

Invitation to Tender

for

Intraoperative Neuromonitoring Services and Equipment

National Framework Agreement

Project Ref: F/048/IONM/18/IB

Tender Process:

Schedule I Open Tender Services	<input checked="" type="checkbox"/>	Schedule I Open Tender Goods	<input type="checkbox"/>
Schedule I Restricted Tender Services	<input type="checkbox"/>	Schedule I Restricted Tender Goods	<input type="checkbox"/>

CLOSING DATE FOR RETURNS: 17 September 2018 at 14:00 GMT

Contents

1	BACKGROUND TO THIS FRAMEWORK	3
2	BACKGROUND TO THE COUNTRESS OF CHESTER NHS FOUNDATION TRUST COMMERCIAL PROCUREMENT SERVICE	4
3	BACKGROUND TO THE PUBLIC SECTOR AND NHS	4
4	HOW THE FRAMEWORK WILL OPERATE	6
5	HOW THIS INVITATION TO TENDER PROCESS WILL WORK.....	7
6	TIMETABLE	8
7	INVITATION TO TENDER	8
8	COMMUNICATION.....	9
9	RETURN OF BIDS	10
10	CONTRACT AWARD PROCESS AND EVALUATION CRITERIA	11
	10.1 PREREQUISITES.....	11
	10.2 EVALUATION OF TECHNICAL INFORMATION	14
	10.3 COMMERCIAL EVALUATION	15
	10.4 CALCULATION OF FINAL SCORES AND AWARD OF FRAMEWORK AGREEMENT.....	17
11	CONDITIONS OF TENDER	17
12	CALL OFF CONTRACT AWARD PROCESS.....	30
13	LIST OF APPENDICES.....	35

1. BACKGROUND TO THIS FRAMEWORK AGREEMENT

Intraoperative Neurophysiological Monitoring (IONM) involves the use of physiological tests that allows for real-time assessment of the peripheral and central nervous system at risk during surgery. IONM significantly reduces the risk of iatrogenic injury to the nervous system, offering early detection of reversible neurophysiologic dysfunction during surgery, thereby optimising surgical outcomes.

Standard techniques in intraoperative neuromonitoring include sensory and motor tract testing during spinal procedures, cortical and subcortical mapping during resection of tumour near to eloquent areas, cortical perfusion assessment in aneurysm surgery and cranial nerve monitoring during skull base surgery.

The extensive knowledge of the anatomy and physiology of the central and peripheral nervous systems combined with the expertise in the neurophysiological tests used in the operating room offers safety to the patient and a reliable guidance to the surgeon. The surgeon is, therefore, able to take appropriate measures to minimise or reverse potential permanent neurological injury.

Research has shown that IONM is effective in decreasing the chance of nerve damage and providing patients with better surgery results. Providers employ highly specialised clinical physiologist to monitor the patient's nervous system during surgery. Monitors continuously provide immediate feedback that can allow the surgeon to preventing short and long term neural damage. The integrity of any structure at risk can be monitored.

While some NHS Organisations that perform the complex spinal and/or brain surgery for which IONM is indicated have in-house services, a growing number of centres carrying out these procedures do not and contract in the services of private sector specialists.

The Countess of Chester Hospital NHS Foundation Trust, through its Commercial Procurement Services, wishes to award a national framework agreement in two lots:

- Lot 1 the provision of neuromonitoring services; to include equipment, consumables and professional services. This Lot is mainly intended for use by NHS Organisations that do not currently have in-house IONM services.
- Lot 2 the supply of neuromonitoring equipment; to include training for NHS staff using the equipment. This Lot is mainly intended for use by NHS Organisations that have in-house IONM services.

Tenders may be submitted for one or both Lots.

Further details of the lot structures are provided in SCHEDULE A – Framework Agreement Specification of this ITT.

The proposed framework agreement will allow NHS Organisations to procure these goods and services in a legally compliant manner, with the assurance that Suppliers have met rigorous criteria.

Commercial Procurement Services encourages the participation of smaller businesses (SMEs) in public sector procurement. As such the procurement process has been simplified to encourage greater participation. The proposed framework agreement will greatly reduce the ongoing administrative burden of repeating multiple procurement processes for the

services described within this ITT. This framework will therefore support public procurement and private enterprise through its efficiency.

2. BACKGROUND TO THE COUNTESS OF CHESTER HOSPITAL NHS FOUNDATION TRUST COMMERCIAL PROCUREMENT SERVICE.

The Countess of Chester Hospital NHS Foundation Trust is comprised of a 600 bed acute general hospital located on the outskirts of the City of Chester, an 86 bed community based hospital located in Ellesmere Port, a number of West Cheshire community based health clinics and a shared service Microbiology Laboratory in Wirral.

The Trust also hosts a Commercial Procurement Service which not only undertakes its own commercial activity but seeks to act to the wider public sector to promote and develop smaller innovative businesses and ideas. The Countess of Chester Hospital Commercial Procurement Services (CPS) is a centre of procurement expertise providing strategic and specialist procurement services and advice to NHS trusts, wider public sector and private sector clients. Operating within, but operationally independent of, an NHS Acute Foundation Trust Procurement department, our in-depth knowledge of the NHS and the healthcare market coupled with excellent track record of delivering high quality commercial and procurement projects enables us to effectively advise, assist and deliver a range of benefits including service improvements and cash releasing and cost avoidance savings. CPS Framework Agreements currently serve over 70 public sector organisations, and offer unique access points to goods and services which offer innovation and savings with no Customer access fees. Further information can be obtained from the website www.coch-cps.co.uk

The Countess of Chester Hospital NHS Foundation Trust as the Framework Manager will administer the framework agreement, provide guidance to client authorities and issue draft contracts for consideration between client authorities and the successful supplier. In the first instance of any dispute the Framework Manager will offer first line mediation.

3. BACKGROUND TO THE PUBLIC SECTOR AND NHS

The public sector in the United Kingdom (UK) is comprised of many organisations. These include: ministries or departments of central government such as the Cabinet Office, Department of Health (including the National Health Service (NHS)) and Ministry of Justice; local authorities, such as councils and social services; wider public bodies such as fire and rescue services, police authority services, educational authorities, universities and public broadcasting; and utilities agents, such as water authorities. UK public sector procurement bodies must comply with the Public Procurement Regulations, as derived from European Union (EU) treaty principles. These mandate a regulated contract and tender procedure for opportunities above a certain financial threshold, which varies depending on the type of organisation and type of procurement being undertaken.

The National Health Service (NHS) in the UK is representative of over 400 health organisations including Hospital Trusts, Mental Health Trusts, Ambulance Trusts, Foundation Trusts, Clinical Commissioning Groups, Commercial Support Units and Community Health Trusts. The landscape is one of constant evolution and change.

To promote transparency, The Countess of Chester Hospital NHS Foundation Trust wishes to establish a Framework Agreement for use by all UK NHS bodies (and any future successors to these organisations). To provide bidders with information on potential users of the Framework Agreement the following organisations are considered the eligible Participating Authorities:

NHS Bodies England

<http://www.nhs.uk/ServiceDirectories/Pages/AcuteTrustListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/CCGListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/MentalHealthTrustListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/CareTrustListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/AreaTeamListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/SpecialHealthAuthorityListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/OtherListing.aspx>

Scottish NHS Bodies

<http://www.gov.scot/Topics/Health/NHS-Workforce/NHS-Boards>

<http://www.show.scot.nhs.uk/organisations/>

NHS Wales

<http://www.wales.nhs.uk/ourservices/directory>

Health and Social care in Northern Ireland

<http://www.hscni.net/>

Any corporation established, or a group of individuals appointed to act together, for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and (i) financed wholly or mainly by another contracting authority listed above in this section of this ITT;

(ii) subject to management supervision by another contracting authority listed above in this section of this ITT; or

(iii) more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, are appointed by another contracting authority listed above in this section of this ITT

(iv) an association of or formed by one or more of the Contracting Authorities listed above in this section of this ITT

Entities which are not public sector bodies may also use the Framework Agreements if the Authority is satisfied that:

- such entity is calling-off goods and/or services directly, solely and exclusively in order to satisfy contractual obligations to one or more public sector bodies, all of which are entitled to use the Framework Agreements on their own account;
- all goods to be called-off by it are to be used directly, solely and exclusively to provide goods and/or services at sites occupied by such public sector body(ies); and
- it will pass the benefit of the call-off contract to such public sector body(ies) directly, in full and on a purely “pass-through” basis. Accordingly there must be no mark-up, management

fee, service charge or any similar cost solely in relation to the supply of goods and/or services imposed on the relevant public sector body(ies), who must be able to benefit from the terms of the Framework Agreements in a like manner and to the same extent as if using the Framework Agreements on its/their own account.

