

**Bid Pack – Better Business Cases Programme**

**Attachment 1 – About the Contract**

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# **Welcome**

We invite you to bid in this competition for Business Case Accreditation, Examination and Training Services. Our Invitation to Tender (**ITT**) is divided into main two parts:

* **Attachment 1 - About the Contract** (this document) – what the opportunity is, who can bid, the timelines for this competition, how to ask questions.

Plus:

* the competition rules and obligations and rights between you and us.
* how the contract works – what a concession contract is.
	+ **Attachment 2 - How to Bid** – guidance on how to submit your bid, the selection and award stages, how we will assess your bid, what is the process at *the* *intention to award* and *the contract award* stages.

To submit your bid, you must use our eSourcing suite, found here: <https://crowncommercialservice.bravosolution.co.u>[k](https://crowncommercialservice.bravosolution.co.uk)

Please read the bidder guidance, which can be accessed using the below link, for help using our eSourcing suite and for instructions on how to submit a **compliant** bid:

<https://www.gov.uk/government/publications/esourcing-tool-guidance-for-suppliers>

You can book for online training for the CCS eSourcing suite at: <https://www.crowncommercial.gov.uk/esourcing-training>

There are also further attachments to the bid pack as follows:

Attachment 1 This document (About the Contract)

Attachment 2 How to Bid

Attachment 2a Selection Questionnaire

Attachment 4 Information and Declaration Workbook

Attachment 5 Financial Assessment Template

Attachment 6 Consortia Details

Attachment 7 Key Subcontractor Details

Attachment 9 Contract Award Letter Template

Attachment 10 Terms and Conditions

Attachment 11 Specification (Statement of Requirements)

Make sure you **read all the attachments, and the contract documents.** The guidance, information and instructions that we provide are there to help you to make a compliant bid.

If anything isn’t clear, see paragraph 6. ‘When and how to ask questions’.

Please read Attachment 6 (Bidder Guidance) for help using our eSourcing suite and instructions on how to submit a compliant bid.

### **What You Need To Know**

* 1. What ’we’ and ‘you’ means

When we use “HMT”, “we”, “us” or “our” we mean HM Treasury (the Authority);

When we use “you” or “your” we mean your organisation, or the organisation you represent, in this competition also referred to as the bidder.

* 1. What do we mean by ‘deliverables’?

Deliverables are the services that will be provided under this contract as set out in Attachment 10 (Specification).

* 1. Who are ‘Key Subcontractors’?

Key Subcontractors are any other person other than you who under this contract will:

* be relied on to deliver any of the deliverables under this contract in their entirety (or any part of them)
* provide the facilities or services necessary for the provision of the deliverables (or any part of them)
* be responsible for the management, direction, or control of the provision of the deliverables (or any part of them)

Please note we do not require all subcontractors to be named in your bid, we only want to know about Key Subcontractors who directly contribute to your ability to provide the deliverables under the contract. We do not need to know about subcontractors who supply general services to you (such as window cleaners etc.) that only indirectly enable you provide the deliverables under the contract.

* 1. What is the difference between a ‘Bidder’ and ‘Supplier’?

The successful bidder will become the Supplier.

* 1. The Public Contracts Regulations 2015

The Public Contracts Regulations 2015 (“the Regulations”) regulate how we procure. This means that we and you follow processes that are fair, transparent, and equitable for all bidders.

* 1. The Concession Contract Regulations 2016

“The Regulations” refers to the Concession Contract Regulations (CCR2016) which regulate how we will procure. This means that we and you have to follow processes that are fair, transparent and equitable for all bidders.

We will be using the Regulations following a ‘light touch’ procedure, in scope of clause 19 and Schedule 3 of the Concession Contract Regulations 2016.

Any interested bidder may submit a bid in response to the prior information notice. The bid must include all the information required for qualitative evaluation that is requested by us. The bid shall be assessed in accordance with the criteria set out in the bid pack.

* 1. Government Security Classifications (GSC)

On 02/04/2014, the Government introduced its Government Security Classifications (GSC) classification scheme to replace the current Government Protective Marking System (GPMS). A key aspect of this was the reduction in the number of security classifications used.

