

# Invitation to Tender

for

## The Provision of Data Validation Services

## National Framework Agreement

**Project Ref: F/075/VAL/21/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"/>

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## 1. BACKGROUND TO THIS FRAMEWORK AGREEMENT

A number of NHS organisations are currently migrating, or are expected to migrate from legacy Patient Administration Systems (PAS) to modern Electronic Patient Record (EPR) systems.

Many legacy PAS are not Referral To Treatment (RTT) compliant and, therefore, RTT Pathways and associated Events for migration have to be 'manually manufactured' from existing referrals and outcomes.

There may also be significant data quality issues with legacy data that will impact on the management and integrity of that data prior to implementation of a new EPR system.

It is expected that, as part of the process of migrating data to a modern EPR, the data from the legacy PAS will require certain cleansing tasks to improve the quality and integrity of data being migrated, especially when such data potentially violates system rules for import to the incoming EPR system.

In addition to cleansing data, data validation may be required, to facilitate the migration to an EPR. This includes validation of incomplete pathways and incomplete waiting lists as well as understanding the data quality issues that could facilitate the RTT migration to the incoming EPR system and the Client's Covid-19 restoration and recovery work. National Codes from the NHS Data Dictionary will be used where possible.

This will improve the quality of patient data held within EPR and support the optimal use of the EPR from implementation.

NHS organisations may lack in-house expertise and/or capacity to undertake the necessary data cleansing exercises and may require expert assistance in undertaking a data validation exercise prior to the Client's planned migration of its legacy PAS to a modern EPR system. The proposed framework will provide Clients with this expert support.

The Countess of Chester Hospital NHS Foundation Trust's Commercial Procurement Service anticipates appointing all Bidders whose combined score meets or exceeds 60% against the award criteria detailed in Section 10 of this ITT (which has met the minimum requirements which are set out in these ITT documents) to supply the works and services detailed for that Lot within the specification at SCHEDULE A FRAMEWORK AGREEMENT SPECIFICATION.

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

The Countess of Chester Hospital NHS Foundation Trust (the 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 innovative businesses and ideas. Further information can be obtained from the website [www.coch-cps.co.uk](http://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 Participating Authorities and issue draft contracts for consideration between Participating 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.

The Countess of Chester Hospital's Commercial Procurement Service wishes to establish a Framework Agreement for use by all UK NHS bodies (and any future successors to these organisations):

1. Any NHS Trust, any NHS Foundation Trust, any Sustainability & Transformation Partnership, and Integrated Care System, any Clinical Commissioning Group and any of their successors in England;
2. Any NHS Health Board or Special Health Board in Scotland;
3. Any NHS Health Board, any NHS Community Health Council in Wales;
4. Any NHS Health and Social Care Trust in Northern Ireland
5. 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 in this document;
  - (ii) subject to management supervision by another contracting authority listed above in this document; 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 document;
  - (iv) an association of or formed by one or more of the Contracting Authorities listed above in this document.
6. The voluntary sector, charities and/or other entities and private organisations and which are not UK public sector bodies may also use the Framework Contracts if the Authority is satisfied that:

- (i) such entity is calling-off 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 Contracts on their own account.
- (ii) such entity is acting as a managing agent or procuring on behalf of the public sector delivering services of a public nature.

For the avoidance of doubt, any successor bodies of any of the above entities shall be entitled to place Orders and shall be deemed Participating Authorities for the purposes of this Framework Agreement.

## 4. HOW THE FRAMEWORK WILL OPERATE

The Framework Agreement will be a multi-supplier framework. Contracts will be awarded by direct call off or following further competition between Suppliers. In the event that there is only one Supplier appointed to the Framework Agreement, Contracts will be awarded within the limits laid down in the Framework Agreement and, for the award of those Contracts, Contracting Authorities may consult the Supplier in writing, requesting it to supplement its tender as necessary.

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.

Contracting Authorities wishing to use the Framework Agreement must contact the Commercial Procurement Services Team directly.