Any 'bodies governed by public law' which under the Public Contracts Regulations 2015 means bodies that have all of the following characteristics

- (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) they have legal personality; and
- (c) they have any of the following characteristics:—
 - (i) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law;
 - (ii) they are subject to management supervision by those authorities or bodies; or
 - (iii) they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

4. HOW THE FRAMEWORK WILL OPERATE

The Framework Agreement will consist of two multi-supplier Lots. Award of Contracts under either Lot may be made in one of two ways.

1. By direct award where the Participating Authority is able to determine that its Services or Goods Requirements can be met by the Framework Supplier's catalogue/description of the Services or Goods in the Lot most appropriate to the Participating Authority's requirements as set out in the Framework Agreement Specification (Schedule A of this ITT) and the Framework Supplier's response to that Specification, or
2. Following a call for further competition among suppliers on the Lot most appropriate to each Participating Authority's requirements.

The following outlines a high level process of how parties will engage each other. For a detailed explanation of the further competition process and evaluation criteria to be used as part of this process please see Section 12 of this ITT.

NHS Organisations wishing to use the Framework Agreement must contact the Commercial Procurement Services Team directly.

1. NHS Organisations will liaise directly with the Framework Manager in order to satisfy themselves that it offers adequate governance and value.
2. The Framework Manager will issue the NHS Organisation with a detailed briefing pack and a copy of the Framework Agreement detailing options available and how any further competition will be conducted.
3. The NHS Organisation will decide which Lot is most appropriate to their requirements.

4. The NHS Organisation will decide whether award by direct call-off or by conducting a further competition.
5. If the NHS Organisation decides to conduct a further competition, the NHS Organisation will send a detailed set of requirements to all Suppliers awarded to the appropriate Lot of the Framework Agreement who will be given an agreed timescale to respond.
6. The NHS Organisation will undertake a detailed evaluation of the offering in line with the evaluation criteria set out in Section 12 of this ITT.
7. When the Contract award decision is made by the NHS Organisation, the NHS Organisation will contact the Framework Manager for a unique reference number. The Framework Manager will issue the NHS Organisation with a unique reference number which the NHS Organisation will use to call-off the Services under this Framework Agreement. NHS Organisations attempting to engage a Supplier without the unique reference number are doing so outside the remit of this Framework Agreement and as such the Framework Manager can offer no assurance on legal compliance.
8. The NHS Organisation may use the model contract templates included within this Framework Agreement.
9. The Supplier will promote the Framework Agreement at all opportunities with a drive towards a single NHS framework agreement.
10. The Supplier shall provide COCH with timely, accurate and complete MI Reports each Month on the Reporting Date using the MI Reporting Template. The MI Reporting Template is embedded within SCHEDULE B TEMPLATE FRAMEWORK AGREEMENT and provided as a separate attachment to this ITT for information.
10. The Framework Manager will monitor expenditure through successful Suppliers' MI Reports. Management fees as detailed within this ITT will be invoiced based on this information at the rate stated. Invoices will also be issued monthly and will be due within 30 days. All management fees set out within this ITT are payable by the Supplier to the Framework Manager, Commercial Procurement Services.
11. Quarterly reviews will be held between the Supplier and the Framework Manager. The Supplier will be expected to submit quarterly framework updates to the Framework Manager in advance of these meetings/calls. As part of these, Suppliers will provide updates on their organisation, sales, and marketing, and to highlight any issues affecting sales under the framework.
12. The Framework Agreement will run for a maximum four year term, however call-off Contracts may exceed this period provided that Contracts are awarded within the Framework Agreement Term.

5. HOW THIS INVITATION TO TENDER PROCESS WILL WORK.

Open Procedure

Following the close of the ITT period, bids will be opened by the assessment panel. Bids will be checked for completeness and compliance to any prerequisites that have been applied. Failure to submit a complete bid meet any prerequisite will result in your bid being immediately rejected. If all prerequisites are satisfied, your bid will be assessed using the

award criteria laid out in this Invitation to Tender. Following the conclusion of the evaluation, you will be issued notification of either being successful or unsuccessful. This will be accompanied by a debrief letter advising you of your scores and if appropriate the scores of the winning bids, along with narrative as to how the scores were applied and the characteristics and relative advantages of the winning bid. A minimum 10 calendar day standstill period will follow prior to concluding the Framework Agreement which will be formed upon the exchange and signing of Framework Agreement documents. Where a single Tender is received in a Lot, no standstill period will be required for that Lot. Following the signing of the Framework Agreement documents an Award notice will be published in the Official Journal of the European Union and on the UK Government's Contracts Finder website.

6. TIMETABLE

Tenderers should note that the dates listed below are indicative only and The Countess of Chester Hospital Commercial Procurement Services reserves the right to vary this timetable at its absolute discretion.

Description	Date/Period
OJEU advertisement sent for publication	17 August 2018
Last date and time for the submission of Clarification Questions	12 September 2018 at 17:00 BST
Invitation To Tender closing date and time.	17 September 2018 at 14:00 BST
Opening of Tenders and commencement of evaluation process.	19 September 2018 at 09:00 BST
End of evaluation process and notification of intent to award. Standstill period begins.	26 September 2018
Framework Agreement conclusion and launch date.	8 October 2018

7. INVITATION TO TENDER

7.1 Bidders/Tenderers

In this ITT the terms "Bidder" and "Tenderer" are used interchangeably to indicate an organisation that is participating in this tender process. The term "Supplier" refers to a successful Tenderer following the Framework Agreement award.

The terms Bid and Tender are similarly used interchangeably.

7.2 Contracting Authorities

The Countess of Chester Hospital NHS Foundation Trust, hereafter referred to as the "Framework Manager", invites competitively tendered offers in accordance with the attached Tender Documents as listed in the list of Appendices to this Invitation to tender.

In this ITT the terms "NHS Organisation", "Participating Authority" and "Customer" are used interchangeably to indicate an organisation that may utilise this Framework Agreement.

7.3 Acceptance of bids

The Framework Manager does not bind itself to accept the lowest or any offer and reserves the right to accept an offer either in whole or in part each item being for this purpose treated as offered separately. The Framework Manager reserves the right to award the Framework Agreement for the supply of the services described within and arising out of this procurement process to more than one Supplier. The Framework Manager reserves the right to make no award of the Framework Agreement.

Tenderers are advised to read this Invitation to Tender and all supporting documentation very carefully to ensure they are familiar with the nature and extent of the obligations to be accepted by them if their Tender is successful.

8. COMMUNICATION

8.1 Clarification Questions from Bidders

Any questions which the Bidder wishes to raise in relation to this Invitation To Tender should be made via the e-sourcing portal messaging system. Questions provided in other formats will not be considered or answered.

The last date and time for the submission of Clarification Questions is 12 September 2018, 17:00 BST.

The Framework Manager is under no obligation to respond to any question received after this time and date. However, the Framework Manager reserves the right to respond to any questions received after this deadline at its absolute discretion.

Should a Tenderer be in any doubt as to the interpretation of any or all parts of the ITT document, have commercial queries or technical/clinical queries prior to the submission of Tenders, these should also be directed via submission of written questions through the e-sourcing portal. The Framework Manager will refer the query to the relevant person for resolution, and will communicate the decision to the Tenderer in writing via the e-sourcing portal.