You are encouraged to make yourself aware of the changes and identify any potential impacts in your Bid, as the protective marking and applicable protection of any material passed to, or generated by, you during this competition, or pursuant to any Contract awarded to you as a result of this competition, will be subject to the GSC from 02/04/2014. The link provides information on the GSC:

<https://www.gov.uk/government/publications/government-security-classifications>

* 1. Public Procurement Note 01/22:Contracts with suppliers from Russia or Belarus

In March 2022, the Government introduced its Public Procurement Note 01/22 ‘Contracts with suppliers from Russia or Belarus’ ([PPN 01/22](https://www.gov.uk/government/publications/procurement-policy-note-0122-contracts-with-suppliers-from-russia-and-belarus)) in response to the invasion of Ukraine by Russia, which was met with unprecedented global condemnation. The UK Government has introduced financial and investment sanctions aimed at encouraging Russia to cease actions which destabilise Ukraine. This PPN requires that Contracting authorities, such as CCS, should consider how they can further cut ties with companies backed by the states of Russia and Belarus including declining to consider tenders.

CCS will therefore apply PPN 01/22 to all bidders (and any subcontractors named in a tender). Unless exceptions in the PPN apply, CCS may:

1. exclude from this competition any tenders that are deemed from bidders (or subcontractors) who are constituted or organised under the law of Russia or Belarus, or whose ‘Persons of Significant Control’ information states Russia or Belarus as the place of residency; or
2. request that a bidder find a replacement subcontractor by a specified deadline before its tender can be included in this competition.

### **The Opportunity**

Crown Commercial Service (the Agent) is putting in place a concession contract for HM Treasury (the Authority) for the provision of an accreditation, examination and training service. The Supplier will ensure continued development and consistent delivery in line with the currently agreed syllabuses and examinations. The procurement will be a single Supplier contract which will last an initial period of 3 years, with the option to extend the duration of the contract by a further 2 years and then a further 2 (a maximum contract length overall of 7 years total).

### **What a Concession Contract Is**

Concession are broadly similar to "normal" contracts between contracting authorities’ entities and suppliers, but with one key difference: the consideration in a concession contract consists in the right to exploit the work, or services, that are the subject of the contract, or that right to exploit together with a payment. Examples of concession might include car parks built on local authority-owned land, or toll roads and toll bridges.

The transfer to the concessionaire of the right to exploit the works or services shall always imply an operating risk of economic nature involving the possibility that it will not recoup the investments made and the costs incurred in operating those works or services. This means that under the contract, the concessionaire should not enjoy a guarantee of breaking even on investments and costs incurred.

To class as a concession contract subject to the CCR16 the concessionaire must be exposed to a potential loss on its investments and costs, and it should not be merely nominal or negligible risk.

Risk can either be demand risk, that is the risk on the actual demand for the works or services that are the subject-matter of the contract (e.g. related to the number of users of a highway) or supply risk, that is the risk that the provision of the services will not match demand (e.g. related to the costs and investments generated in relation with maintenance of the highway) or both. Assessing this operating risk requires the net present value of all the investments, costs and revenues associated with the concession contract to be taken into account in a consistent and uniform manner.

However, whatever the type of risk it must stem from factors that are outside the control of the parties or in other words which are foreseeable but uncertain. They are the risk associated with the vagaries of the market. They are to be risks other than those linked to bad management, contractual defaults by the economic operator or to instances of force majeure.

Concession contracts may involve a transfer of ownership to the contracting authority or utility.

The contracting authority or utility always obtains the benefits of the works or services in question rather than the concessionaire.

*(Source: Section 6 ‘Definition of a Concession Contract’, Handbook for Concession Contract Regulations 2016, CCS) (*[*https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/528062/20160607\_Handbook\_for\_the\_Concession\_Contracts\_Regulations\_2016\_final.pdf*](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/528062/20160607_Handbook_for_the_Concession_Contracts_Regulations_2016_final.pdf)*)*

### **Who Can Bid**

We are running this competition using the ‘open procedure’. This means that anyone can submit a bid in response to the published contract notice.