The Framework Manager will issue the Contracting Authority with a detailed briefing pack showing the options available.

The Contracting Authority will liaise directly with the Framework Manager in order to satisfy themselves that it offers adequate governance and value.

If satisfied, the Contracting Authority will request a unique reference number from the Framework Manager;

The Framework Manager will issue the Contracting Authority with a unique reference number which the Contracting Authority can use to call-off the Services under this Framework Agreement. Contracting Authorities attempting to engage a Supplier without the unique reference number are doing so outside of the remit of this Framework Agreement and as such the Framework Manager can offer no assurance on legal compliance;

and

on the basis set out above, the Contracting Authority will award the Call Off Contract with the successful Framework Supplier in accordance with the procedure in Section 12 of this ITT.

The Contracting Authority shall publish the necessary award information on Contracts Finder.

Suppliers shall provide COCH with timely, accurate and complete Management Information (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.

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 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.

Quarterly reviews will be held between the Suppliers and the Framework Manager. The Suppliers 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.

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. Where prerequisites have been applied, these will be assessed as the first stage of the evaluation. Failure to meet any prerequisite may 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 bid, 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, no standstill period will be required. 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

Bidders 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
Find a Tender Service advertisement sent for publication	9 March 2021
Last date and time for the submission of Clarification Questions	8 April 2021 at 1700 BST
Invitation To Tender closing date and time.	14 April 2021 at 1400 BST
Opening of Tenders and commencement of evaluation process.	16 April 2021 at 0900 BST
End of evaluation process and notification of intent to award. Standstill period begins.	23 April 2021
Framework Agreement conclusion and launch date.	4 May 2021

## 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 Bidder 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 “Participating Authority”, “Client Organisation” 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 make no award of the Framework Agreement.

Bidders 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 8 April 2021 at 1700 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 Bidder be in any doubt as to the interpretation of any or all parts of the ITT document, have commercial queries or technical 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 response to the Bidder 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 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**

Bidders must return bids via the web site [www.nhssourcing.co.uk](http://www.nhssourcing.co.uk); hard copies will not be accepted. It is the sole responsibility of the Bidder 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 who submits the most economically advantageous tender 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..

### **9.1 The closing date for the return of Tenders is 14 April 2021 at 1400 BST.**



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. FRAMEWORK AWARD PROCESS AND EVALUATION CRITERIA

The Framework Agreement will be awarded on the basis of the most economically advantageous tender, which will be evaluated on the following criteria:

Criterion	Weighting
Prerequisites	PASS/FAIL
Technical – Organisation, qualification and experience of staff	20%
Technical – Contract management processes	10%
Technical – Data testing and validation processes	40%
Technical – Knowledge transfer	10%
Commercial	20%
<b>Total</b>	<b>100%</b>

The evaluation will follow the four step process described below.

### 10.1 STEP 1: PREREQUISITES

10.1.1 Tenders will be checked to ensure that they have been completed correctly, that they are compliant with the Framework Agreement Specification and that all necessary information has been provided. Tenders for a Lot that are not compliant or incomplete may be rejected from that Lot. Where a tender is rejected at this point it will automatically be disqualified and will not be further evaluated.

#### 10.1.2 Grounds for mandatory exclusion

In certain circumstances we are required by law to exclude bidders from participating. If you cannot answer ‘No’ to every statement in Part 2 (Grounds for mandatory exclusion) of the Selection Questionnaire then your request to participate shall be excluded from further participation in the SQ (except where disproportionately small amounts of tax or social security obligations are involved).

#### 10.1.3 Grounds for discretionary exclusion

We are entitled (in our sole discretion) to exclude a bidder from further participation if any of the statements in response to Part 2 (Discretionary grounds for exclusion) of the Selection Questionnaire apply. If you cannot answer ‘No’ to every statement it is possible that you will be excluded from this request to participate.