Clarification questions received by any other method may constitute canvassing as defined in this ITT. Organisations participating in a bid submission are therefore strongly advised to ensure that any communication with the Countess of Chester Hospital NHS Foundation Trust and/or its employees about or related to this procurement process is submitted through the e-sourcing portal only, as failure to do so may result in their bid submission being disqualified.

Bidders are reminded that their questions, and the Framework Manager's responses, will normally be circulated to all Bidders in an anonymised form, in order to treat all Bidders fairly. This will be provided in digest form, periodically updated and uploaded to the e-

sourcing portal for all Bidders to view who have registered for the procurement. Provision will be made for Bidders to request clarification in confidence but in responding to such requests the Framework Manager will reserve the right to act in what it considers a fair manner and in the best interests of the procurement, which may include uploading to the e-sourcing portal and/or circulating the response to all Bidders.

8.2 Clarification Questions from the Framework Manager

The Framework Manager reserves the right to require Bidders to clarify their bid submissions. Any such request will be made via the e-sourcing portal to the Bidder's nominated representative. The Framework Manager will retain a general discretion in relation to this procurement process, at any stage of this procurement process, to seek clarification from any Bidder in relation to any aspect of the bid submission.

It is likely that any response to a clarification question will be required within two working days of request. Failure to respond adequately or in a timely manner to clarification questions may result in a potential Bidder not being considered further in the procurement.

The Framework Manager may contact (or may require the Bidder to contact on its behalf) any of the Customers, subcontractors or consortium members to whom information relates in a response or bid, to ask that they testify that information supplied is accurate and true.

The Framework Manager reserves the right to seek third party independent advice or assistance to validate information submitted by a Bidder and/or to assist in the bid evaluation process.

The Framework Manager reserves the right to conduct site visits and/or audits at any time during this procurement process.

9. RETURN OF BIDS

Tenderers must return bids via the web site www.nhssourcing.co.uk; hard copies will not be accepted. It is the sole responsibility of the Tenderer to ensure their offer is received on time. Tenders received after the due date cannot normally be accepted

The Framework Manager intends to award the Framework Agreement to the Bidder(s) who submit(s) the most economically advantageous tender(s) as determined by applying the evaluation criteria set out in this ITT. However, the Framework Manager reserves the right not to award all or any of the Framework Agreement to the most economically advantageous bid or to any bidder. The Framework Manager also reserves the right to award the Framework Agreement to more than one bidder.

The Framework Manager does not bind itself to accept the lowest or any offer and reserves the right to accept an offer either in whole or in part.

9.1 The closing date for the return of Tenders is 17 September 2018 14:00BST

Failure to return a completed tender by the closing date specified will entitle The Framework Manager to disqualify the relevant Bidder from participating in this procurement.

Those Bidders deciding not to tender should use the "Decline to Respond" function on the Trust e-procurement portal, and provide a reason for this decision.

10. CONTRACT AWARD PROCESS AND EVALUATION CRITERIA

The Framework Agreement will be awarded on the basis of the most economically advantageous tenders in each Lot which will be evaluated on the following criteria:

Lot 1

Criterion	Weighting %
Prerequisites	PASS/FAIL
Technical - Service delivery	30%
Technical - Clinical governance	25%
Technical - Equipment functionality	25%
Commercial Evaluation	20%
Total	100%

Lot 2

Criterion	Weighting %
Prerequisites	PASS/FAIL
Technical - Equipment functionality	30%
Technical - Training delivery	20%
Technical - Back-up and support	20%
Technical - Equipment delivery	10%
Commercial Evaluation	20%
Total	100%

Each Lot will be evaluated separately.

The evaluation will follow the four step process described below.

10.1 STEP 1: PREREQUISITES

10.1.1 Applicants must submit a compliant completed bid or bids and must meet all the requirements of SCHEDULE C - Prerequisites for each and any Lot for which they bid. Bids that are not compliant or incomplete may be rejected.

10.1.2 Assessment of Economic and Financial Standing

We will undertake an assessment of your economic and financial standing using the DUNS number (as provided by Dun and Bradstreet) for your organisation which you input in Section 1 of the SQ.

We will look at your “Risk of business failure” score in the report provided by the credit reference agency (Dun and Bradstreet). If the score provided by the credit reference agency is 51 or more, then you will achieve a “Pass” for Section 4 of the SQ in that Lot.

If you indicate as part of the SQ that a financial guarantor will be provided, as you do not initially meet the required credit reference agency score as described above, we will perform an assessment of the proposed financial guarantor’s economic and financial standing.

If any of the following circumstances arise:

- a. the score provided by the credit reference agency is less than 51 and/or;
- b. no standard credit reference agency score is available for your organisation,

then we may ask you to provide a copy of your audited accounts for the most recent two years and/or one or more of the following in respect of your organisation or the proposed financial guarantor (as the case may be):

- a statement of your turnover, profit and loss account/income statement, balance sheet/statement of financial position and statement of cash flow for the most recent year of trading;
- a statement of your cash flow forecast for the current year and a bank letter outlining the current cash and credit position; and/or
- an alternative means of demonstrating financial status.

We will use this information as detailed above, in addition to a detailed credit reference agency report (where available) to assess whether your organisation’s or your proposed financial guarantor’s risk is acceptable. This will be performed using the financial assessment template that can be viewed as part of the Bid Pack, which covers a range of financial risk indicators.

If we then determine that the financial risk is acceptable, then you will achieve a “Pass” for Section 4 of the SQ in that Lot.

If we determine that your financial risk is determined as being unacceptable, then we may (in our sole discretion) request that you nominate a financial guarantor. If you nominate a financial guarantor, we will undertake the steps as detailed above in respect of the proposed financial guarantor.

If, after evaluating all the information requested and provided, the level of financial risk is still deemed unacceptable, or where the requested information has not been provided, then you will be rejected from further involvement in the procurement.

If you are bidding as Lead Contact for a Group of Economic Operators, the assessment of economic and financial standing will be carried out in respect of each member of the Group of Economic Operators. If one or more members of the Group of Economic Operators is determined as having an unacceptable risk level following this assessment, then the relevant member(s) will be required to obtain a Framework Agreement Guarantee. We will undertake the steps as detailed above in respect of the proposed financial guarantor. If a financial guarantor cannot be provided and the level of risk remains unacceptable, then the Group of Economic Operators will be excluded from further involvement in this Procurement.

10.1.3 Assessment of Technical and Professional Ability

We want to make sure that you have experience of performing the type of services and/or supplying the type of products covered by each Lot of this Framework Agreement. This section lets you tell us about up to 3 contracts that you have run. Customers who want to call off contracts from a Lot of the Framework Agreement may want to check these references for themselves.

If you don't have at least one example of a contract for the type of services and/or goods covered by the applicable Lot of this Framework Agreement, you can use section 6.3 of the SQ to tell us about your ability. It is important to include enough detail to give us, and potential users of the Framework Agreement, confidence that you will be capable of performing the service.

If we then determine that the level of experience is acceptable, then you will achieve a "Pass" for Section 4 of the SQ in that Lot.

- 10.1.4 Applicants must meet all of the requirements of SCHEDULE C - Prerequisites for each and any Lot for which they bid. Any Applicants which do not meet all of the selection requirements set out in the prerequisites for each Lot in which they wish to be considered as found in SCHEDULE C- Prerequisites (or (1) submit their European Single Procurement Document, which must be completed in full (together with any further information which is required in the prerequisites but not in the European Single Procurement Document); or (2) explain to The Countess of Chester Hospital Commercial Procurement Services' satisfaction why they do not perhaps through the

use of self-cleaning evidence) will be treated as ineligible for that Lot of the Framework Agreement, their Tender for that Lot will not be evaluated further and the Applicant will be informed of their rejection at this stage.

10.1.5 Applicants who have met prerequisites in a Lot will move to step 2 for that Lot.

10.2 STEP 2: EVALUATION OF TECHNICAL INFORMATION

10.2.1 Technical information will be evaluated using the criteria and weightings below.

Lot 1

Technical Criterion (Lot 1)	Weighting %
Service delivery	30%
Clinical governance	25%
Equipment functionality	25%
Total for Technical Criteria (Lot 1)	80%

Lot 2

Technical Criterion (Lot 2)	Weighting %
Equipment functionality	30%
Training delivery	20%
Back-up and support	20%
Equipment delivery	10%
Total for Technical Criteria (Lot 2)	80%

10.2.2 Applicants are required to answer a number of technical questions for the Lot or Lots in which they choose to submit a Bid found in SCHEDULE D – Technical Schedule, which are linked to the criteria listed above.