The contract notice can be found on Find a Tender (FTS): https://www.find-tender.service.gov.uk/Notice/022658-2022

You can submit a bid as a single legal entity. Alternatively, you can take one or both of the following options:

* work with other legal entities to form a consortium. If you do, we ask the consortium to choose a lead member who will submit the bid on behalf of the consortium.
* bid with named Key Subcontractors to deliver parts of the requirements. This applies whether you are bidding as a single legal entity or as a consortium.

We recognise that subcontracting and consortium plans can change. You must tell us about any changes to the proposed subcontracting or to the consortium as soon as you know. If you do not, you may be excluded from this competition.

### **Timelines for the Competition**

These are our intended timelines. We will try to achieve these however, for a range of reasons, dates can change. We will tell you if and when timelines change:

|  |  |
| --- | --- |
| Start date (this is the date we submitted the prior information notice to be published) | 16/08/2022 |
| Publication date (this is the date the bid pack will be published)  | 14/10/2022 |
| Clarification period commences | 14/10/2022  |
| Clarification period deadline | 17:00 - 24/10/2022  |
| Deadline for our responses to clarification questions | 17:00 - 28/10/2022  |
| Bid submission deadline | 18:00 - 11/11/2022  |
| Issue of intention to award notices to successful and unsuccessful bidders | 25/11/2022  |
| End of mandatory standstill period | 23:59 at the end of 09/12/2022 |
| Award of contract | 12/12/2022 |

### **When and How to Ask Questions**

 We hope everything is clear after you have read this bid pack (including the attachments).

If you have any questions you need to ask them as soon as possible after the contract notice is published. This is because we have set a deadline for submitting questions - the clarification questions deadline.

You need to send your questions to us through the eSourcing suite. This is the only way we can communicate with bidders. Try to ensure your question is specific and clear. Do not include your identity in the question. This is because we publish all the questions and our responses, to all bidders.

If you feel that a particular question should not be published, you must tell us why when you ask the question. We will decide whether or not to publish the question and response.

Remember that you can ask us questions about the contract but please do not attempt to ‘negotiate’ the terms.

All contract awards will be made under identical terms.

### **Management information**

If you are awarded a contract you will need to send to the Authority Management Information (MI) every quarter (as referenced in Annex 10 of the Terms and Conditions Reporting, Records and Open Book). All MI Reports must be completed by the Supplier adhering to the MI Reporting Requirements and returned to the Authority on or prior to the Reporting Date every Quarter during the Term and thereafter, until all transactions relating to this Agreement have permanently ceased.

The Supplier must return the MI Report for each Quarter even where there are no transactions to report in the relevant Quarter (a "Nil Return").

### **Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)**

We don’t think TUPE will apply to this contract because:

● services are provided to the Authority by the outgoing supplier but there is no organised grouping of employees

### **Competition rules**

We run our competitions so that they are fair and transparent for all bidders. This section, sets out the rules of this competition. It needs to be read together with the bid pack.

* 1. What you can expect from us

We will not share any information from your bid which you have identified as being confidential or commercially sensitive with third parties, apart from other central government bodies (and their related bodies). However, we may share this information but only in line with the Regulations, the Freedom of Information Act 2000 (FOIA) or any other law as applicable.

* 1. What we expect from you

You must comply with these competition rules and the instructions in this bid pack and any other instructions given by us. You must also ensure members of your consortium, Key Subcontractors or advisers comply.

Your bid must remain valid for 120 days after the bid submission deadline.

You must submit your bid in English and through the eSourcing suite only.

* 1. Involvement in multiple bids

If you are connected with another bid for the same requirement we may make further enquiries. For example, where you submit a bid:

* in your own name and as a Key Subcontractor and/or a member of a consortium connected with a separate bid
* in your own name which is similar to a separate bid from another bidder within your group of companies.

This is so we can be sure that your involvement does not cause:

* potential or actual conflicts of interest
* supplier capacity problems
* restrictions or distortions in competition

We may require you to amend or withdraw all or part of your bid if, in our reasonable opinion, any of the above issues have arisen or may arise.