‘Self Cleaning’ (Covering both mandatory and discretionary exclusion):

If you have answered 'Yes' to any question in Section 2 or Section 3 of the SQ but you can provide sufficient evidence that remedial action has taken place subsequently that effectively "self cleans" the situation, we may decide that you shall not be excluded from this request to participate. As a minimum, you will have to demonstrate that you have:

- (a) paid or undertaken to pay compensation in respect of any damage caused by any criminal offence or misconduct;
- (b) clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
- (c) taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures you have taken will be considered taking into account the gravity and particular circumstances of the criminal offence or misconduct.

The detailed grounds for mandatory and discretionary exclusion of an organisation are set out on this [web page](#), which should be referred to before completing these questions in the SQ.

### 10.1.4 Assessment of Economic and Financial Standing

The Framework Manager will not undertake an evaluation of the Bidder's economic and financial standing. Contracting Authorities that intend to call off contracts under the framework agreement are expected to carry out their own assessment of the Supplier's economic and financial standing prior to Contract award.

### 10.1.5 Assessment of Technical and Professional Ability

You must have proven expertise in cleansing and validating data that has been migrated from an NHS PAS to an NHS EPR system in the UK and proven expertise and knowledge of NHS rules on RTT and the interpretation of Trust Access Policies. This section lets you tell us about up to 3 contracts that you have run. Customers who want to call off contracts from 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 covered by 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 contracts.

If we then determine that the level of experience is acceptable, then you will achieve a "Pass" for technical and professional ability.

### 10.1.6 Insurance

Bidders that self-certify that they already have, or can commit to obtain, prior to the commencement of the Framework Agreement, the levels of insurance cover indicated will achieve a “Pass” for insurance.

Bidders that are unable to self-certify that they already have, or can commit to obtain, prior to the commencement of the Framework Agreement, the levels of insurance cover indicated will achieve a “Fail” for insurance.

#### 10.1.7 Standards, Accreditations and Certifications

Bidders must hold (or commit to obtain, prior to commencement of the Framework Agreement if awarded) Cyber Security Essentials Plus accreditation AND must be registered (or commit to register, prior to commencement of the Framework Agreement if awarded) with the Information Commissioner’s Office as a Data Processor and furthermore commit to maintain registration throughout the life of the Framework Agreement and the period of all Contracts called off from the Framework Agreement.

Bidders that self-certify that they already have, or can commit to obtain, prior to the commencement of the Framework Agreement, the accreditation and registration indicated will achieve a “Pass” for questions specific to this procurement process.

Bidders that are unable to self-certify that they already have, or can commit to obtain, prior to the commencement of the Framework Agreement, the accreditation and registration indicated will achieve a “Fail” for questions specific to this procurement process.

10.1.8 Bidders must achieve a “Pass” for all of the selection requirements of SCHEDULE C – Prerequisites. Any Bidders which fail any of the selection requirements set out in the prerequisites as found in SCHEDULE C- Prerequisites will be treated as ineligible for the Framework Agreement, their Tender will not be evaluated further and the Bidder will be informed of their rejection at this stage.

10.1.9 Bidders who have met prerequisites will move to step 2.

### 10.2 STEP 2: EVALUATION OF TECHNICAL INFORMATION

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

Criterion	Weighting
Technical – Organisation, qualification and experience of staff	20%
Technical – Contract management processes	10%
Technical – Data testing and validation processes	40%

Technical – Knowledge transfer	10%
<b>Total for technical criteria</b>	<b>80%</b>

10.2.5 Bidders are required to answer a number of questions found in SCHEDULE D TECHNICAL SCHEDULE, which are linked to the criteria listed above.

10.2.6 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.