10.2.3 Each question has been assigned a maximum score, which is provided in SCHEDULE D TECHNICAL SCHEDULE. The following methodology will apply where qualitative information is provided. Bidders are unable to contest the application of this methodology as it forms the subjective opinion of the Awarding Authority:

Rate	Qualifier
0	No Confidence
1	Serious concerns
2	Concerns, Some Confidence
3	Acceptable, Confident
4	Exceptionally Confident

10.2.4 In applying the scoring scale each Bid will be evaluated according to its quality and deliverability. The term 'quality' in this context refers to fitness for purpose and therefore covers any aspect of a submission that affects the performance of the Framework Agreement. 'Deliverability' refers to the likelihood that all aspects of a particular submission (including time and cost) could in fact be delivered by the Bidder concerned.

10.2.5 The evaluation of technical information will be undertaken once for each Lot, and the resulting score used in the calculation of the final score for each Lot described in step 4 below.

10.3 STEP 3: COMMERCIAL EVALUATION

10.3.1 The commercial evaluation for each Lot is based on an illustrative scenario of a hypothetical NHS Organisation's requirements as described in SCHEDULE E – Commercial Schedule, using the weighting below;

Lot 1

Commercial Criterion (Lot 1)	Weighting %
The all-inclusive total cost per year for the Lot 1 scenario	20%
Total for Commercial Criteria (Lot 1)	20%

If bidding for this Lot, Bidders are required to provide for this scenario within SCHEDULE E – Commercial Schedule prices to an illustrative NHS Organisation for the Supplier to deliver the indicative services described. The all-inclusive total cost per year will be calculated by multiplying the price for each service by the illustrative number of procedures per year given in the scenario and summing across all services. These costs will be evaluated as follows:

The Bidder with the lowest total cost to the NHS Organisation will receive the full 20% commercial score. Bidders with higher total costs will gain a percentage of the

20% commercial score for that scenario on a pro-rata basis from the top scoring cost. This is calculated using the following formula:

Commercial score=20 x (Lowest total cost / Bidder total cost)

where

Lowest total cost = the lowest total cost provided for the scenario.

Bidder total cost= the total cost offered by the Bidder for the scenario.

Bidders are also required to provide a full electronic catalogue of all services available, which will be made available to NHS Organisations under this Framework Agreement. These prices will not be used for evaluation of award to the Framework Agreement but should enable NHS Organisations to determine the cost of using the Supplier as their provider of intraoperative neuromonitoring services.

Lot 2

Commercial Criterion (Lot 2)	Weighting %
The calculated total cost of ownership (TCO) for the Lot 2 scenario	20%
Total for Commercial Criteria (Lot 2)	20%

If bidding for this Lot, Bidders are required to provide for this scenario within SCHEDULE E – Commercial Schedule details of an prices for the goods and services shown.

The total cost of ownership (TCO) will be calculated for an illustrative NHS Organisation, purchasing the number of items shown in the scenario over a 5 year period. Cost will be calculated from purchase price of the IOM device, fully-comprehensive annual maintenance and purchase price of the stated number of consumables.

These costs will be evaluated as follows:

The Bidder with the lowest total cost to the NHS Organisation will receive the full 20% commercial score. Bidders with higher total costs will gain a percentage of the 20% commercial score for that scenario on a pro-rata basis from the top scoring cost. This is calculated using the following formula:

Commercial score=20 x (Lowest total cost / Bidder total cost)

where

Lowest total cost = the lowest total cost provided for the scenario.

Bidder total cost= the total cost offered by the Bidder for the scenario.

Bidders should provide technical details of the intraoperative neuromonitoring equipment offered in response to this scenario in a separate attachment where requested in the NHS Sourcing portal.

Bidders are also required to provide a full electronic catalogue of all products available, which will be made available to Participating Authorities under this Framework Agreement. These prices will not be used for evaluation of award to the Framework Agreement but should enable NHS Organisations to determine the cost of using the Supplier as their provider of intraoperative neuromonitoring equipment.

10.4 STEP 4: CALCULATION OF FINAL SCORES AND AWARD OF FRAMEWORK AGREEMENT

10.4.1 Once the commercial and technical criteria have been assessed, the final scores for each Lot will be calculated as follows:

10.4.2 Each Bidder's technical score for a Lot, as calculated in step 2 will be added to the commercial score for the Lot as calculated in step 3, to produce a total score for each Bidder for that Lot.

10.4.3 The Countess of Chester Hospital NHS Foundation Trust's Commercial Procurement Service anticipates that all Applicants whose combined score for a Lot meets or exceeds 50% (who have met the minimum requirements set out in this Invitation to Tender) will be awarded a place on that Lot of the proposed Framework Agreement to supply the services detailed within the specification at SCHEDULE A - Framework Agreement Specification.

10.4.4 Suppliers may be appointed to one or both Lots of the Framework Agreement. Contracting Authorities shall only request Goods and/or Services from the Supplier(s) appointed to the Lot relevant to their requirement.

11. CONDITIONS OF TENDER

11.1 Information and Confidentiality

11.1.1 This ITT is intended for the exclusive use of the Bidder and is provided on the express understanding that this ITT and the information contained in it or, provided in connection with it, will be regarded and treated as strictly confidential. This ITT and

all related materials may not be reproduced in whole or in part nor furnished to any other persons other than the bidder, save for the purpose of:

- taking legal or other advice in connection with completing the ITT; and/or
- obtaining input from relevant organisations relevant to the Bidder's response to the ITT; and/or
- obtaining input from any other parties who the Bidder demonstrates will provide information relevant to the ITT response but subject always to the prior written consent of the Framework Manager to such disclosure (which they may withhold in their absolute discretion).

In each of the above cases, the Bidder must obtain confidentiality undertakings from any such parties prior to disclosure of at least equivalent strength to those set out above.

Upon written request from the Framework Manager, the Bidder shall promptly provide evidence to Framework Manager that such undertakings have been provided to the Bidder.

11.1.2 The Bidder must ensure that, to the best of its knowledge and belief, the information contained in its tender response is accurate and contains no material misrepresentation.

11.1.3 This invitation and its accompanying documents shall remain the property of Framework Manager and must be returned on demand.

11.1.4 Any notice to a Tenderer required under these Conditions to be given in writing, shall be deemed to be duly served at the time of actual delivery if delivered to a physical address, or at the time of posting on the e-sourcing portal if communicated via the e-sourcing portal to the Bidder's nominated representative, or at the time of delivery in ordinary course of post if posted in a prepaid envelope addressed to the Tenderer by name, to the Tenderer's last known place of abode or business or, in the case of a company, the registered office of the company.

11.1.5 Estimated quantities, where inserted in the Invitation to Tender document, shall indicate only the possible requirements for the period referred to and Contracting Authorities shall not be bound to order such quantities.

11.2 Freedom of Information and other information disclosures

11.2.1 The Framework Manager is committed to open government and meeting legal responsibilities under the Freedom of Information Act 2000 (FOIA) as amended.

Accordingly, any information created by or submitted to the Framework Manager (including the information contained in the Tender and the submissions received from Bidders in response) may need to be disclosed by the Framework Manager in response to a request for information.

11.2.2 The Framework Manager may also decide to include certain information in their relevant publication scheme maintained under the FOIA. In making a submission, each bidder therefore acknowledges and accepts that the information contained therein may be disclosed under the FOIA.

11.2.3 Bidders must clearly identify any information supplied in response to the Tender, which they consider to be confidential or commercially sensitive and attach a brief statement of reasons why such information should be so treated and for what time period.

11.2.4 However, Bidders should be aware that even where a Bidder has indicated that information is commercially sensitive, the Framework Manager is responsible for determining at their absolute discretion whether such information is exempt from disclosure under the FOIA, or must be disclosed in response to a request for information.

