**Call-Off Schedule 20 (Call-Off Specification)**

**THE SPECIFICATION**

1. **Aims and Objectives**
	1. The main aim of this tender exercise is to appoint a service provider for legal advice and support for the development and delivery of the Buyer’s International Climate Finance (ICF) portfolio of programmes.
	2. The specific requirements will be driven by the needs of individual programmes. But the Buyer anticipates the support to be on matters of foreign, corporate and commercial law where internally the Buyer either does not have the required specialist legal expertise or does not have sufficient capacity through the Government Legal Department colleagues.
	3. As such this contract is to complement legal advice currently obtained through the Government Legal Department, and not replace.
	4. Many of the ICF projects that the Buyer invests in require the Buyer to enter into legally binding contracts and funding arrangements governed by foreign law, or contribute to more complex commercial or financial investment vehicles, or a combination of both, which are both areas where the Buyer does not have sufficient expertise. The Supplier may also be required to advise on non-legally binding arrangements with international organisations. It is this external support, required on ad hoc and project specific basis, which will be required to be sourced through this new Contract.
	5. A secondary aim of this requirement is to provide knowledge sharing for Buyer staff on common legal requests or issues. Where there are frequent requests for legal advice on a common topic, we would require the Supplier to develop guidance documentation for Buyer staff with non legal backgrounds in order for them to make their own informed view of legal risk, which can then be used to inform production of project business cases or amendments to template terms and conditions. Importantly this guidance is not to make legal service support redundant; but to make initial risk assessments on common or straight forward legal issues prior to review from a legal professional (either the Supplier or Government Legal Department team). This may include advice on upcoming changes in law that will affect ICF programmes once in force.
	6. The objective of this Contract therefore is to provide legal support to the Buyer when developing formal arrangements and agreements, which support will result in documentation which will limit the level of risk the Buyer will accept to a manageable level.
2. **Background on International Climate Finance portfolio**
	1. The Department for Business, Energy and Industrial Strategy (BEIS)[[1]](#footnote-1) delivers the International Climate Finance (ICF) as part of a government commitment to spend at least £11.6bn of climate finance from 2021/22 to 2025/26[[2]](#footnote-2). Three government Departments (FCDO, BEIS and Defra) have responsibility for investing this finance.
	2. The overall aims of the ICF are to drive urgent action to tackle climate change by supporting low carbon growth and adaptation in developing countries. ICF will achieve this by:
3. **Halting deforestation and preventing irreversible biodiversity loss.**
4. **Helping countries and communities become resilient to the damaging effects of climate change.**
5. **Unlocking affordable and clean energy for all.**
6. **Building sustainable cities and transport systems.**
	1. The Buyer’s ICF team supports these objectives by working in partnership with business and the international community, to promote clean growth and take action to tackle climate change.
	2. As global leaders in green finance, the Buyer is using skills and expertise to drive technological innovation across the world. By helping developing countries stand on their own two feet, we are building the UK trading partners of tomorrow and expanding the global low carbon market, creating new jobs, companies and industries, with huge benefits for the UK.
	3. Up to $90 trillion will be spent on infrastructure across the globe in the next 15 years, and it is crucial that investment in developing countries does not lock them into high carbon energy commitments. As the private sector will finance the majority of new global infrastructure growth, we need to create the conditions that attract business to new low carbon projects. The Buyer’s ICF team works to overcome these barriers by using the UK’s climate finance to lower perceived risk, leverage private investment and influence other financial institutions.
	4. The Buyer’s ICF portfolio currently has 29 programmes with a total value of £1.27 billion. In Financial Year 2022/2023, the Buyer’s ICF portfolio programme spend was £360 million.
	5. Further information on the Buyer’s ICF programmes is available: <https://devtracker.dfid.gov.uk/department/BEIS>
7. **Background to Legal Support**
	1. The Buyer’s ICF portfolio have previously entered in to Contracts to provide similar legal support service. The most recent of these was procured using the Crown Commercial Service’s General Legal Services Framework (RM 3786) in April 2021 which will expire 6th June 2023 and was awarded to Gowling WLG[[3]](#footnote-3).
	2. To date spend on this Contract has been £176K (excluding VAT) paid through 36 separate invoices. This provides an approximate indication on the number of commissions for legal support, ranging in size and legal complexity. Annex A is provided for a summary of legal support which has been requested to date.
	3. Some examples of recent legal support requested are:
* Advice on application of the new subsidy control regime on new ICF programmes.
* Supporting with drafting funding agreements for new ICF programmes with UN organisations on tackling deforestation.
* Advice on the transfer of a programme from BEIS to Foreign Commonwealth and Development Office and then onto another organisation.
1. **Technical areas of likely support required in this Contract**
	1. From the Buyer’s experience the below are technical areas of where legal support has previously been requested and may be similar to requests in this new Contract. However it is noted that these should be considered as indicative, in no order of frequency and non exhaustive:
		1. the best financial, corporate or other structures (investment funds, joint ventures, grants, Memorandum of Understanding (MoUs) with multilateral development banks as well as other HMG Departments etc.) to deliver the proposed projects and the legal benefits and risks of using different structures, including an assessment of whether these might provide the required level of control, influence or protection for the Buyer;
		2. the nature of the governance arrangements within the proposed project structure and whether they provide the Buyer with the required level of control/influence and protection;
		3. the nature of the liability arrangements within the proposed project structure and whether the Buyer is taking on any liability by contributing to the project and whether the Buyer can recover any sums or require other actions to be taken from others involved within the projects;
		4. advice on the transparency and reporting arrangements for the projects and whether these might be sufficiently robust bearing in mind the nature of the particular project and the Buyer’s aims and objectives;
		5. the nature of the termination provisions (and whether the Buyer can terminate or otherwise exit from the project), the circumstances in which this might arise and legal consequences from such action;
		6. an assessment of the risk (see Attorney General's Guidance on Legal Risk[[4]](#footnote-4)) of successful commercial challenge on variations to existing, or new agreements (contractual and quasi-legal) based on the requirements as defined in the Public Contract Regulations 2015, and any future subsequent legislation with proposals for mitigating factors;
		7. drafting legal and quasi-legal documentation, such as contracts, grants and MOUs usually from templates to be provided by the Buyer, as well as reviewing, commenting and or drafting specific clauses relating to arising issues or concerns; advice on the terms and conditions of any arrangements and the legal consequences that might arise from these, including the benefits and risks of different drafting options; and
		8. advice on general public or international law issues that might arise including confidentiality, freedom of information, Subsidy Control and legal powers (for example under the International Development Act 2002).
	2. Further detail on how these technical areas are translated in to practical requests for support could include:
		1. Support on corporate matters might include (but is not limited to) the drafting of documentation and the provision of assistance:
2. on the establishment and running of both incorporated and unincorporated bodies;
3. to facilitate the Buyer’s investments and/or joint ventures with other bodies; or
4. in relation to the Buyer’s grant and other financial assistance schemes.