Rate	Qualifier	Interpretation
0	No Confidence	Does not meet the specification and/or insufficient information provided to demonstrate how the Bidder will satisfy this requirement of the specification.
1	Serious concerns	The response gives little confidence that the Bidder's goods and/or services could satisfy this requirement of the specification to an acceptable standard of quality and deliverability. There are considerable reservations regarding how the Bidder's goods and/or services would satisfy this requirement of the specification.
2	Concerns, Some Confidence	The response gives some confidence that the Bidder's goods and/or services could satisfy this requirement of the specification to an acceptable standard of quality and deliverability but there minor reservations about one or more aspects of the response.
3	Acceptable, Confident	The response gives confidence that the Bidder's goods and/or services could satisfy this requirement of the specification to an acceptable standard of quality and deliverability.
4	Exceptionally Confident	The response gives excellent confidence that the Bidder's goods and/or services could satisfy this requirement of the specification to an excellent standard of quality and deliverability.

10.2.7 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. The term 'acceptable' in this context refers to a level of quality and/or deliverability that would be acceptable to a reasonably well informed and normally diligent Contracting Authority. The term 'excellent' in this context refers to a level of quality and/or deliverability that would clearly exceed the normal expectations of a reasonably well informed and normally diligent Contracting Authority.

10.2.8 The evaluation of technical information will be undertaken once and the resulting technical score used in the calculation of the final score described in step 4 below.

**10.3 STEP 3: EVALUATION OF COMMERCIAL INFORMATION**

10.3.1 The commercial evaluation will be based on the price of each type of service as described in SCHEDULE E – Commercial Schedule, using the weighting below;

Commercial Criterion	Weighting %
Cost per pathway to test	10%
Cost per pathway to validate	10%
<b>Total for Commercial Criteria</b>	<b>20%</b>

For each service, the lowest price will be awarded the highest score, with higher price offers scoring pro-rata using the standard differential model.

The formula used will be:

$$\text{Commercial Score} = \text{section weighting} \times \left( \frac{\text{Lowest Price}}{\text{Applicant Price}} \right)$$

The scores for each service will be summed to determine the overall commercial score for each Supplier.

**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 will be calculated as follows:

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

The Countess of Chester Hospital NHS Foundation Trust's Commercial Procurement Service anticipates that all Bidders whose combined score meets or exceeds 60% (who have met the minimum requirements set out in this Invitation to Tender) will be awarded a place on the proposed Framework Agreement to supply the services detailed within the specification at SCHEDULE A - Framework Agreement Specification.

**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 Bidder 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 Bidder by name, to the Bidder'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 probable requirements for the period referred to and the Contracting Authority 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 service contained within this Schedule. 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 capped (i.e. not subject to variation) for the period of 2 years. Any proposed amendments to the capped price period will be rejected.
- 11.3.4 Where a fixed price period ends and triggers a price review option, price variations must be accompanied by evidence to justify the change in price. References to standard inflationary indices are not acceptable. 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 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 offered should be strictly in accordance with the Specification. Alternative services may be offered but all differences between such services and the Specification must be indicated in detail in your response to SCHEDULE D TECHNICAL SCHEDULE. Alternative services 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 offered will be evaluated strictly in accordance with the published award criteria. Alternative services and goods may be submitted only where a tender which is not a variant has also been submitted.

11.4.3 Tenders must comprise of the following completed documents:

the Technical Schedule;

the Commercial Schedule;

the Prerequisites;

the Form of Offer;

the Certificate of Non-Canvassing

any other documents requested, as appropriate.

11.4.4 The Form of Offer must be signed by an authorised signatory 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](http://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 Bidders.

## 11.5 Rebates/Commissions

11.5.1 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.

11.5.2 In any application of rebates and commissions, Bidders 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.

11.5.3 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.

11.5.4 **Framework Award Fee:** There will be a Framework Agreement award fee of £10,000 - not discountable against any other fees charged to the Supplier by the Framework Manager. Invoices will be issued following the signing of the Framework Agreement and will be due within 30 days.

11.5.5 **Annual Fee:** There will be an annual fee of £10,000 – discounted from the Gain Share Charge for new contracts signed and live within the 12 months prior to the Annual Fee due date. This 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.

11.5.6 **Gain Share Charge:** There will be a Gain Share charge – this will be 1.5% of the turnover of each call off Contract awarded under the Framework Agreement. The Gain Share 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 Gain Share 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 Not applicable.