11.2.5 Bidders should also note that the receipt by the Framework Manager of any information marked “confidential” or equivalent does not mean that the Framework Manager accepts any duty of confidence by virtue of that marking, and that the Framework Manager has the final decision regarding the disclosure of any such information in response to a Request for Information.

11.2.6 In making a submission in response to this Tender, each Bidder acknowledges that the Framework Manager may be obliged under the FOIA to disclose any information provided to it:

- Without consulting the Bidder; or
- Following consultation with the Bidder and having taken its views into account.

11.2.7 Bidders acknowledge that the Framework Manager may be subject to the Environmental Information Regulations 2004 (EIR) as amended and shall assist and co-operate with the Framework Manager (at the Bidder’s expense) to enable the Framework Manager to comply with its information disclosure requirements contained in this legislation.

11.2.8 Bidders should be aware of the Framework Manager’s obligations and responsibilities under the EIR to disclose, on request, recorded information held by

the Framework Manager. Information provided by Bidders in connection with this procurement process, or any contract that may be awarded as a result of this process, may therefore have to be disclosed by the Framework Manager in response to such a request, unless the Framework Manager decides that one of the statutory exemptions under the EIR applies.

The Framework Manager shall be responsible for determining, at its absolute discretion, whether the information submitted by a Bidder is exempt from disclosure in accordance with the provisions of the EIR.

- 11.2.9 Bidders acknowledge that the Framework Manager and/or its members may be subject to the Government's public sector purchasing transparency requirements and that the Framework Manager and/or its members may be required to publish on a Government on line portal or otherwise details of this procurement process, including but not limited to the process documentation and the contract awarded.

11.3 Prices

- 11.3.1 Prices in SCHEDULE E COMMERCIAL SCHEDULE must remain open for acceptance until 90 days from the closing date for the receipt of Tenders.
- 11.3.2 Prices submitted as part of SCHEDULE E COMMERCIAL SCHEDULE should be considered capped pricing and under no circumstances should prices for any call-off exceed the unit cost per good or service exceed this. Final prices may be below this cap based on a client's specific requirements.
- 11.3.3 Prices in SCHEDULE E COMMERCIAL SCHEDULE must be firm (i.e. not subject to variation) for the period of 2 years. Any proposed amendments to the fixed period may be rejected at the discretion of the Framework Manager.
- 11.3.4 Where a fixed price period ends and triggers a contract extension option, price variations must be accompanied by evidence to justify the change in price. References to standard inflationary indices are not acceptable. Any price variations will be reviewed and may be accepted or rejected at the discretion of the Framework Manager. It is expected that successful suppliers will mitigate any price increases through structured business development and efficiency planning.
- 11.3.5 Where the accumulated costs materially exceed the advertised contract value (as published in the Award notice, the Framework Manager reserves the right to terminate and re-advertise the Framework Agreement.

11.4 Tender Documentation and Submission

- 11.4.1 Tenders must be for the supply of the whole of the specification in the Lot to which the Tender applies upon the Terms and Conditions of the Contract. Tenders for part

or parts only of the specification or for different standards or frequencies or made subject to alternative terms or conditions may be rejected.

11.4.2 The services or goods offered should be strictly in accordance with the Specification of the appropriate Lot. Alternative services or goods may be offered but all differences between such services or goods and the applicable Specification must be indicated in detail in your response to SCHEDULE D TECHNICAL SCHEDULE. Alternative services or goods offered may be rejected at the sole discretion of the Framework Manager if they are substantially non-compliant with the Specification. If compliant, alternative services or goods offered will be evaluated strictly in accordance with the published award criteria.

11.4.3 Tenders for each Lot offered must comprise of the following completed documents:

- the Technical Schedule, completed for all Lots tendered;
- the Commercial Schedule, completed for all Lots tendered;
- the appropriate Prerequisites;
- the Form of Offer;
- the Certificate of Non-Canvassing;
- any other documents requested, as appropriate to each Lot tendered.

11.4.4 The Form of Offer must be signed by an authorised signatory, scanned and uploaded into the e-sourcing portal where indicated. In the case of a partnership, by a partner for and on behalf of the partnership; in the case of a limited company, by an officer duly authorised, the designation of the officer being stated. Any signature included in the Tender will be deemed to be from an authorised person.

11.4.5 The Tender must be completed in full. Any Tender may be rejected which:

- contains gaps, omissions or obvious errors; or
- contains amendments which have not been initialled by the authorised signatory; or
- is received after the closing time.

11.4.6 Contact the Framework Manager via the e-sourcing portal for help in completing the Tender in compliance with the requirements of this ITT.

11.4.7 Offers must be written in English and submitted via the Framework Manager's e-sourcing portal at www.nhssourcing.co.uk

11.4.8 The Framework Manager may, at its own absolute discretion extend the closing date and time specified above without request. Any extension granted will apply to all Tenderers.

11.5 Rebates/Commissions

Why we charge our suppliers fees.

- Setting up legally compliant framework agreements is a resource intensive process which requires qualified experienced staff
- We manage our framework agreements including dealing with client enquiries
- The fees allow us to deliver free to access framework agreements for client authorities which encourages usage by the Public Sector.

11.5.1 In any application of rebates and commissions, Tenderers will be treated fairly and equitably within their markets. Furthermore, agreement will be reached between both parties on the process for relating payments to contractual activity. The Supplier will be expected to submit sales activity on a monthly basis and invoices will also be issued monthly.

11.5.2 The purposes of rebates and commissions are the promotion and management of the Framework Agreement and as such should benefit both the Framework Supplier and the Framework Manager. All fees set out below are payable by the supplier to the Framework Manager, Commercial Procurement Services.

11.5.3 There will be a Framework Agreement award fee of £10,000 – not discountable against any other fees charged. This fee will be split equally between all Suppliers awarded a place on the Framework Agreement. For the avoidance of doubt, any Supplier awarded to more than one Lot of the proposed Framework Agreement will not be required to pay multiple Framework Agreement award fees. Invoices will be issued following the signing of the Framework Agreement and will be due within 30 days.

11.5.4 Annual Fee: There will be an annual fee equal to that paid in the award fee – discounted from the Business Success Charge for new contracts signed and live within the 12 months prior to the annual fee due date. The annual fee will be paid by the Supplier to the Framework Manager for every year the Framework Agreement is

live. Invoices will be issued on the anniversary of the Framework Agreement letting date and will be due in 30 days.

- 11.5.5 Business Success Charge – this will be 1.5% of the turnover of each call off Contract awarded under the Framework Agreement. The business success charge will be paid by the Supplier to the Framework Manager for the duration of each call off contract. Call off contracts may exceed the Framework Agreement expiry date and in such cases the business success charges will continue to be paid until the call off contract expiry date.

11.6 Table-top trials ☐ (only applicable to the Tender if this box is checked)

- 11.6.1 Clinical table-top trials will be used to assess a product's quality against its described characteristics in the bidder's response documents as highlighted in the award sub-criteria. Table-top trials are intended to be used to assess products with minimum disruption to our clinicians and patients and as such will not be trialled in a live clinical environment. All bidders are required to submit any products related to this Tender as requested by the Authority within the timescales advised by the Authority. Failure to provide adequate trial material will result in receiving a Zero in the appropriate award section of the evaluation.

**Note. Clinical table-top trials may be used by NHS Organisations in the award process for subsequent Call-Off Contracts under Lot 2 but do not apply to the establishment of this Framework Agreement.*

11.7 TUPE ☒ (only applicable to the Tender if this box is checked)

- 11.7.1 The attention of Tenderers is drawn to the provisions of the European Acquired Rights Directive EC77/187 and TUPE (Transfer of Undertakings Protection of Employment Regulations). TUPE may apply to the transfer of the Contract from the present supplier to the new one, giving the present supplier's staff (and possibly also staff employed by any present sub-contractors) the right to transfer to the employment of the successful Tenderer on the same terms and conditions. The above does not apply to the self-employed.
- 11.7.2 Tenderers are advised to form their own view on whether TUPE applies, obtaining their own legal advice as necessary.
- 11.7.3 To assist in future processes the Framework Manager may seek workforce details from present supplier(s). The Framework Manager provides no warranty as to the accuracy of any such information supplied and accepts no liability for any inaccuracies that is contained within it or for any omissions from such information. Tenderers must form their own view and make their own enquiries as to whether TUPE will apply and as to the workforce implications if it does.

