Bidders cannot score less than 0 marks for this criterion).

Example:

- Bidder A price 80; Bidder B price 90; Bidder C price 100.
- Bidder A Score (lowest Bidder) is allocated maximum marks of 23%.
- Bidder B Deduction =  $(90 - 80) / 80 = 0.13$
- Bidder B Score =  $23\% \times (1 - 0.13) = 20.01\%$
- Bidder C Deduction =  $(100 - 80) / 80 = 0.25$
- Bidder C Score =  $23\% \times (1 - 0.25) = 17.25\%$

## 8.6. Price of Change

**8.6.1.** Price of Change evaluation will be evaluated based on the following:

- NPC of the optional two year contract extension period (5%); and
- Bidders' submitted Year Direct Rate (1%) and Day Direct Rate cards (1%).

**8.7.** NPC of Contract Extension Period

**8.7.1.** Prices submitted by Bidders for the final two years after the Initial Term will be discounted to generate an NPC (Change).

**8.7.2.** This Indexed Price will be subject to adjustment for any or all of the following that are identified to relation to the extension period, to give a 'Risk Adjusted Price' for the whole life cost to the Authority of the extension period:

- Adjustment of all prices under the GMPTC mechanism to reflect the Maximum Price;
- Adding the indexed financial value of the Reward Pool as proposed by each Bidder as set out in the Bidder's Financial Submission Template worksheet "Commercial Terms";
- Any identified Manifest Errors (e.g. due to incorrect formulae or calculations within the submission template);
- Any Assumptions proposed by Bidders within their populated ITN Solution Assumptions Template (Appendix 14; ITN – A14) and where those assumptions are determined by the Authority to be either 'rejected' or 'allowable' in accordance with the process and instructions detailed in Appendix 4 (ITN – A4);
- The impact of any deviations from the Authority's default position in respect of Key Commercial Terms, as detailed by Bidders in the Financial Submission Template Worksheet "Commercial Terms" and where these deviations are accepted by the Authority;
- Comparability factors as determined by the Authority; and
- Differential internal costs to the Authority resulting from a Bidder's solution.

**8.7.3.** Each Bidder's NPC (Change) will be used to generate a score with the Bidder who has submitted the lowest NPC (Change) awarded the full score available (5%). Each Bidder will be awarded an NPC (Change) Score out of 5% as follows:

Bidder NPC (Change) Score = Max Score Available x (1-Deduction); where

$$\text{Deduction} = \frac{(\text{Bidder NPC (Change)} - \text{Lowest NPC (Change)})}{\text{Lowest NPC (Change)}}$$

**8.7.4.** The Deduction will be calculated to 2 decimal places, and the maximum value of the Deduction is 1 (i.e. Bidders cannot score less than 0 marks for this criterion).

**8.8.** Evaluation of Rate Cards

**8.8.1.** In line with the requirements of Appendix 5a (**ITN – A5a**), Bidders are required to provide separate Year Direct Rate Cards, one for UK staff and the other non-UK staff in their ITN Financial Model submission. Bidders are also expected to set out the proportion of their staff based in these two areas in order to calculate a 'blended' Year Direct Rate Card. Bidders are expected to explicitly demonstrate how these proportions reconcile to the Organisation Chart provided as part of their technical submission.

- 8.8.2. Bidders are also required to provide separate Day Direct Rate Cards for each of UK staff and other non-UK staff, along with a ‘blended’ Day Direct Rate Card.
- 8.8.3. Bidders’ Profit Margin percentage (taken in aggregate across the three Components) should be applied within the Financial Model submission to the ‘blended’ Day Direct Cost Card and ‘blended’ Year Direct Cost Card to generate a ‘blended’ Day Rate Card and ‘blended’ Year Rate Card.
- 8.8.4. The ‘blended’ Year Rate Card and ‘blended’ Day Rate Card will be combined with the following weightings to calculate a combined Weighted Year Rate (“WYR”) and a combined Weighted Day Rate (“WDR”).

Grade	Weighting
SFIA Grade 1	5 %
SFIA Grade 2	6 %
SFIA Grade 3	38 %
SFIA Grade 4	25 %
SFIA Grade 5	15 %
SFIA Grade 6	6 %
SFIA Grade 7	5 %

- 8.8.5. Each Bidder’s WYR will be used to generate a score, with the Bidder who has submitted the lowest WYR (“Lowest WYR”) awarded the full score available (1%). Each Bidder will be awarded a WYR Score out of 1% as follows:

Bidder WYR Score = Max Score Available x (1-Deduction); where

$$\text{Deduction} = \frac{(\text{Bidder WYR} - \text{Lowest WYR})}{\text{Lowest WYR}}$$

- 8.8.6. Each Bidder’s WDR will be used to generate a score, with the Bidder who has submitted the lowest WDR (“Lowest WDR”) awarded the full marks available (1%). Each Bidder will be awarded a WDR Score out of 1% as follows:

Bidder WDR Score = Max Score Available x (1-Deduction); where

$$\text{Deduction} = \frac{(\text{Bidder WDR} - \text{Lowest WDR})}{\text{Lowest WDR}}$$

- 8.8.7. In each of the cases above, the Deduction will be calculated to 2 decimal places, the maximum value of the Deduction is 1 (i.e. Bidders cannot score less than 0 marks for this criterion).

**8.9. Discount Rate**

- 8.9.1. A nominal discount rate of 5.57% will be used for the purposes of the NPC calculations, comprising a real discount rate of 3.5% and an assumed rate of CPI of 2% over the term of the contract.

**9. Ranking of ITN Submissions**

- 9.1. Following evaluation in accordance with the above paragraphs of this Section C, Bidders will be ranked in numerical order against their overall score (Management and Technical score + Commercial score + Price score), and the top scoring Bidder will be declared Preferred Bidder,

subject to any conditions that might arise as a result of its Solution and the evaluation exercise conducted.

- 9.2.** The Authority reserves the right in its absolute discretion to appoint a reserve Preferred Bidder. The Authority may, in its discretion, appoint such reserve Preferred Bidder as Preferred Bidder if it is, for any reason, unable to progress to contract award with the highest scoring bidder.