* + 1. Support on commercial matters might include (but is not limited to):
1. Drafting contracts or other legal or quasi-legal documentation and any necessary subsidiary advice;
2. Risk assessment of commercial options being developed as part of the project’s business case;
3. in the context of the drafting of the relevant contractual or other documentation; or
4. advice in the area of competition law
	* 1. The primary focus of the areas referred to 4.2.1 and 4.2.2 above will be the negotiation/drafting of the relevant legal arrangements to formalise the Buyer’s contribution to a project in question. However, there may be an ancillary requirement for legal support on legal issues connected with/arising out of the negotiation/drafting of those legal arrangements. This might include, for example, advice on the different drafting options available or how any identified risks can be addressed through the legal documentation. There may also be a requirement to produce standard template agreements and supporting guidance to enable standardised documentation to be produced in-house.
		2. Legal support may be required for specific projects or issues which affect the portfolio as a whole; for example recent changes introduced by the Subsidy Control Act 2022. As such the legal support provided by the Supplier will be required to meet the context within which it is requested.
		3. The Buyer may also require the appointed law firm to provide public law or public international law support within the context of the projects on which they are advising to maximise flexibility in the use of in-house legal resource and to provide added capacity at peak times.
		4. In respect of overseas legal jurisdictions, it is likely that the Buyer y will, predominantly, require expertise in respect of the major European legal jurisdictions, in particular, German law and Luxembourg law. It is possible that the Buyer will also require expertise in respect of other major non-European legal jurisdictions. This support could be provided either from in-house resources or via partnerships with other entities.
		5. The Supplier is required to remain aware of the public law context and through horizon scanning, bring any emerging issues to the prompt attention of the Buyer which they consider may apply to the Buyer y ICF portfolio. We would expect these updates to occur ad hoc but also brought to the Buyer’s attention in quarterly meetings.
5. **Project Commission deliverables**
	1. When a legal support requirement is identified, a Project Commission will be created by a member of the Buyer. The Supplier will then broadly deliver their support to that Project Commission in two forms:
6. **Initial telephone call.** Ability for a kick-off telephone call between the Buyer Project Office and a member of the Supplier’s project team. This telephone call is required in order to assist the Buyer project officer clearly define the task requirements and identify the limitation of scope to the Supplier.

It is anticipated that this telephone call should be no longer than an hour in duration. It should be noted that in some situations, a legal query or opinion could be sought, provided and the issue resolved in this initial telephone call.

1. **Project Commission specific outputs.** Following the kick-off telephone call, the requirement for advice will be defined on a commission-by-commission basis and a Commissioning Form will be completed by the Buyer and sent to the Supplier which will detail the area of support which is required (often with specific questions to be answered by the Supplier) and how the advice should be delivered. Deliverables could include some or multiple of the below, but not be limited to:
2. Responding to comments within a document (as a comment within that document)
3. Provision of a concise paper explaining issues, risk and proposed solutions for an audience without a legal knowledge background
4. Creating new agreement documents which could be used by the Buyer and their delivery partners
5. Providing training on a particular legal issue to Buyer staff (including members of the Government Legal Department);
6. Attendance at meeting with other stakeholders in order to provide a legal comment or support the Buyer negotiation team.
	1. Where requested, all deliverables are required to include a clear legal response to the question being asked of in the commission, with justification as to how that answer was created, referring to the Government Legal Department’s risk matrix. Deliverables should wherever possible be complete and not require further investigation in to other issues, unless the Supplier feels it is fundamentally necessary to do so.
	2. It is important to note that the project officers requesting advice will unlikely have a legal background. In many cases, legal considerations and issues are one of many which require resolving on a project and as such requestors are seeking short implementable solutions to their issues. As such, advice must be drafted to be suitable for an audience of limited background legal knowledge. The advice should be a complete answer both to specific legal questions posed and any legal questions which the Supplier considers relevant but which weren’t expressly raised by the project officer. The Buyer will be relying on the Supplier’s advice in order to assess and manage legal risk.
	3. However, on some projects, the Supplier may need to work in conjunction with the Buyer’s legal advisors, who are part of the Government Legal Department. The exact requirements for legal support and arrangements for providing this will be agreed on a commission-by-commission basis.
7. **Supplier Skill and knowledge set**
	1. To provide legal advice and facilitate the preparation of the documents necessary to formalise the Buyer’s contribution to proposed projects, the Buyer requires in-depth expertise in areas of English corporate, contracts and competition law and the ability to provide similar expertise in a variety of overseas legal jurisdictions (including German and Luxembourg law) either from in-house resources or via partnerships with other entities. If a separate entity is used, the Buyer would expect the supplier to sub-contract the work to avoid the Buyer having to enter into a separate contract. The Buyer also requires expertise on relevant areas of public law. This includes:
8. know-how and expertise of individual lawyers / teams;
9. appropriate commercial templates / precedent banks;
10. knowledge of providing legal input on similar projects;
11. working in partnership with Buyer policy officials and in some cases Buyer legal advisors;
12. understanding the policy context in which they are asked to provide expertise; and
13. making available knowledge of good commercial practice in the relevant market(s).
	1. The Supplier appointed must have expertise in drafting appropriate documentation, sometimes at short notice (the Buyer will indicate required timelines when in Terms of Reference, detailed below). To do so, the Supplier will:
14. work with Buyer policy officials to distil any policy instructions or objectives required for the legal drafting;
15. at all times, draft in a clear, modern and plain-English style;
16. if available, draft in accordance with government templates (e.g. Crown Commercial Service model terms and conditions);
17. at all times, ensure that any drafting complies with government commercial policy (e.g. Crown Commercial Service Procurement Policy Notices (PPNs) and government policy on IPR); and
18. if required, produce standard templates and supporting guidance to enable standardised documentation to be produced internally by the Buyer and Buyer officials to draw on the relevant advice throughout the duration of the project.
	1. The Supplier must be able to provide advice and expertise clearly and succinctly. If this involves the issue of legal risk, the law firm(s) will be expected to:
19. be flexible and pragmatic; for instance, by suggesting alternative options to achieve objectives and mitigate risk;
20. be able to explain clearly the rationale for a particular approach, tailored to different audiences, for instance senior officials, Ministers and Buyer legal advisors; and
21. provide risk-based legal advice in accordance with the Government Legal Department guidance (Attorney General's Guidance on Legal Risk[[5]](#footnote-5)).
	1. The Buyer expects that the Supplier will work to agreed deadlines and be able to provide rapid support to the Buyer, at short notice, when necessary. The Buyer will endeavour to provide reasonable deadlines for the completion of tasks, this will include consideration of when multiple commissions may arise at certain times of the year for example in the final quarter of the financial year, but the work of the department is sometimes at short notice and involves fast paced timescales dictated by the government context in which the Buyer operates;
	2. The Supplier will be required to balance use of an appropriate level of fee earner for a particular task with the need for some consistency in the lawyers involved in advising the Buyer so that the Buyer develops reliable points of contacts who understand it’s business. The Buyer would encourage involvement of junior members of staff to work on more routine, lower risk commissions, but with suitable levels of quality assurance. This is in order to reduce costs as well as increase knowledge across the Supplier’s project team, thereby increasing levels of contingency.
	3. The Supplier will allocate each proposed project team member a Grade as defined by Framework Schedule 1 (Specification), paragraph 5.1.4. These descriptions are repeated within the Pricing Schedule.
22. **Commission Management**
	1. It is envisaged that the Contract will be managed by the Buyer’s ICF programme management office in their central co-ordination and oversight role. But specific requirements will come from individual programme leads e.g. drafting clear instructions and providing the relevant background documentation with the necessary support from the Government Legal Department. The Buyer’s Contract Manager will seek to manage commissions and timelines in order to avoid creating conflicting resource requests for the Supplier, however there will likely be instances of multiple commissions being required at any given time.
	2. As such when a potential commission is identified the following process may be followed:
23. Buyer Contract Manager (or deputy) receives request for legal support from member of the Buyer staff.
24. Contract Manager reaches out to Supplier via email seeking to arrange a kick off telephone call with Supplier representative, the Buyer Contract Manager and Buyer staff member (potentially other stakeholders such as Buyer Commercial or Government Legal Department also). The telephone call should occur as soon as practical, diaries dependent, but no more than 5 working days following this initial communication. In this initial request the Buyer Contract Manager will identify the topic area which the advice is required on to inform the Supplier prior to the meeting and to ensure any persons with specialist knowledge can attend the call also from the Supplier’s team.
25. Kick off telephone conversation occurs, chaired, where possible, by the Buyer’s Contract Manager. This call will be used to discuss the nature of the legal support required and for the Supplier to assist the Buyer in defining their requirement and setting expectations on the form of the deliverable. It may also include discussion on the scope of the request.
26. The Buyer project team will complete a project Legal Instruction Template (LIT) which will detail the requirement, the question to be asked and the nature of the deliverable and proposed timeline for response. This will be reviewed by the Buyer Contract Manager who will then either directly send on to the Supplier or approve that the project team can do so.
27. The Supplier will review the LIT and confirm or suggest any alternative timeline for Buyer consideration as well as review the deliverable as well as price. This should be a maximum price based on time and expenses from provided day rates. This should be returned to the Buyer within 2 working days.
28. The Buyer will review the LIT and formally approve the Commission to commence, via email. The Buyer may choose to query the costs or timeline with the Supplier prior to acceptance. To note this may take a more formalised route requiring Supplier and Buyer signature to the LIT, to be decided upon between both parties.
29. The Supplier will then commence delivery of that commission. Draft deliverables, or indicative answers by identified dates are expected to be identified within the LIT. Reporting and communication requirements with the Buyer project team will also be identified in the LIT.
30. Once the final deliverable of that Commission is approved by the Buyer the Commission has ended, but note that there may be follow up actions or support at later dates based on that advice. The Supplier must track the time spent on this additional support, but the first £1,000 of value is expected to be at no charge to the Buyer. Where Support exceeds this amount, then a new or changes to the existing LIT may be required.
	1. To note that all activities undertaken by the Supplier up to point 7 above will be undertaken at the expense of the Supplier and no charge to the Buyer. The exception to this could be where step 8 requires a new commission and step 3 is considered part of the ongoing work rather than an initial call. Only once the Buyer has agreed the LIT and the Commission commences will the Supplier be permitted to charge the Buyer for work on that Commission.
31. **Contract Management**