This information will be supplied to Tenderers on request on the basis that it is treated as strictly confidential; that it is not disclosed except to such people within the Tenderer's organisation, and to such extent, as is strictly necessary for the preparation of the tender; and that it is not used for any other purpose. By requesting this information from the Framework Manager a Tenderer will be deemed to have agreed to abide by these obligations of confidentiality.

11.7.4 The successful Supplier will be required to indemnify the Contracting Authority against all possible claims under TUPE.

11.7.5 It is a further requirement that the successful Supplier will pass on all details of their own workforce towards the end of the Contract period so that this information can be passed to other bona fide suppliers to enable them to assess their obligations under TUPE in the event of a subsequent transfer occasioned by a future tender process.

**Note. TUPE may apply to subsequent Call-Off Contracts but it does not apply to the establishment of this Framework Agreement due to it offering no commitment.*

11.8 Contract Monitoring

11.8.1 The Framework Manager is committed to helping improve the efficiency of contracted Suppliers through sharing information on performance measurement. The criteria for measuring performance shall be agreed with the Supplier/s and formally documented. It is possible that measurement criteria will develop during the term of the Framework Agreement - this will also be documented following agreement with the Supplier/s.

11.8.2 Monthly contract financial performance monitoring may be necessary to ensure that the correct rebate amount is payable. The Framework Manager reserves the right to request audit data from NHS Organisations to ensure management information is accurate.

11.9 Canvassing

11.9.1 Each organisation forming part of a bid submission must not canvass, solicit or offer any gift or consideration whatsoever as an inducement or reward to any officer (or their partner) or employee (or their partner) of the Framework Manager, or to any officer (or their partner) or employee (or their partner) of any Framework Manager member organisation or to a person (or their partner) acting as an adviser to in connection with the selection of Bidders in relation to this procurement. Without limitation to the generality of the above obligation, any organisation that:

- directly or indirectly attempts to obtain information from any member, employee, agent or contractor of the Framework Manager concerning the process leading to

the award of the Framework Agreement or any subsequent Contract (save as expressly provided for in the MOI, SQ or ITT, whichever is applicable); or

- directly or indirectly attempts to contact any member, employee, agent or contractor of the Framework Manager concerning the process leading to the award of the Framework Agreement or any subsequent Contract (save as expressly provided for in the MOI, SQ or ITT, whichever is applicable); or
- directly or indirectly attempts to influence any member, employee, agent or contractor of the Framework Manager concerning the conduct of the process leading to the award of the Framework Agreement or any subsequent Contract, or the structure of the procurement process, or the structure of the contractual opportunity, save where this occurs in a manner provided for in the MOI, SQ or ITT, whichever is applicable;
- directly or indirectly canvasses any member, employee, agent or contractor of the Framework Manager concerning the process leading to the award of the contract (save as expressly provided for in the MOI, SQ or ITT, whichever is applicable);

may be disqualified from the procurement process by the Framework Manager at their absolute discretion. Where any organisation forming part of a bid submission is disqualified the entire bid submission shall be disqualified.

11.10 Collusive Tendering

11.10.1 Any organisation forming part of a bid submission must neither disclose to, nor discuss with any other potential Bidder, or Bidder (whether directly or indirectly), any aspect of any response to any procurement documents (including the ITT). Without limitation to the generality of the above obligation, any organisation that:

- fixes or adjusts the price included in its response to the ITT by or in accordance with any agreement or arrangement with any other bidder; or
- communicates to any person other than the Framework Manager the price or approximate price to be included in its response to the ITT or information that would enable the price or approximate price to be calculated (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the response to the ITT or for the purposes of obtaining insurance or for the purposes of obtaining any necessary security); or
- enters into any agreement or arrangement with any other potential Bidder that has the effect of prohibiting or excluding that potential Bidder from submitting a response to the ITT or as to the price to be included in any response to be submitted; or

- offers or agrees to pay or give or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other response to the ITT or proposed response to the ITT;

may be disqualified from the procurement process by the Framework Manager at their absolute discretion. Where any organisation forming part of a bid submission is disqualified the entire bid submission shall be disqualified.

11.11 Guarantees

11.11.1 If the successful Tenderer is a subsidiary Company within the meaning of S1159 of the Companies Act 2006 (as amended) it shall also provide to the Framework Manager within 28 days receipt of written acceptance of the Tender a Guarantee by its holding Company (as defined by the Companies Act 2006 as amended) to secure the due performance by the successful Tenderer of its obligations to the Framework Manager and, as appropriate, the Contracting Authority

11.11.2 If the successful Tenderer shall fail to provide the Guarantee within the period specified in 11.1 above, the Framework Manager shall by written notice to the Tenderer be entitled to treat such failure as putting an end to the Framework Agreement between the Framework Manager and the Tenderer.

11.12 The Framework Agreement

11.12.1 This procurement exercise concerns the conclusion of a Framework Agreement under which multiple Suppliers will be appointed to supply Services or Goods to NHS Organisations on the terms agreed. A copy of a specimen Framework Agreement can be found in SCHEDULE B TEMPLATE FRAMEWORK AGREEMENT.

11.12.2 The specification (SCHEDULE A FRAMEWORK AGREEMENT SPECIFICATION) and associated appendices, the terms and conditions at SCHEDULE B TEMPLATE FRAMEWORK AGREEMENT together with any special requirements will form the basis of the resulting Framework Agreement between the successful Bidders and the Framework Manager. Please confirm your understanding of this statement by completing the "Form of Offer" attached as SCHEDULE F FORM OF OFFER.

11.13 Disclaimer

The information contained in this ITT is presented in good faith and does not purport to be comprehensive or to have been independently verified.

Neither the Framework Manager, or any of its members, nor any of their advisers accept any responsibility or liability in relation to its accuracy or completeness or any other information which has been, or which is subsequently, made available to any Bidder, any relevant organisation, Bidder guarantors, their financiers or any of their advisers, orally or in writing or in whatever media.

Interested parties and their advisers must therefore take their own steps to verify the accuracy of any information that they consider relevant, but are not entitled to rely on any statement or representation made by the Framework Manager, or any of its members or any of their advisers.

Nothing in this ITT is, nor shall be relied upon as, a promise or representation as to any decision by the Framework Manager in relation to this procurement. No person has been authorised by the Framework Manager, or their advisers or consultants to give any information or make any representation not contained in this ITT and, if given or made, any such information or representation may not be relied upon as having been so authorised.

Nothing in this ITT or any other pre-contractual documentation shall constitute the basis of an express or implied contract that may be concluded in relation to this procurement exercise, nor shall such documentation / information be used in construing any such contract. Each Bidder must rely on the terms and conditions contained in any contract when, and if, finally executed, subject to such limitations and restrictions that may be specified in such contract. No such contract will contain any representation or warranty in respect of this ITT or other pre-contract documentation.

The Framework Manager, accept no liability for any loss, liability, cost or expense (including legal expenses) incurred by any Bidder in preparing for or participating in this ITT process, howsoever arising (whether under contract, tort or under any statutory provision or otherwise) including under any implied contract between the Framework Manager and any Bidder arising by virtue of this ITT process.

In this Clause, references to the ITT include all information contained in these documents and any other information (whether written, oral or in machine-readable form) or opinions made available by or on behalf of the Framework Manager or any of its advisers or consultants in connection with any other pre-contract documentation.

The Framework Manager reserve the right to change the basis of, or the procedures (including the timetable) relating to, the procurement process, to reject any, or all, of the ITT bids, in respect of the procurement.

The Framework Manager shall not be obliged to appoint any of the Bidders and reserves the right not to proceed with the procurement, or any part thereof, at any time.