* 1. Collusive behaviour

**You must make sure** that your directors, employees, Subcontractors, Key Subcontractors, advisors, companies within your group or members of your consortia do not:

* fix or adjust any part of your bid by agreement or arrangement with any other person, except where, getting quotes necessary for your bid or to get any necessary security
* communicate with any person other than us the value, price or rates set out in your bid or information which would enable the precise or approximate value, price or rates to be calculated by any other person except where such communication is undertaken with persons who are also participants in your bid submission, namely those where disclosure to such person is made in confidence in order to obtain quotes necessary for your bid or to get any necessary security
* enter into any agreement or arrangement with any other bidder, so that bidder does not submit a bid
* share, permit or disclose to another person, access to any information relating to your bid submission (or another bid submission to which you are party)
* offer or agree to pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any other person for doing or having done or causing or having caused to be done in relation to its bid submission

If you do breach paragraph 9.4, we may (without prejudice to any other criminal or civil remedies available to it) disqualify you from further participation in this competition.

We may require you to put in place any procedures or undertake any such action(s) that we in our sole discretion considers necessary to prevent or stop any collusive behaviour.

* 1. Contracting arrangements

Only you or, as applicable, your Key Subcontractors (as set out in your bid) or consortium members can provide the deliverables through the concession contract.

* 1. Contracting arrangements for consortium

We may require a consortium to form a specific legal entity when signing a contract. We may also require a member to sign a contract guarantee for the legal entity.

Otherwise, each member will sign the contract. It is not possible for two or more members to sign a contract without joint and several liability.

* 1. Bidder conduct and conflicts of interest

You must not attempt to influence the contract award process. For example, you must not directly or indirectly at any time:

* collude with other others over the content and submission of bids. However, you may work in good faith with a proposed partner, supplier, consortium member or provider of finance.
* canvass any Minister, officer, public sector employee, member or agent our staff or advisors in relation to this competition.
* try to obtain information from any of our staff or advisors about another bidder or bid.

You must ensure that no conflicts of interest exist between you and us. If you do not tell us about a known conflict, we may exclude you from the competition. We may also exclude you if a conflict cannot be dealt with in any other way.

* 1. Confidentiality and freedom of information

You must keep the contents of this bid pack confidential unless it is already in the public domain, you must keep the fact you have received it confidential. This obligation does not apply to anything you have to do to:

* submit a bid
* comply with a legal obligation.
	1. Publicity

You must not make statements to the media regarding any bid or its contents. You are not allowed to publicise the outcome of the competition unless we have given you written consent.

* 1. Our rights

We reserve the right to:

* waive or change the requirements of this bid pack from time to time without notice
* verify information, seek clarification or require evidence or further information in respect of your bid. You MUST ensure you are regularly checking your messages to ensure you are able to respond to our clarifications
* withdraw this bid pack at any time, or re-invite bids on the same or alternative basis
* choose not to award any contract as a result of the competition
* make any changes to the timetable, structure or content of the competition
* carry out the evaluation stages (selection and award stages) of this procurement concurrently
* exclude you if:
	+ you submit a non-compliant bid
	+ your bid contains false or misleading information
	+ you fail to respond to any clarifications from us
	+ you fail to tell us of any change in the contracting arrangements between bid submission and contract award
	+ the change in the contracting arrangements would result in a breach of procurement law
	+ for any other reason set out elsewhere in this bid pack
	+ for any reason set out in the Regulations
	1. Consequences of misrepresentation

If a serious misrepresentation by you induces us to enter into a contract with you, you may be:

* excluded from bidding for contracts for three years under regulation 57(8)(h)(i) of the Regulations
* sued by us for damages, and we may rescind the contract under the Misrepresentation Act 1967
* If fraud, or fraudulent intent, can be proved, you may be prosecuted and convicted of the offence of fraud by false representation under s.2 of the Fraud Act 2006, which can carry a sentence of up to 10 years or a fine (or both).
* If there is a conviction, then your organisation must be excluded from the procurement procedure for five years under regulation 57(1) of the Regulations (subject to self-cleaning).
	1. Bid costs

We will not pay your bid costs for any reason, for example if we terminate or amend the competition.