*Duration of the Agreement*

* 1. Service Commencement for this Contract is expected to begin 7th June 2023. The Contract will deliver Services for three years and is expected to end 6th June 2026. However the Buyer reserves the right to review the Contract performance in 2025 and choose to end the Contract after 2 years, by 6th June 2025 (this will be the Initial Call-Off Contract period). The Buyer’s decision not to continue with the Contract in to its third year may be due to changes in Buyer priorities and pipelines or evidenced poor performance from the Supplier. Any decision to proceed with ending the Contract early will be made with mutual agreement with the Supplier. The Buyer will notify the Supplier at least three months prior to June 2025 if it intends to end the Contract early.
	2. If there are active Commissions still being delivered by the Supplier at the point of the Contract ending, these are to continue to be delivered after the expiry of the Agreement under the same Terms and Conditions.

*Non exclusivity*

* 1. The Buyer reserves the right to procure similar services and not use this Agreement. Budget figures provided are indicative and the Buyer and reserves the right not to use all or part of the Services identified.

*Quality Assurance*

* 1. The Supplier is required to produce (as part of their Tender submission) and maintain throughout the Duration of the Contract a quality assurance plan and agreement to follow any reasonable Buyer requirements. The Buyer expects that all outputs will be grammatically correct, well-written and professionally drafted using UK English language.
	2. The Buyer will typically provide one or two rounds of comments on any Commission’s final deliverables, (i.e. reports) to resolve any questions that may remain. The Buyer’s Contract Manager and project team must be engaged in the development of a response to the LIT, and it is expected that the Supplier must share a draft final deliverable prior to it being developed in full.
	3. Quality assurance measures must be factored into workplan timelines. The Supplier must provide periodic updates on the progress of all commissioned deliverables (planned, completed and ongoing), via email, telephone or formal meetings, to the Buyer. If the Buyer considers that the quality of deliverables is unacceptable, it reserves the right to request additional drafts at the expense of the Supplier.

*Supplier’s project team*

* 1. The Buyer and the Supplier will identify individuals in their organisations whom will undertake the Buyer Project Manager and Supplier Project Manager in accordance with Call Off Schedule 7 (Key Supplier Staff) and Call Off Schedule 15 (Call-Off Contract Management). Key Roles and Key Staff are to be identified in the Tenderer’s Tender submission Call-Off Schedule 4 (Call-Off Tender).
	2. The Supplier will identify a core team of individuals who will act as the primary contact points for developing and delivering each Commission. Key Roles (and likely skills) rather than individuals are expected to be identified at the point of Tendering. The project team must ensure that it has the coverage of all those technical areas identified in Section 4 above and be able to source individuals to provide knowledge should a commission require knowledge from an area not identified above.
	3. It is expected that Key Staff will remain in place for the duration of the Contract. Where a change of Key Personnel is required, the Supplier shall submit to the Buyer an identified replacement who must have a comparable skill set. Where a comparable skill set is not available, the Supplier shall identify mitigation measures to ensure that the skill set is not lost and there is no material change to the initial tender proposal, which will be included in the final agreed contract documentation. The Buyer reserves the right to reject proposed individuals if it does not consider this skill set replacement is not suitable and for the Supplier to identify another person for this role.
	4. It is expected that when delivering a Commission (including activities for the kick-off meeting) the Supplier will be able to fully resource the proposed delivery. The Supplier must ensure that suitable mitigation measures for staff absence is considered when developing a LIT, for example named deputies for key roles.

*Contract Meetings*

* 1. The Supplier is not to expect payment for any Contract meetings with the Buyer.
	2. The Supplier and Buyer will have quarterly meetings, which will be attended by the Buyer Project Manager and Supplier’s project managers and others by request. Quarterly meetings will typically be virtual and will include provision of Performance Monitoring Reports, as defined in Call Off Schedule 14 (Service Levels), and may include but not limited to:
* Reporting on Performance KPIs;
* Issues faced in delivering Requirements;
* Horizon scanning on issues which could impact the Buyer
* Pipelines; and
* Risks to delivery.

As per Call Off Schedule 14 (Service Levels) this process and the content of the meetings are to be agreed between the Buyer and the Supplier within 20 days of the Start Date.

* 1. This meeting may be conducted face to face at the Buyer’s premises, however preference may be for virtual meetings to occur. This will form the Operational Board as defined in Call-Off Schedule 15 (Call-Off Contract Management) as well as Performance Review Meetings, as defined in Call Off Schedule 14 (Service Levels).
	2. The fourth Quarterly meeting will be an Annual Contract Review. This will look at performance of all Commissions the previous year, pipelines and any issues in delivery identified.
	3. Supplier’s costs of Quarterly and Annual Contract Meetings will not be charged to the Buyer.

*Gender, inclusion, and equality and Social Value*

* 1. The Supplier must ensure that the principles of the UK’s Public Sector Equality Duty, including but not limited to marginalised groups, are applied to all decisions regarding personnel throughout the delivery of this programme.
	2. The Buyer wishes to implement the Social Value Model[[6]](#footnote-6) in this Contract, in particular the theme of Tackling Economic Inequality and the Model Award Criteria 2.2. of: “Creating employment and training opportunities particularly for those who face barriers to employment and/or who are located in deprived areas, and for people in industries with known skills shortages or in high growth sectors.” The Supplier will in delivery of this Contract demonstrate how delivery of this Call off Contract will result in increased training opportunities for groups the Supplier identifies as being under represented in the Legal Service workforce. Identification or reporting metrics will be monitored throughout the duration of the Services.

*Ethics and safeguarding*

* 1. The Buyer expects the Supplier to adhere to the Buyer’s Supplier Code of Conduct (Annex B). Reference to BEIS in this document, should be read as meaning the Buyer.

*Supply chain mapping and modern slavery*

* 1. The Buyer is expected to report within central government on the levels of contracted work being allocated to Small and Medium Enterprises (SME) and other sub-contracted organisations. It is a requirement to provide details regarding the levels of direct and indirect departmental SME spend with major Delivery Partners to the cross-government SME Small Business Policy team working on this initiative. The Buyer is also interested in gathering details of the organisations working within the supply chains of directly contracted partners. As part of the contractual compliance checking process, the Supplier is required to submit returns providing these details, as a minimum on an annual basis.
	2. The Supplier is required to manage and monitor any modern slavery risks in creating its proposal for, and during, the delivery of services. Measures must be introduced to monitor and mitigate any modern slavery supply chain risks too. The Supplier must have a clear and unambiguous process for reporting and responding to suspected incidents of modern slavery that also accommodates its supply chain.