11.14 Bidder changes

Bidders are subject to an ongoing obligation to notify the Framework Manager of any material changes in their identity, financial or other circumstances. This includes, but is not limited to, changes to the identity of partner organisations or sub-contractors or the ownership or financial or other circumstances thereof and solvency of the Bidder. The Framework Manager should be notified of any material change as soon as it becomes apparent.

Failure to notify the Framework Manager of any material changes or to comply with any of these provisions may lead to a Bidder being liable for disqualification from the procurement. The Framework Manager reserves the right to refuse to allow such a change and to disqualify any Bidder from further participation in the procurement process. The Framework Manager may take into account whether such change is material to the delivery of the contract.

11.15 Procurement Costs

Each Bidder will be responsible for its own costs and expenses (including legal costs and expenses) incurred throughout each stage of the procurement process. The Framework Manager will not be responsible for any costs incurred by any Bidder or any other person through this process, including but not limited to any exit or de-commissioning costs.

The Framework Manager will not be responsible for any costs and expenses (including legal costs and expenses) that result from delay to this procurement process or from the abandonment of this procurement process.

11.16 Publicity

No publicity regarding this procurement process or the award of any Framework Agreement or Contract will be permitted unless and until the Framework Manager has given express written consent to the relevant communication and has approved the detail of any such communication. Without prejudice to the generality of the foregoing, no statements shall be made to the media regarding the nature of any response to this ITT relating to this process, its contents, any ongoing dialogue between the Framework Manager and any Bidder or any proposals relating to it, without the prior written consent of the Framework Manager.

11.17 IPR

All procurement documentation issued in connection with this procurement shall remain the property of the Framework Manager and shall be used by the Bidder only for the purposes of this procurement.

11.18 Law and Jurisdiction

Any dispute (including non-contractual disputes or claims) relating to this procurement shall be governed by and construed in accordance with the laws of England and Wales.

The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this procurement (including non-contractual disputes or claims).

11.19 Prerequisites ☒ (only applicable to the tender if this box is checked, open procedure only and must be referenced in the OJEU notice)

Bids and/or Bidders that fail to meet the minimum standards as denoted in SCHEDULE C PREREQUISITES may be rejected. This includes Bidders that are ineligible to tender under one or more of the mandatory exclusion criteria specified in regulation 57 of the Public Contracts Regulations 2015 (as amended). Bidders that fail to satisfy the Contracting Authority's prerequisites, either economically or technically will be deemed ineligible and not have their bid further assessed.

It is recommended the Bidders review SCHEDULE C PREREQUISITES and satisfy themselves of their own compliance before completing the technical and commercial response schedules.

11.20 Contingency Plans & Business Continuity

This clause is for information only. The Contracting Authority requires all of its Suppliers to have contingency and business continuity plans, copies of which will be held on file by the Framework Manager. Where such formal contingency plans are not in place, Suppliers must agree to work with the Framework Manager to produce these over the initial Framework Agreement term to mitigate any risk which may occur and affect contract performance.

Successful Suppliers will be required to provide copies of their contingency plans for any of the following situations:

- Fire at your premises
- IT failure at your premises
- Cyber attack

- Industrial action by your staff
- National industrial action (e.g. action affecting fuel distribution)
- Force majeure (e.g. terrorism, piracy, extreme weather, grounded flights)

12. CALL OFF CONTRACT AWARD PROCESS

12.1 This Framework Agreement will be a multi-supplier Framework Agreement with two Lots. Lot 1 - Provision of Intraoperative Neuromonitoring Services and Lot 2 - Supply of Intraoperative Neuromonitoring Equipment. Contracts in either Lot may be awarded in one of two ways.

- (i) If a Contracting Authority can determine that its Services or Goods Requirements can be met by the Framework Supplier's catalogue/description of the Services or Goods as set out in the Framework Agreement Specification (set out in Schedule A of this ITT) and the Framework Supplier's response to that Specification; and all of the terms of the proposed Call Off Contract are laid down in the Framework Agreement and the Template Call Off Terms do not require amendment or any supplementary terms and conditions (other than the inclusion of optional provisions already provided for in the Template Call Off Terms); then the Contracting Authority may award a Call Off Contract in accordance with the procedure set out in **12.2** below.
- (ii) If all of the terms of the proposed Call Off Contract are not laid down in the Framework Agreement and a Contracting Authority:
 - a. requires the Supplier to develop proposals or a solution in respect of such Contracting Authority's Services or Goods Requirements; and/or
 - b. needs to amend or refine the Template Call Off Terms to reflect its Services or Goods Requirements to the extent permitted by and in accordance with the Regulations and Guidance (for example where a Contracting Authority is able to offer commitment (e.g. for a minimum number of procedures or quantity of Goods purchased);

then the Contracting Authority shall award a Call Off Contract in accordance with the Further Competition Procedure set out in **12.3** below.

12.2 DIRECT ORDERING WITHOUT A FURTHER COMPETITION

12.2.1 Subject to paragraph 12.1 above any Contracting Body awarding a Call Off Contract under this Framework Agreement without holding a further competition shall:

- (i) develop a clear Statement of Requirements;
- (ii) apply the Direct Award Criteria to the catalogue of the Services or Goods for all Suppliers capable of meeting the Statement of Requirements in order to establish which of the Framework Suppliers provides the most economically advantageous solution; and

- (iii) on the basis set out above, award the Call Off Contract with the successful Framework Supplier in accordance with paragraph 12.6 below.

12.3. FURTHER COMPETITION PROCEDURE

Contracting Body's Obligations

12.3.1 Any Contracting Body awarding a Call Off Agreement under this Framework Agreement through a Further Competition Procedure shall:

- (i) develop a Statement of Requirements setting out its requirements for the Services or Goods and identify the Framework Suppliers capable of supplying the Services or Goods;
- (ii) amend or refine the Template Call Off Form and Template Call Off Terms and Schedules to reflect its Services or Goods Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
- (iii) invite bidders by conducting a Further Competition Procedure for its Services or Goods Requirements in accordance with the Regulations and Guidance and in particular:
 - (a) if an Electronic Reverse Auction (as defined in paragraphs 12.3.9 to 12.3.15 below) is to be held the Contracting Body shall notify the Framework Suppliers identified in accordance with paragraph 12.3.1 and shall conduct the Further Competition Procedure in accordance with the procedures set out in paragraph paragraphs 12.3.9 to 12.3.15; or
 - (b) if an Electronic Reverse Auction is not used, the Contracting Body shall:
 - (i) invite the Framework Suppliers identified in accordance with paragraph 12.3.1 to submit a Bid in writing for each proposed Call Off Agreement to be awarded by giving written notice by email to the relevant Supplier Representative of each Framework Supplier;
 - (ii) set a time limit for the receipt by it of the Bids which takes into account factors such as the complexity of the subject matter of the proposed Call Off Agreement and the time needed to submit Bids; and
 - (iii) keep each Bid confidential until the time limit set out for the return of Bids has expired.

12.3.2 Apply the Further Competition Award Criteria to the Framework Suppliers' compliant Bids submitted through the Further Competition Procedure as the basis of its decision to award a Call Off Agreement for its Goods and/or Services Requirements;

12.3.3 On the basis set out above, award its Call Off Agreement to the successful Framework Supplier in accordance with paragraph 12.6 which Call Off Agreement shall:

- (a) state the Services or Goods Requirements;
- (b) state the Bid submitted by the successful Framework Supplier;
- (c) state the charges payable for the Services or Goods Requirements in accordance with the Bid submitted by the successful Framework Supplier; and
- (d) incorporate the Template Call Off Form and Template Call Off Terms (as may be amended or refined by the Contracting Body in accordance with paragraph 12.3.2 above) applicable to the Services or Goods,

12.3.4 Provide unsuccessful Framework Suppliers with written feedback in relation to the reasons why their Bids were unsuccessful.

The Supplier's Obligations

12.3.5 The Supplier shall in writing, by the time and date specified by the Contracting Body following an Request for Proposal pursuant to paragraph 12.3.3 above provide the Contracting Body with either:

- (i) a statement to the effect that it does not wish to Bid in relation to the relevant Services or Goods Requirements; or
- (iii) the full details of its Bid made in respect of the relevant Statement of Requirements.