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

11.7.1 The attention of Bidders 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 Bidder on the same terms and conditions. The above does not apply to the self-employed.

11.7.2 Bidders 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. Bidders 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 Bidders on request on the basis that it is treated as strictly confidential; that it is not disclosed except to such people within the Bidder'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 Bidder 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 Participating Authorities to ensure management information is accurate. Failure by a Participating Authority to provide may result in the Framework Manager requesting volume supply information from Contracting Authorities under the auspices of the Freedom of Information Act.

## 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 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 Bidder 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) to secure the due performance by the successful Bidder of its obligations to the Contracting Authority

- 11.11.2 If the successful Bidder shall fail to provide the Guarantee within the period specified in 11.11.1 above, the Framework Manager shall by written notice to the Bidder be entitled to treat such failure as putting an end to the Framework Agreement between the Contracting Authority and the Bidder.

### **11.12 The Framework Agreement**

- 11.12.1 This procurement exercise concerns the conclusion of a Framework Agreement under which a single Supplier will be appointed to supply Services to Participating Authorities 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 Bidder and the Contracting Authority. 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 paragraph, 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:

- 11.20.1** Fire at your premises
- 11.20.2** IT failure at your premises
- 11.20.3** Cyber attack
- 11.20.4** Industrial action by your staff
- 11.20.5** National industrial action (e.g. action affecting fuel distribution)
- 11.20.6** Force majeure (e.g. terrorism, piracy, extreme weather, grounded flights)

**12 CALL OFF CONTRACT AWARD PROCESS**

12.1 The following sets out the process by which call off Contracts may be awarded under the Framework Agreement by Participating Authorities.

**Award criteria to be used by Participating Authorities when placing Orders for services under the Framework Agreement.**

Criterion	Weighting range
Organisation, qualification and experience of staff	1% - 99%
Contract management processes	1% - 99%
Data testing and validation processes	1% - 99%
Knowledge transfer	1% - 99%
Commercial	1% - 99%
TOTAL	100%

To direct award under the framework without holding a further competition clients should:

1. Develop a statement of requirements and determine whether this can be met by the services of the framework.
2. Confirm that all the terms of the framework and the call-off terms do not require amendment or any supplementary terms and conditions.
3. Review the price schedule for all capable suppliers and determine the most economically advantageous solution.
4. Award to the successful framework supplier and sign the completed call-off form.

If clients want to allow suppliers to develop proposals or a solution in respect of their requirement; and/or they need to amend or refine the terms of the call-off contract to reflect their requirements (to the extent permitted by and in accordance with the procurement regulations), a further competition will be required.

To award a call-off contract under the framework through a further competition clients should:

1. Develop a statement of requirements identifying the framework suppliers capable of providing the services.
2. Amend or refine the template call-off form and call-off terms to reflect the services required.
3. Develop evaluation criteria and scoring methodology.
4. Publish an invitation to tender pack, along with award criteria and further competition process.
5. Invite all capable suppliers to tender by conducting a further competition in accordance with the regulations.
6. Evaluate tenders, score and provide feedback to bidders.
7. Sign the call-off form with the successful supplier including any supplementary terms or schedules identified in the tender.

## RESPONSIBILITY FOR AWARDS

12.2 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.

## 13 LIST OF SCHEDULES AND APPENDICES

Schedule	Title	Contents	Action
A	Framework Agreement Specification	Specification of the subject matter of the procurement	Bidder 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"> <li>▪ NHS FRAMEWORK AGREEMENT FOR THE SUPPLY OF SERVICES</li> <li>▪ APPENDIX A- CALL OFF TERM AND CONDITIONS FOR THE SUPPLY OF SERVICES</li> </ul>	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 Bidders	Bidders are required to complete all questions in prerequisites in SCHEDULE C PREREQUISITES. Alternatively; Bidders 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 Bidder to Tender Offer	An unamended copy must be signed by an appropriate person with the authority to commit the Bidder 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
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