*Duty of care*

* 1. The Supplier will accept full responsibility for the duty of care of their personnel, their sub-Suppliers and any external specialists or partner organisations required to deliver requirements. The Supplier must have appropriate arrangements and procedures in place to ensure their safety and wellbeing and the Buyer may request detail of this process in order for its own security department to review if the processes are acceptable to the Buyer. Where processes are deemed not acceptable by the Buyer, the Buyer will work with the Supplier to agree a rectification plan.

*Intellectual property rights*

* 1. All outputs of this Contract will be considered project specific intellectual property (IP), unless otherwise agreed by the Buyer. As per paragraph 9.2 of the Framework Core Terms new IP will be assigned to the Buyer, in this case the Buyer and Cluster members (Commissioning Authorities).

*Data processing*

* 1. The Supplier will be compliant with the Data Protection Legislation, as defined in the Call off Contract. A guide to the General Data Protection Regulation (GDPR) published by the Information Commissioner’s Office can be found [here](https://ico.org.uk/for-organisations/guide-to-data-protection/).
	2. The Buyer will work with the Supplier during the LIT development to confirm if the requirement is consistent with the Contracts GDPR table or if exceptions are required, and this will then be monitored during the lifetime of each Requirement.

*Transfer of knowledge to the Buyer (Exit Management), business continuity and disaster recovery process*

* 1. The Supplier is required to set out how they will facilitate the effective transfer of knowledge to the Buyer at the end of the Contract (Exit Plan). This includes the use and provision of all data used for the services (subject to commercial confidentiality considerations) and the transfer of any documents (reports and templates) for continued use by the Buyer in any manner it chooses. The content of this Plan is to be in line with the requirements as detailed in Schedule 10 (Exit Management). The Buyer will liaise with the Supplier to agree a timeline for this plan, but it a Draft version is expected to be produced within the first quarter from the Start Date and it is to be finalised in the last three months of the Agreement if the full duration is agreed.
	2. As per Call off Schedule 8 (Business Continuity and Disaster Recovery) the Supplier will provide a draft Business Continuity and or Disaster Recovery Plan in the event of a known or unforeseeable event, for example COVID-19. This plan is to be provided to the Buyer prior to the first quarterly meeting, with the intention for its approval in this meeting. Its contents are permitted to be high level but should follow those described in Call Off Schedule 8 (Business Continuity and Disaster Recovery) where relevant and proportionate.
	3. In accordance with the GDPR table, any data produced by the Supplier will be either securely destroyed or transferred back to the Buyer at the end of the contract and stored by the Buyer. This is to be agreed following the commencement of each Requirement.

*Invoicing*

* 1. The Commissioning Buyer will aim to process all payments as soon as possible, and within a maximum of 30 days from receipt of an undisputed and correctly submitted invoices, in line with the Call Off Contract Terms and Conditions.
	2. The Supplier must pay any sub-Suppliers within 30 days of receiving a valid invoice. If this 30-day deadline is inconsistent with the Supplier’s invoice to the Buyer (i.e. the invoice to the Buyer is greater than 30 days after receipt of a valid invoice from a sub-Supplier), and if the invoice is below £5,000 (including VAT) in total, the Supplier is expected to resolve this directly with the sub-Supplier. If the amount exceeds £5,000 (including VAT), and it could create issues in terms of the Supplier’s own cash flow, the Supplier is permitted to invoice the Buyer ad hoc for any sub-Supplier payments outside of the agreed invoicing schedule. However, the Buyer expects the Supplier to limit these incidences as much as possible and as a minimum include reference to it in the LIT.
	3. The Supplier must have management measures in place to avoid disputes on sub-Supplier invoices, which could impact the time for payments to issued.
1. **Costs and Pricing**
	1. The Buyer has estimated the cost of the Contract, which has been informed by previous years’ work. This Contract has a maximum contract value of up to £400,000 excluding VAT but including any applicable international taxes, which is the maximum value that can be awarded for this scope of work inclusive of expenses. It is noted that these figures are heavily caveated and are subject to the outcome of internal spending reviews.
	2. The Buyer reserves the right to amend the Contract to increase the scope of activities required of the Supplier, so long as the maximum Contract value permits this and any additional activities meet the Aims and Objectives of the Contract as identified in Section 1 of this Specification. Contract amendments would be managed by a formal variation process and will be made with mutual agreement with the Supplier.
	3. The Buyer reserves the right to increase the maximum Contract value during delivery, if funding is available, the performance of the Supplier is deemed by the Buyer to be satisfactory and the service will continue to deliver value for money. This is only permitted if the proposals are compliant within the remit of Public Contracts Regulations 2015.
	4. The Buyer also reserves the right to reduce maximum Contract value, which will be formalised as a variation to the Call off Contract. This is only permitted if the proposals are compliant within the remit of Public Contracts Regulations 2015. Changes to Contract value will be made in consultation with the Supplier.
	5. The Supplier shall charge the Buyer for their services based on a standard economic unit of a rate per hour per grade band (as defined in Framework Schedule 1 (Specification)). There will be two sets of rates; the first to be used for commissions which commence between 7th June 2023 and 6th June 2025 (the Initial Call Off Contract period) and the second for commissions between 7th June 2025 and 6th June 2026. Where commissions occur in both periods, the rates identified in the Initial Call Off Contract period will be utilised. These rates will be provided at the point of Tendering and which will form part of the Contract. Travel shall be in accordance with the Buyer’s Expenses Policy (Annex C), references to BEIS should read the Buyer.
	6. The Buyer will only pay for expenses which can be evidenced with receipts, and which adhere to that Buyer’s Expenses Policy (Annex C). Where expenses exceed the limits set out in this policy, the Supplier will be required to cover any excess, unless a strong justification can be provided.
	7. Following delivery to the Buyer of a final deliverable, noting after draft versions have been provided, the Buyer will decide if the final output is to its satisfaction. Payment can only be made following satisfactory delivery of the final deliverable. Once this has been determined, an invoice can be created by the Supplier on completion of work by the Buyer. Before payment can be considered, each invoice must include a detailed elemental breakdown of work completed and the associated costs against those quoted in the Legal Instruction Template. The Buyer will generate a purchase order number and invoices must quote this purchase order number and sent to the Buyer’s project officer.

1. **Continuous Improvement**
	1. The Supplier will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.
	2. As per Call Off Schedule 3 (Continuous Improvement), the Supplier will create a Continuous Improvement Plan annually which will be provided to the Buyer prior to the Annual Contract Review meeting. It is the intention that subject to the Buyer’s review, the Buyer will formally approve this plan during this meeting.
	3. The Buyer reserves the right to request a Benchmark Review, as detailed in Call off Schedule 16 (Benchmarking) if it feels that value for money is not being obtained from deliverables.
2. **Conflict of Interest and Confidentiality**
	1. There may be a time where conflict of interest occurs where the Supplier is unable to deliver the role, for example they may be delivering a project for the Buyer themselves. In this event, the Buyer reserves the right to undertake Commissions with another organisation noting the non-exclusivity clause stated above.
	2. Where a Commission requires a Supplier to provide advise which will impact a third party, and where it is identified that there is a conflict of interest in providing information to the Supplier, the Buyer may reasonably request the Supplier to develop a conflict of-interest mitigation solution, as part of their LIT, to ensure that information passed between parties is treated confidentially.
	3. All information it receives from the party it is assessing as part of delivery of a Commission must be treated as commercially sensitive and the Supplier holds full responsibility for managing this information during delivery. Any failure to handle this information confidentially may be considered by the Buyer as a material breach of this Contract.
3. **Performance Management**
	1. Supplier performance will be measured using contract Key Performance Indicators (KPI) The requirements of the Contract Terms and Conditions will apply throughout service delivery. The information contained in this Schedule is replicated in Call-Off Schedule 14 (Service Levels).
	2. KPIs will be used to align the Supplier’s performance with the requirements of the Buyer. Contract KPIs must be realistic and achievable, and also have to be met, in order to demonstrate that the service is being delivered to an adequate quality.
	3. The Buyer will complete a KPI report for each Commission and will share this with the Supplier upon completion (i.e. final payment) of that Commission.
	4. KPIs are included in below. The Buyer reserves the right to seek to amend the KPI’s detailed below or add any new KPI’s throughout delivery should the Buyer or Supplier believes changes are required to improve the Services. Any changes to the KPI’s will be by mutual agreement with the Supplier and be confirmed by way of a formal contract amendment. The Supplier may propose changes to KPIs also throughout delivery which would be considered by the Buyer, so long as the nature of the KPIs nor the risk profile of the Contract as a whole is not significantly changing.
	5. The Buyer will compile all KPI assessments undertaken prior to the quarterly Contract meeting. The provisional results of this will be shared with the Supplier for comment, before a final set is agreed and signed off during the following quarterly Contract meeting.
	6. Performance of each KPI will be recorded against a red, amber, green “score”, as described below. These levels of performance are detailed in the table below.
	7. Where KPI’s have not been met as a result of measures or activities outside of the Supplier’s direct control, the Buyer may choose to disregard the KPI and corrective measures in that instance.
	8. Where a Rectification Plan is required, the Supplier must consider the content of Joint Schedule 10 (Rectification Plan) for the content of the Rectification plan, however the final structure of this must be agreed between the Supplier and the Buyer.