12.3.6 In the event that the Supplier submits such a Bid, it should include, as a minimum:

- (a) an email response subject line to comprise unique reference number and Supplier name, so as to clearly identify the Supplier;
- (b) a brief summary, in the email (followed by a confirmation letter), stating that the Supplier is bidding for the Statement of Requirements;
- (c) a proposal covering the Goods and/or Services Requirements.

12.3.7 The Supplier shall ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to this paragraph 12.3 shall be based on the Framework Agreement Commercial Schedule (Schedule 5 of the Framework Agreement and take into account any discount to which the Contracting Body may be entitled (for example where a Contracting Authority is able to offer commitment (e.g. for a minimum number of procedures or quantity of Goods purchased).

12.3.8 The Supplier agrees that:

- (a) all Bids submitted by the Supplier in relation to a Further Competition Procedure held pursuant to this paragraph 12.3 shall remain open for acceptance by the Contracting Body for ninety (90) Working Days (or such other period specified in the documentation issued by the relevant Contracting Body in accordance with the Call Off Procedure); and

- (b) all Bids submitted by the Supplier are made and will be made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the price of the Bid by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:
 - (i) communicate to any person other than the person inviting these Bids the amount or approximate amount of the Bid, except where the disclosure, in confidence, of the approximate amount of the Bid was necessary to obtain quotations required for the preparation of the Bid; and
 - (ii) enter into any arrangement or agreement with any other person that The Supplier or the other person(s) shall refrain from submitting a Bid or as to the amount of any Bids to be submitted.

E-AUCTIONS

12.3.9 The Contracting Body shall be entitled to formulate its Statement of Requirements in accordance with paragraph 12.3.1 above and invite the Supplier to a Further Competition Procedure using a reverse auction in accordance with the rules laid down by the Contracting Body and in accordance with the Regulations, prior to the commencement of any such Further Competition Procedure.

12.3.10 The Supplier acknowledges that Contracting Bodies may wish to undertake an electronic reverse auction, where Framework Suppliers compete in real time by bidding as the auction unfolds ("Electronic Reverse Auction").

12.3.11 Before undertaking an Electronic Reverse Auction, the relevant Contracting Body will make an initial full evaluation of all Bids.

12.3.12 The Contracting Body will inform the Framework Suppliers of the specification for the Electronic Reverse Auction which shall include:

- (i) the information to be provided at auction, which must be expressed in figures or percentages;
- (ii) the mathematical formula to be used to determine automatic ranking of bids on the basis of new prices and/or new values submitted;
- (iii) any limits on the values which may be submitted;
- (iv) a description of any information which will be made available to Framework Suppliers in the course of the Electronic Reverse Auction, and when it will be made available to them;
- (v) the conditions under which Framework Suppliers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- (vi) relevant information concerning the electronic equipment used and the arrangements and technical specification for connection;
- (vii) the date and time of the start of the Electronic Reverse Auction; and

(viii) details of when and how the Electronic Reverse Auction will close.

12.3.13 The Electronic Reverse Auction may not start sooner than two (2) Working Days after the date on which the specification for the Electronic Reverse Auction has been issued.

12.3.14 Throughout each phase of the Electronic Reverse Auction the Contracting Body will communicate to all Framework Suppliers sufficient information to enable them to ascertain their relative ranking.

12.3.15 The Supplier acknowledges and agrees that:

- (i) the Contracting Body and its officers, servants, agents, group companies, assignees and customers (including the Authority) do not guarantee that its access to the Electronic Reverse Auction will be uninterrupted or error-free;
- (ii) its access to the Electronic Reverse Auction may occasionally be restricted to allow for repairs or maintenance; and
- (iii) it will comply with all such rules that may be imposed by the Contracting Body in relation to the operation of the Electronic Reverse Auction.
- (iv) The Contracting Body will close the Electronic Reverse Auction on the basis of:
 - (a) a date and time fixed in advance;
 - (b) when no new prices or values meeting the minimum differences required pursuant to paragraph 12.3.12 have been received within the prescribed elapsed time period; or
 - (c) when all the phases have been completed.

12.4. NO AWARD

12.4.1 Notwithstanding the fact that the Contracting Body has followed a procedure as set out above in paragraph 12.2 or 12.3 (as applicable), the Contracting Body shall be entitled at all times to decline to make an award for its Goods and/or Services Requirements. Nothing in this Framework Agreement shall oblige any Contracting Body to award any Call Off Agreement.

12.5. RESPONSIBILITY FOR AWARDS

12.5.1 The Supplier acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call Off Agreements under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:

- (i) the conduct of Other Contracting Bodies in relation to this Framework Agreement; or
- (ii) the performance or non-performance of any Call Off Agreements between the Supplier and Other Contracting Bodies entered into pursuant to this Framework Agreement.

12.6. CALL OFF AWARD PROCEDURE

- 12.6.1 Subject to paragraphs 12.1 to 12.5 above, a Contracting Body may award a Call Off Agreement with the Supplier by sending (including electronically) a signed order form substantially in the form (as may be amended or refined by the Contracting Body in accordance with paragraph 12.3.1 above) of the Template Order Form set out in Framework Schedule 7 (Ordering Procedure, Award Criteria and Order Form) and Framework Agreement Appendix A (Call-off Terms and Conditions for the Supply of Goods and the Provision of Services). The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Agreement) which is not as described in this paragraph 12.6 shall not constitute a Call Off Agreement under this Framework Agreement.
- 12.6.2 The Framework Agreement will run for a four year term; however call-off Contracts may exceed this period provided that Contracts are awarded within the Framework Agreement term.
- 12.6.3 On receipt of an order form as described in paragraph 12.6.1 above from a Contracting Body the Supplier shall accept the Call Off Agreement by promptly signing and returning (including by electronic means) a copy of the order form to the Contracting Body concerned.
- 12.6.3 On receipt of the signed order form from the Supplier, the Contracting Body shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and a Call Off Agreement shall be formed.

12.7. FORM OF ORDER

- 12.7.1 The Parties acknowledge that provisions of Schedule 9 (Extra key provisions) of the Template Call Off Terms shall apply in accordance with Clause 12.1 (i) of this Framework Agreement and that a Contracting Body shall have the right to include any of the provisions referred to within that schedule.

13. LIST OF APPENDICES

SCHEDULE	Title	Contents	Action
A	Framework Agreement Specification	Specification of the subject matter of the procurement	Applicant should read the specification and ensure they can provide the services listed.
B	Template Framework Agreement (including all Schedules and Appendices)	<ul style="list-style-type: none"> NHS FRAMEWORK AGREEMENT FOR THE SUPPLY OF SERVICES APPENDIX A-CALL OFF TERM AND CONDITIONS FOR THE SUPPLY OF SERVICES 	Read and confirm commitment by submitting a signed unamended copy of SCHEDULE F – FORM OF OFFER
C	Prerequisites	Mandatory/Discretionary and Minimum requirements of all Applicants	Applicants are required to complete all questions in prerequisites in SCHEDULE C PREREQUISITES for the Lot or Lots tendered. Alternatively;

			Applicants may submit their European Single Procurement Document, which must be completed in full together with responses to any additional prerequisites shown in SCHEDULE C PREREQUISITES.
D	Technical Schedule	Technical criteria to be assessed within this document	This document once completed should be uploaded as part of tender response to the e-sourcing portal
E	Commercial Schedule	Commercial offerings to be detailed within this document	This document once completed should be uploaded as part of tender response to the e-sourcing portal
F	Form of Offer	Formal Commitment of Applicant to Tender Offer	An unamended copy must be signed by an appropriate person with the authority to commit the Applicant to the Tender offer and the Framework Agreement. This document is in PDF format and should be printed, signed (electronic signatures will not be accepted) witnessed and dated, scanned and attached to the response submission via the e-sourcing portal.
G	Certificate of Non Canvassing		This document once completed should be uploaded as part of tender response to the e-sourcing portal