* 1. Warnings and disclaimers

We will not be liable:

* where parts of the bid pack are not accurate, adequate or complete
* for any written or verbal communications

You must carry out your own due diligence and rely on your own enquiries.

This bid pack is not a commitment by us to enter into a contract.

* 1. Intellectual Property Rights

The bid pack remains our property and that of our agent in this procurement, Crown Commercial Service. You must use the bid pack only for this competition.

You allow us to copy, amend and reproduce your bid so we can:

* run the competition
* comply with law and guidance
* carry out our business

Our advisors, subcontractors and other government bodies can use your bid for the same purposes.

* 1. Government Security Classifications (GSC)

You allow us to amend any security related term or condition of the draft contract accompanying this bid pack to reflect any changes introduced by the Government Security Classifications (GSC) classifications scheme.

###  **How the Contract is Structured**

The concession contract is made up of two key components:

**1.** **Concession Contract Award Letter**

The Draft Contract Award Letter (Attachment 9) contains important details. This letter is the basis of the contract between the Supplier and HM Treasury. If you are awarded a place on the contact, the contract Award Letter will be prepared by us and personalised to you. We will use information you have submitted in your bid.

You must sign and return the contract Award Letter within 7 days of being asked. If you do not sign and return, we may withdraw our offer of a contract.

**2.** **The Contract documents**

This table lists and briefly describes the contract.

|  |  |
| --- | --- |
| Document title | What is it? |
| **Terms and Conditions (Attachment 10) including the Award Letter (Attachment 9)** | The main legal terms for concession contract, which include important information about the concession contract. |
| **Specification/Statement of Requirements (Attachment 11)** | Annex to the Terms and conditions which contain important information about the scope and nature of the requirement. |

### **Additional Information**

In this section 11, “Procurement Regulations” means each of:

1. the Public Contracts Regulations 2015 (SI 2015/102);
2. the Concession Contracts Regulations 2016 (SI 2016/273);
3. the Utilities Contracts Regulations 2016 (SI 2016/274);
4. the Defence and Security Public Contracts Regulations 2011 (SI 2011/1848);
5. the Remedies Directive (2007/66/EC);
6. Directive 2014/23/EU of the European Parliament and Council;
7. Directive 2014/24/EU of the European Parliament and Council;
8. Directive 2014/25/EU of the European Parliament and Council; and
9. Directive 2009/81/EC of the European Parliament and Council.

### **The Armed Forces Covenant**

* 1. The Armed Forces Covenant is a public sector pledge from Government, businesses, charities and organisations to demonstrate their support for the armed forces community. The Covenant was brought in under the Armed Forces Act 2011 to recognise that the whole nation has a moral obligation to redress the disadvantages the armed forces community face in comparison to other citizens, and recognise sacrifices made.
	2. The Covenant’s 2 principles are that:
* the armed forces community should not face disadvantages when compared to other citizens in the provision of public and commercial services.
* special consideration is appropriate in some cases, especially for those who have given most such as the injured and the bereaved.

We encourage all bidders, and their Subcontractors, to sign the Corporate Covenant, declaring their support for the Armed Forces community by displaying the values and behaviours set out therein. We encourage you to make your [Armed Forces Covenant pledge](https://www.gov.uk/government/publications/corporate-covenant-pledge).

* 1. [The Corporate Covenant](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/649954/20171005_Armed_Forces_Covenant_Guidance_Notes_for_Businesses.pdf) gives guidance on the various ways you can demonstrate your support.
	2. If you wish to register your support you can provide a point of contact for your company on this issue to the Armed Forces Covenant Team at the address below, so that the MOD can alert you to any events or initiatives in which you may wish to participate. The Covenant Team can also provide any information you require in addition to that included on the website.

Email address: covenant-mailbox@mod.uk

Address: Armed Forces Covenant Team, Zone D, 6th Floor, Ministry of Defence, Main Building, Whitehall, London, SW1A 2HB

* 1. Paragraphs 12.1 – 12.4 above are not a condition of working with us now or in the future, nor will this issue form any part of the tender evaluation, contract award procedure or any resulting contract. However, we very much hope you will want to provide your support.