*Scoring methodology for KPI criteria:*

| KPI Number | Topic | What is Measured | Green Score | Amber Score | Red Score |
| --- | --- | --- | --- | --- | --- |
| 1 | Quality | The number of comments or versions of Draft Final Deliverable until a Final deliverable is accepted by the Buyer.[[7]](#footnote-7) | 2 rounds of Draft report before a Final deliverable is agreed by the Buyer | Final deliverable requires more than 2 round of Draft before Final deliverable is agreed | Final deliverable requires more than 3 rounds of Draft before Final version is agreed and initial Draft versions require, in the opinion of the Buyer, significant Buyer input and or questions to be resolved. |
| 2 | Timeliness  | Deliverables are provided to the Buyer in line with those dates in the LIT, or where changes are agreed with by the Buyer | Deliverables are provided on the day expected, or a delay is caused by a genuinely unforeseeable event (not including staff leaving the organisation) | Deliverables are delayed by up to a week and caused by an issue which is within the control of the Supplier. | Deliverables are delayed by over a week which are caused by a reasonable, in the view of the Buyer, foreseeable event which is within the control of the Supplier. |
| 3 | Accuracy | Deliverables are error free and there are inaccuracies in evidence, analysis and report text and formatting.Errors would include omissions, such as failing to identify, adequately assess or document material risks that any reasonably qualified and diligent professional would have identified and reported on. As these will not always be apparent until the passage of time, the Buyer reserves the right to amend a score of a KPI if the error transpires in subsequent years. This is without prejudice to any rights the Buyer has under Tort law. | The Final deliverable is error free in the view of the Buyer through the life of the contract. | The Buyer identifies minor (in the opinion of the Buyer) errors in the Final or Draft deliverables, or where the Buyer is made aware of errors in Draft versions. The errors could become apparent through the passage of time. | The Buyer identifies major (in the opinion of the Buyer) errors in the Final or Draft deliverable, or where the Buyer is made aware of errors in Final deliverables which results in an internal review determining the recommendations of the Final deliverable are in light of new evidence which could be reasonably obtained by the Supplier during delivery of the Requirement, be inappropriate.The errors could become apparent through the passage of time. |
| 4 | Interpretability | Deliverables are presented in a way that recommendation are clear and unequivocal, with reasonable assumptions and caveats being clearly identified and minimised and wherenon legal professionals are able to understand the arguments detailed in the deliverables in order to make informed decisions. | Deliverables are worded clearly and from this, and engagement throughout their production, the Buyer officers feel confident they understand the decision made and its justification. | The Buyer officers are not satisfied that the Final deliverable fully addresses the question set in the LIT with partial ambiguity or where clarity is missing, or where there is ambiguity in the response. | Buyer officers are not satisfied that the final deliverable addresses the question set in the LIT or where the response is deemed by Government Legal Department colleagues to be difficult to fully appreciate. |
| 5 | Horizon Scanning | The Supplier provides timely advice on potential new legislation which they identify as impacting the Buyer, both through ad hoc emails and then amalgamated in quarterly meetings | New legislation is flagged to the Buyer at the earliest opportunity and the impact this could have on the Buyer is clearly articulated, with mitigation factors proposed. | New legislation may have been identified but mitigation actions not proposed, resulting in urgent requests for assistance to manage these by the Buyer. | New legislation which impacts the Buyer comes in to force which the Buyer Contract Manager has not been made aware of by the Supplier and results in urgent requests for assistance to manage these by the Buyer, or where the Buyer is formally challenged on omission to address it. |
| *Amended for Contract: See Call Off Schedule 14 for Additional Social Value KPIs* |

* 1. Green score: If a green score has been awarded to a KPI then no further action is required from the Supplier, with the exception of continuing activities to maintain this score for the next reporting period.
	2. Amber score: If an amber score has been awarded, the Supplier must examine and implement measures to prevent this KPI being scored an amber in subsequent reporting periods and requirements. The Supplier must create a Rectification Plan at their own cost. This must detail how they will change their practices to prevent another amber score being awarded for this KPI. The timeline for producing this Rectification Plan must be agreed between the Buyer and the Supplier and must only be implemented following approval by the Buyer. The Buyer reserves the right to terminate the Contract if a satisfactory Rectification Plan cannot be agreed.
	3. Red score: If a red score is awarded the Supplier must create a Rectification Plan at their own cost. This Rectification Plan must detail how they will change practices to prevent another red score being awarded for this KPI. As above, the Buyer must agree to the timelines and contents of the Rectification Plan prior to implementation and reserves the right to terminate the Contract is a satisfactory plan cannot be agreed. If, following implementation of a Rectification Plan, the Supplier scores a red in the same KPI in any subsequent period throughout the duration of the Contract, the Buyer reserves the right to terminate the Contract under Clause 10.4.1 g of the Core Terms. The Buyer also reserves the right to terminate this Contract based on a red score without requesting a Rectification Plan, if it is of the Buyer’s view that a material Default has occurred under Clause 10.4 of the Core Terms. The Buyer reserves the right to suspend, or partially terminate this Contract, while a Rectification Plan is being developed and agreed, where there is justification to do so.

* 1. It is expected that the Supplier will require some relationship understanding when delivering initial requirements for the Buyer. As such the first 4 Commissions for the Buyer will be treated with some flexibility on KPI scoring from the Buyer. After the first 4 Commissions, the Supplier is expected to have understood the nature of the Buyer’s requirements and manage these accordingly.
1. **Clustering**
	1. Under Call Off Schedule 12 of the Contract, other Government Departments who work in International Climate Finance, namely the Foreign Commonwealth and Development Office (FCDO) and Department of Environment, Food and Rural Affairs (Defra) may request to Commission the Supplier to undertake a service. Their engagement is limited to only being related to projects utilising International Climate Finance. They are identified as Cluster Members.
	2. In such instances access to this Contract would be granted by the Buyer’s Project Manager and a named Clustering Member officer will be the liaison. Cluster Members will commission requirements in the same way, but may require Legal Instruction Templates to be signed by both parties. The Buyer’s Project Manager will oversee the commission also and will be the escalation point in the event of any dispute. The Cluster Member may pay the Supplier directly, but to note that all spend under this Contract, from the Buyer and Cluster Members will be up to the maximum amount as detailed in the Contract Order Form.

*Dispute Management*

* 1. Where a dispute occurs between FCDO or Defra and the Supplier, the Buyer will act as mediator and the Buyer will make all final decisions on behalf of Defra and FCDO.

**Annex A:**

**Summary of legal support which has been requested to date.**

The examples below are legal commissions sent under the current BEIS ICF external legal services contract. Some of the information has been redacted given commercial sensitivities and some of the original wording in the commission has been modified to make it suitable for this tender specification. All advice would have included the relevant background documents and the opportunity for a phone call to clarify the advice request.

The intention of this Annex is to provide Tenderers with an indication of the type of legal advice that could be requested under this new contract.

1. **Example 1: Transfer of membership in Limited Liability Partnership**

*“We’re looking first to understand the necessary steps and processes to go through (ideally including timings and responsibilities) to substitute the BEIS SoS as the HMG member of a LLP, with the Foreign Secretary. We are discussing with BEIS legal on the intra-govt transfer side, but coming to you for advice on what we must do within the bounds of the LLP.*

*As a deliverable, an email or document laying out the main steps, relevant actors and timings would be ideal.*

* *This is an example of an initial request for advice with the work later evolving into a longer-term project to transfer the LLP Membership not only between HMG departments but to an external party.”*
1. **Example 2: Direct awards**

*“We would like to assess the likelihood of a successful challenge for awarding a non-contractual funding arrangement, without holding a competition. What principles should we apply when undertaking this assessment to reduce or remove the risk of any successful challenge?*

*Context: We award a lot of grants and other funding arrangements without competition, especially when to multi/bi-lateral funds to developing banks, voluntary contributions (where we consider the partner is delivering activities in line with our corporate objectives), memorandum of understandings or non-competed Grants. As such we want to include an assessment on the likelihood of successful commercial challenge (via Judicial Review – unless you feel other methods of challenging the authority is more appropriate – so this and any other form of challenge route), to inform the business case. Additionally, it would be good to receive a steer on definitions of non-contractual arrangements – would the term “grant” cover all non-contractual arrangements. We use the term loosely due to lack of clarity but have identified other arrangements we have such as voluntary contributions, funding arrangements, MoUs with organisations, so some thoughts from your experience on what these are and if the categorisation impacts the likelihood of successful challenge.*

*Now noting that this is a little more high level/strategic question, but it would be good to have:*

* *A flow chart*
* *A short (less than 1 side of A4) description of what non contractual arrangements could be and any differences in the terminology of them.*
* *Some generic lines where outputs or end results of the above flow chart result in a paragraph or text which officers could take and paste in to a business case as “legal considerations”. Ideally if these could be based on the standard GLD risk assessment levels also for consistency.”*

1. **Example 3: Transfer of BEIS being a member of a company limited by guarantee**

*“We are seeking legal advice for a BEIS International Climate Finance (ICF) funded programme which provides technical and financial support to private sector developers of small-scale renewable energy projects in sub-Saharan Africa. We are seeking legal advice on the transfer from BEIS to FCDO.*

***For background on governance structure:***

* *The programme is established as a company limited by guarantee.*
* *The Members of the company are BEIS (formally the Secretary of State) and a private sector organisation (who are also the delivery partner). The company has Articles of Association which set out the governance arrangements, in particular, the role of the Members and the Board of Directors.*
* *The Board of Directors instruct the delivery partner on the programme activities. That instruction is governed by a Management Services Agreement (MSA).*

*We are seeking to amend the Articles of Association which will be executed by the company secretary.*

*The Secretary of State (SoS) of BEIS is currently a Member of the CLG and on the Board and Investment Committee.**For transition, we expect that BEIS SoS will need to resign as member and an FCDO replacement will need to be formally approved by the Board. We are seeking advice on who the Membership could transfer over to in FCDO:*

1. *Could the BEIS SoS membership transfer over to FCDO as an entity itself?*
2. *Alternatively, are there any legal reasons preventing the Member be* ***any*** *Minister in FCDO or an FCDO accounting officer?”*

1. **Example 4: Advice on contract novation**

*“A technical assistance programme currently managed by BEIS and funded by UK Official Development Assistance (ODA). From 1 April 2022, it will be managed by FCDO with BEIS retaining a smaller financial stake and joint governance in the programme. Delivery of this programme is supported by four separately contracted delivery partners. These four active contracts with delivery partners must be successfully novated from BEIS to FCDO on 1 April 2022.*

*Costed contract extensions to all four contracts (together “the contracts”) were agreed between BEIS and the respective suppliers during 2021, and signed copies of the current contracts are attached to this instruction. The Lot 1, Lot 2 and Lot 3 contract extensions were processed under PCR Reg 72(b) as extension was not specifically provisioned for in the original tender.*

*Please note that the terms, coverage and risk profile of each of the contracts is different and therefore the approach/risk for each may be different.*

***Instruction***

*Gowlings is instructed to review the contracts and provide advice to BEIS and FCDO jointly on what is required to successfully novate the contracts from BEIS to FCDO. The advice / deliverables should be in the form of:*

1. *Draft novation document for each contract to act as the vehicle by which novation will occur.
Gowlings is instructed to advise on the best mechanism for novating the contracts (e.g., side letter, new contracts, etc.) such that all rights and obligations currently held by BEIS transfer to FCDO and there is no ongoing liability upon BEIS. Gowlings should draft this novation agreement.*

*Any changes to contract terms and conditions anticipated by FCDO to bring the contracts into line with their standard terms and conditions is a matter between FCDO and their contractors and as such it is anticipated that these discussions will happen after the novation of contracts from BEIS to FCDO and is therefore not within the scope of this instruction. Consequential changes due to the change of party, such as notice provisions, should be made upon novation.”*

1. **Example 5: Advice on indemnity/liability**

*“We’ve been invited to provide a Council member for a new governance function, that will oversee the development of some global carbon market infrastructure. The organisation, that will act as the secretariat, have invited 5-6 people to join, including a UK person. They would serve in an individual/expert capacity. Seniors have asked whether this could expose any representative to any indemnity/liability issues. Are you able to advise on this point specifically please?”*

1. **Example 6: Advice on funding arrangement for a new programme**

*“Summarise the legal services or advice sought:*

* 1. *Review the draft Standard Administrative Arrangement (attached with original commission) between BEIS and the Multi-Partner Trust Fund (but noting that the document is not legally-binding, as it is an Administrative Arrangement), and associated documents (Memorandum of Understanding, and Terms of Reference). Flag any legal risks to BEIS and propose drafting changes to mitigate these. The documents will need to be agreed with the delivery partner, so we would like Gowlings to provide legal advice for any subsequent rounds of comments with them.*
	2. *Subsidy Control Review:*
		1. *Confirm whether or not the previously conducted subsidy control review for the approved business case remains valid in light of the new subsidy control Act that comes into force on 4th January. If the previous subsidy control review is not valid, provide an updated subsidy control review.”*

1. **Example 7: Advice on a draft business case**

*“Please find below the request for legal advice on a new proposed programme:*

1. *Summarise the legal services or advice sought:*
	1. *Review the draft Outline Business Case for a new proposed Programme It is an existing pooled multi-donor fund. Please provide legal advice on:*
		* *International development Act spending power – to review text currently within the Commercial Case and provide advice on drafting/application/support on additional drafting if needed (pages 44-46)*
		* *Subsidy Control Review – if possible, to do a full subsidy control assessment on this contribution. If not possible at this stage/within this time, to do a high-level initial assessment on subsidy control application*
		* *Public Sector Equality Duty – high-level assessment on application of PSED*
		* *Grant v contract provision and application of Public Contract Regulations. To review Programme Team’s conclusions and provide advice with respect to any potential legal challenge on the basis of this being incorrectly classified as a grant as opposed to public service contract, risk of public procurement law challenge, and any challenging succeeding. To provide further drafting, if needed.*
		* *To identify if any further legal/general public law principles might be needed for analysis/assessment for this ODA investment. (e.g., application of Procurement Bill (applicable from 2024)?)”*

**Annex B: Supplier Code of Conduct**



**Annex B: Expense Policy and Eligible Cost Guidance**

**Expenses Policy and Eligible Costs Guidance**

1. **Background to guidance**

[Managing Public Money](https://www.gov.uk/government/publications/managing-public-money) (2022), HM Treasury guidance on the use of public funds, demonstrates the Government’s clear stated policy that taxpayers’ money is used as intended. In order to **increase transparency, clarity** and **consistency** in the spending of funds this eligible expenditure guidance forms part of this contract. In the event of any conflict between the contract or agreement terms and conditions and this document the contract or agreement will take precedence.

This guidance document provides details of both eligible expenditure and items of expenditure that are expressly ineligible and should be referred to when submitting the budget template supporting your proposal. The guidance will help organisations calculate the full cost of a particular project or service, including an appropriate share of all relevant support services and other overheads/indirect costs as appropriate.

The Authority reserves the right to make changes to this document from time to time in line with developments in Government policy.

1. **Principles of eligibility**

The contract amount is to be used solely for costs included in the budget for the delivery of the outputs and outcomes in the log frame or agreed results model framework. These costs must:

* Be actually incurred by the recipient
* Be incurred within the period set out
* Be indicated within the cost budget
* Be incurred in connection with and necessary for implementation
* Be identifiable, verifiable and recorded in the recipient’s accounts in accordance with applicable accounting standards and with the beneficiary’s usual cost accounting practices
* Be compliant with applicable national law on taxes, labour and any all other relevant national law
* Be reasonable, justifiable and compliant with the principles of sound financial management

**Expenditure cost categories containing specific eligible and ineligible definitions are defined within this guidance and the budget should be completed in line with the guidance**.

1. **Foreign exchange**

All costs within the budget must be in GBP. Suppliers operating in another currency must convert to GBP at the spot FX rate and the source and value of any exchange rates used should be referenced in the budget.

1. **Ineligible costs (applicable to all budget categories)**

The following expenditure items are explicitly ineligible across all expenditure cost categories unless permitting them is a specific requirement of the contract (this list is not exhaustive and does not override activities which are deemed eligible and explicitly agreed as part of the contract):

* Lobbying UK government, i.e. activities which aim to influence or attempt to influence Parliament, UK government or political activity, or UK legislative or regulatory action
* Activities which directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the contract
* To petition UK Government for additional funding
* Activities which may lead to civil unrest
* Activities which discriminate against any group on the basis of age, gender reassignment, disability, race, colour, ethnicity, sex and sexual orientation, pregnancy and maternity, religion or belief
* Interest payments or service charge payments for finance leases
* Gifts
* Statutory fines, criminal fines or penalties
* Payments for works or activities that are fully funded by other sources whether in cash or in kind, for example if premises are provided free of charge, BEIS will not contribute to a notional rent
* Activities in breach of UK Legislation on Subsidy Control
* Bad debts to related parties
* Payments for unfair dismissal or other compensation
* Replacement or refund of any funds lost to fraud, corruption, bribery, theft, terrorist financing or other misuse of funds
* The cost of any fines or charges applied by local Governments or by any local public authority
* Costs or benefits provided to any public official or third party if there is a high likelihood that the payment or benefit was for improper purposes (e.g. facilitation payments)
* Fundraising (with the exception of any agreed allocated costs not attributable to the project (indirect costs))
* Foreign exchange as a standalone budget line
* Contingency or risk premium
* Depreciation (with the exception of any agreed allocated indirect costs)
* Debt repayment
* Costs associated with preparing bid or commercial proposal prior to a formal agreement being executed or in the preparation of proposals for the take up of contract extension options
* Costs incurred prior to a formal agreement being executed
* **Unless directly attributable to the programme,** advocacy and campaigning, marketing and communications, policy, retainer fees, capital expenditure, land, bank charges and insurance (unless, by exception, explicitly agreed in writing in advance).[[8]](#footnote-8)

Additional exclusions relating to specific expenditure cost categories are detailed in this guidance and are mandated in addition to the above general ineligible costs. In case of any doubt, the partner or potential supplier should consult BEIS in advance.

1. **Expenditure cost categories**

In an organisation there are two types of costs that are incurred as a result of running a project or service: Direct Programme Costs and Indirect Costs.

**Direct Programme Costs** are subdivided further into two types of Direct Costs:

1. **Direct project costs:** These are all the costs that are clearly and directly *incurred because of the project*. Typically, they include the salaries of project staff, their travel and subsistence, project materials, and all other costs easily identifiable as part of the project.
2. **Directly attributable project costs:** These are all the costs that are clearly and directly *attributable to the project*. Typically, they include country office resources specifically allocated to the project.

**Indirect costs** comprise those overhead costs that are not attributable to a project. These costs are incurred by an organisation in order to support the projects that it runs.

1. **Direct programme costs**

Direct programme costs are activities and costs directly incurred in the delivery and implementation of the programme and are directly linked to specific project outcomes and results. This generally includes frontline delivery costs and programme management and support costs.

* 1. **Staff costs (including payroll taxes and benefits)**

All individuals working under an employment contract, a direct contract (consultant), a sub-contractor or an individual seconded and assigned to the programmeare eligible costs. Each salaried and non-salaried staff member should be assigned a role and the daily fee rate should be individually listed:

The daily fee rate is deemed to cover the cost of salary remuneration and benefits including superannuation (pension) and payroll taxes. If the cost is that of a sub-contractor, the daily fee rate will be the total invoiced cost chargeable to the project. A line item stating total staff costs will not be accepted.

BEIS will only reimburse productive days’ work.

You should include details in your budget where time is being donated to programmes at no charge (in-kind contributions).

* 1. **Management fees**

The costs incurred by the Lead Organisation of managing both the recruitment and project work of external consultants and delivery partner programme staff where these are significant – i.e. they result in specific additional direct programme costs that are in excess of normal organisational establishment cost levels are eligible costs.

* 1. **Frontline programme delivery costs**

Frontline delivery expenditure includes commodities for beneficiaries or participants, transport of commodities (excluding vehicles which are capital expenditure and driver salaries which are included under travel costs, but including freight and logistics), storage of commodities, training and associated costs for beneficiaries or participants, disbursements to beneficiaries or participants, and any other frontline delivery costs associated with the delivery of programme outputs. This excludes staff costs, travel accommodation and subsistence, and capital expenditure which should be detailed separately under expenses.

* 1. **Capital expenditure items**

Capital expenditure includes specialist equipment, office furniture and equipment, standard and off-road motor vehicles and any other project related equipment. Any aspect of capital expenditure included must be fully justified as contributing to the sustainable outcome of the project. The cost should be recorded in the year in which the purchase is planned; do not spread the cost of a new purchase over the lifetime of the project**. Depreciation is not an allowable expense.**

Ownership of any capital items bought using BEIS funds is retained by BEIS throughout the lifetime of the project. The future use of an item will be discussed and agreed on project completion.

There is a requirement for a programme asset register to be maintained for all assets purchased at a value of £500 or more.

* 1. **Travel, subsistence and accommodation**

Travel undertaken for delivering the programme (including that related to monitoring, evaluation and learning activities) are eligible costs. This includes air, rail, car hire and other travel costs, hotel and accommodation costs, subsistence, travel management fees, travel documentation costs (e.g. passport/visa costs), travel vaccinations. The budget should include as much information as possible about travel plans.

**BEIS is committed to working towards Net Zero both domestically and internationally. As such all BEIS suppliers should look to minimise travel as much as possible. Where travel cannot be avoided the greenest option should be chosen.**

* + 1. **Ineligible expenses**

The following are ineligible expenses and may not be claimed. Exceptions must be agreed in writing with your BEIS contract or agreement manager.

* Alcohol
* Tobacco
* Personal entertainment/recreation or travel
* Per diems (N.B. at cost accommodation and subsistence can still be paid for supported by receipts)
* Business and first-class travel or fully flexible tickets for flights or ground transportation
* Clothing
* Laundry
* Excess baggage
* Extra legroom
* Other travel facilitation costs e.g. charges to select a seat in advance of travel
	+ 1. **Travel**

Travel and living expenses will be paid at a rate consistent with the [HMRC’s schedule of rates](https://www.gov.uk/guidance/expenses-rates-for-employees-travelling-outside-the-uk)[[9]](#footnote-9).

All journeys by rail or air will be budgeted by a class of travel that is no more than **“standard economy”** unless higher travel classes are representative of improved value for money or are required to adhere to specific legislation, for example the Equality Act 2010. Your BEIS representative will confirm if this is appropriate, and no travel should be booked in a class higher than “standard economy” **without express written permission**. First class travel will not be permitted under any circumstances. If a supplier books anything other than standard economy travel without prior written approval, these costs are incurred at their own risk and expense.

The most economical form of transportation must always be used. The use of taxis or car rental where safe, frequent and reliable public transport exists must be justified.

For car journeys less than or equal to 10,000 miles in a personal car, these will be reimbursed at 45p per mile.

* + 1. **Subsistence**

Alcohol and tobacco are not allowable subsistence items under any circumstances.

Where food, refreshments, transportation, accommodation or other expenses are required for the participants of a workshop, conference, seminar etc. (including staff of the supplier or project partners) all costs must be reasonable and follow these guidelines.

In the event that a supplier is not able to stick to these rates they must contact their BEIS contract manager to discuss and provide a rationale for any exemption. Exemptions must be provided in writing by BEIS in advance of any above-rate expenses being incurred. In the event that a supplier incurs above-rate expense without prior written approval, these costs are incurred at their own risk and expense.

As per the guidance in this document, expenses are to be claimed and paid for based on actual expenses incurred supported by receipts. BEIS will not pay fixed per diems.

* 1. **Claiming expenses**

To be reimbursed, expenses must be incurred during the period of the project and be linked to the approved budget lines and activities of the project. All expenses must be clearly detailed and evidenced, showing the actual cost incurred supported by receipts, tickets, hotel bills etc.

* Every expense claim should include sufficient information to justify each expense and should include what the expense is, the date it was incurred and the reason why. All travel claims must state the journey start and end location.
* Bank or credit/debit card statements alone are not acceptable evidence, though must also be provided if the receipt does not evidence payment.
* The currency in which the expense was incurred should always be detailed. If this is not GBP, evidence should be provided showing the exchange rate to GBP (ideally a bank statement showing the GBP cost debited or details of the exchange rate from [www.xe.com](http://www.xe.com) or [www.oanda.com](http://www.oanda.com)). There are several accepted approaches. So long as used consistently, reporting can use the exchange rate on the date each expense was paid; the date the invoice was submitted; or the monthly average. For advance payments, the rate used can be the date the money was paid from the bank.
* Per diem rates will not be reimbursed. However, actual expenditure (evidenced by receipts, invoices etc.) on accommodation, subsistence and travel can be reimbursed.
* Air miles or equivalent reward schemes should not be used to pay for the cost of flights as they will not be reimbursed.
1. **Indirect costs**

Indirect costs are overhead costs that relate to the overall operations, management and identity of the supplier rather than to programme services. These costs are necessary for programmes to function although cannot be clearly linked to specific project outcomes and results (i.e. business expenses not including or related to direct labour, direct materials or third-party expenses that are charged directly to projects).

Typically, they include overall management and employee costs, administration and support, equipment, space and premises costs, and activities that relate to the whole organisation and partly support your project, but also support your other projects. These may include:

* 1. **Premises and office costs**

This category relates to all costs associated with the organisation’s premises and office including rent and imputed rent, mortgage costs, depreciation, management of facilities, building insurance, rates, maintenance and cleaning, groundworks and gardening, utilities, catering, vending services and residential accommodation.

* 1. **Central function costs**

This category relates to all costs associated with the organisation’s Board of Directors including basic salary, maternity and sick pay, other paid leave (sabbatical, vacation, home leave, and paid holidays) overtime, allowances, payroll taxes, pensions, travel and subsistence and telephone.

It also relates to all salary and on-costs associated with the organisation’s central functions including but not limited to human resources, finance, information technology, secretarial, internal audit, policy and research and evidence departments, marketing, office management and any other central support functions, travel and subsistence, bank charges and recruitment costs.

* 1. **Governance and strategic development costs**

This category relates to external expert and professional services expertise brought in when in-house skills are not available, including payments for services contracted to provide strategic or governance direction, financial, management, procurement, legal, audit, human resources or technical advice. This includes any other internal governance and strategic development cost that is not a central function cost or premises and office cost.

* 1. **Share of indirect costs**

Since different projects make different demands on the organisation it is important to note that indirect costs are not necessarily proportional to the direct costs of a project. Indirect costs should be shared between on a fair and reasonable basis. This means:

* Each programme’s share of the indirect cost is appropriate given the nature and extent of its activities (i.e. a programme does not receive a share of overheads that it does not incur).
* There is a rational basis for the method used to share indirect costs that can be justified and supported.
* The allocation of indirect to the programme is only an estimate. The allocation method must be fair and reasonable based on the information you have.

A straight percentage allocation to the budget is not based on an understanding of your organisation’s overheads and is therefore unlikely to meet the principles detailed above.

If you intend to raise income for your programme from other sources, we expect those sources to cover their fair share of the programme’s indirect costs. BEIS will only fund its share of the programme’s overheads. We would not expect to fund a greater share of indirect costs than the share of the programme direct costs we are funding.

* 1. **Accounting and budgeting for indirect costs**

We anticipate that, in the vast majority of cases, indirect costs will be included in the daily fee rates of staff and a further breakdown is not required at the time of bidding. If indirect costs are not included in daily rates and you need to list them separately, please speak to BEIS.

1. **Payment basis and cost verification**

BEIS and HMG operate on a policy of operational need. Payments are made in arrears according to BEIS policy rules unless in exceptional circumstances and where otherwise expressly agreed in writing. We expect our partners to follow the same principles downstream.

An assessment of the eligibility of the costs included within your proposal will be conducted prior to the award of any contract or funding agreement.

1. As announced by the Prime Minister on the 7th of February 2023, BEIS has been split into three Departments. Any references in this Invitation to Tender to the Department for Business, Energy & Industrial Strategy, "BEIS" or "the Buyer" also refer to any successor departments that have been created out of BEIS. In due course, anticipated to be the 3rd May 2023, i.e. whilst this competition is out to tender, secondary legislation will be laid in Parliament that gives effect to the Machinery of Government change and no action should be required in respect of this contract. Until that happens, BEIS remains the contracting authority in this case and contracts continue to be signed on behalf of the Secretary of State for BEIS. Commercial arrangements, terms and conditions and procurement procedures are not affected. [↑](#footnote-ref-1)
2. To note that commitments will last beyond this last financial year. [↑](#footnote-ref-2)
3. <https://www.contractsfinder.service.gov.uk/notice/3c5b2444-a488-4505-af56-cd22c3ef45f3> [↑](#footnote-ref-3)
4. <https://www.gov.uk/government/publications/attorney-generals-guidance-on-legal-risk> [↑](#footnote-ref-4)
5. <https://www.gov.uk/government/publications/attorney-generals-guidance-on-legal-risk> [↑](#footnote-ref-5)
6. <https://www.gov.uk/government/publications/procurement-policy-note-0620-taking-account-of-social-value-in-the-award-of-central-government-contracts> [↑](#footnote-ref-6)
7. The Buyer may choose to apply a scoring criteria to the deliverable to assist them accurately applying this or other KPIs. [↑](#footnote-ref-7)
8. There are limited circumstances where it is appropriate to include insurance costs, for example to meet legal obligations or where doing so provides value for money (this is an extract from [Managing Public Money)](https://www.gov.uk/government/publications/managing-public-money) [↑](#footnote-ref-8)
9. <https://www.gov.uk/government/publications/scale-rate-expenses-payments-employee-travelling-outside-the-uk>- [↑](#footnote-ref-9)