

TMTii 50 - Asset Data Capture Surveying

Secondary Competition Questions and Answers

Version 8 – 05/09/18

Our Ref	Date Received	Document Reference	Question and Answer	Date Released
1	13/08/18	RfQ	<p><u>Question:</u></p> <p>TMTii 50 RfQ - Page 5 Paragraph 23 indicates a return date of the 31/08/18 whereas Annex A sets out a return date of the 07/09/18 - which is correct?</p>	
			<p><u>Answer:</u></p> <p><u>Tender Amendment 1 – TA2</u></p> <p>Tender return date is as per Annex A. Date on page 5 changed to 11:00 07/09/18</p> <p>Please see revised RfQ (V2)</p>	14/08/18
2	13/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>TMTii 50 Call Off Agreement - Indicates NEC3 TSC Main Option C (Target contract) is this correct? Previous Advance Notice of Secondary Competition (ANSC) notice stated Option A (Priced contract), if correct there is no share ranges or share percentages for Option C included in the agreement.</p>	
			<p><u>Answer:</u></p> <p><u>Tender Amendment 2 – TA2</u></p> <p>This is a typo. Contract is Option A not Option C.</p> <p>Please see revised Call Off Agreement (V2)</p>	14/08/18

3	13/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>TMTii 50 Call Off Agreement - Service Information - Clause Z42 Construction Industry Scheme has been included – we do not believe CIS applies to Asset Data Capture Surveying.</p>	
			<p><u>Answer:</u></p> <p>Clause Z42 has been removed as part of Tender Amendment 2 (TA2)</p> <p>Please see revised Call Off Agreement (V2)</p>	14/08/18
4	15/08/18	RFQ	<p><u>Question:</u></p> <p>TMTii RfQ (V2) – Annex B Call off Agreement Award Table 2 Cost Sub-Item 7.1 and 7.2 has a weighting of 4 and 2 respectively, although this is not reflected in Annex C Marking the Quality Submission Table 2 in that the Cost Sub-Item 7.1 states a weighting of 2 and 7.2 is missing all together – we believe Annex C Table 2 should be updated to reflect Annex B Table 2 with a Total Mark of 360 points.</p>	
			<p><u>Answer:</u></p> <p><u>Tender Amendment 3 – TA3</u></p> <p>This has now been amended so that the figures correlate – please see revised RFQ (V3) uploaded as Tender Amendment 3 (TA3)</p> <p>Please note the corresponding increase in the total threshold mark from 160 to 180 on page 9 of RFQ.</p>	15/08/18
5	16/08/2018	Call Off Agreement	<p><u>Question:</u></p> <p>Within “TMTii 50 – Call Off Agreement (V2)” Annex C Contract Data Part One Section 1 (General), reference is made to “Project Risks in the ‘TMTii 50 – Service Information’”.</p> <p>The document “TMTii 50 – Service Information” does not appear to include any reference to Project Risks. Please can you advise?</p>	
			<p><u>Answer:</u></p> <p><u>Tender Amendment 4 – TA4</u></p> <p>This line has been removed as part of Tender Amendment 4 (TA4) as we have not included any employer-identified risks. Tenderers are still required to complete the Risk Register with the risks they have identified in their Quality Submission.</p>	16/08/18

			Please see revised Call Off Agreement (V3).	
6	17/08/18		<p><u>Question:</u></p> <p>We consider conditions Z29 and Z55 are not relevant to the procurement of data capturing services and they add a complexity beyond the contract needs. As this bidder is able to demonstrate its financial standing without recourse to its parent's resources, under the criteria set, it should be unnecessary for it to provide a PCG. Can Highways England confirm these can be removed and the requirement to provide a Parent Company Guarantee is relaxed?</p>	
			<p><u>Answer:</u></p> <p>Highways England is not requesting a PCG from any Supplier at this stage. We will if required at onset of contract. However, during the life of a contract, a situation may arise where one needs to be requested (for example, we find out a Supplier is in financial difficulties and/ or very late with accounts). Therefore Z29 & Z55 will not be removed.</p>	20/08/18
7	20/08/18	TMTii RfQ (V3)	<p><u>Question:</u></p> <p>Quality Criteria Table 2 Item 5 Quality Bullet Point 6 States that "Describe the format of data and deliverables and how this will be consistent with Highways England BIM requirements" – we believe that BIM may not be relevant to this project in that BIM Level 2 compliance relates to Major Project scheme delivery. In this context could the term BIM refer to "Better Information Management", as commonly used with Highways England, if this is the case could the definition for the requirement be provided.</p>	
			<p><u>Answer:</u></p> <p><u>Tender Amendment 5 – TA5</u></p> <p>"BIM" element is a typo. It should read "Describe the format of data and deliverables and how this will be consistent with Highways England requirements" – this has been changed. Please see attached TMTii 50 - RfQ (V4)</p>	20/08/18
8	24/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>Please can Highways England provide details on what the criteria would be for enactment of an extension to this contract. Can Highways England confirm that any extension granted be mutually agreed?</p>	

			<p><u>Answer:</u></p> <p>Contract extensions would be taken up if there is a business need to do so; supplier performance is satisfactory and budgets in place. If Highways England wishes to extend the contract the <i>contractor</i> will be consulted via letter. The extension won't take place unless both parties are in agreement.</p>	30/08/18
9	24/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>We note that X1 has not been included. Please can Highways England confirm that works provided during the extension will be priced at the time of awarding the extensions?</p>	
			<p><u>Answer:</u></p> <p>X1 has not been included as the service period is only one year at this time. If the extensions are taken up, the terms and conditions will remain the same as per the contract award, this includes the tendered prices.</p>	30/08/18
10	24/08/18	Service Information	<p><u>Question:</u></p> <p>Can you confirm expected annual survey coverage for imagery surveys? Can Highways England address the disparity between the survey KMs given in the table, lengths for survey areas and HAPMS data</p>	
			<p><u>Answer:</u></p> <p>The expected annual survey coverage for imagery surveys can be calculated from Tables 2 & 3 in the Service Information. Highways England calculated this from the HAPMS Network Idealisation in May 2018. As the network idealisation only changes about < > 30km every year any extra network to be surveyed will be identified and re-scoped as required on an annual basis.</p>	30/08/18
11	24/08/18	Service Information	<p><u>Question:</u></p> <p>Within the Methodology section of Task C in the Service Information document please can you clarify the missing reference to ADMM? (Error! Reference source not found)</p>	
			<p><u>Answer:</u></p> <p><u>Tender Amendment 6 – TA6</u></p> <p>A new Service Information (V2) has been added to rectify this error. Please see revised document in the tender amendment folder on Bravo</p>	30/08/18

12	24/08/18	Service Information	<p><u>Question:</u></p> <p>Within the Deliverables section of Task C in the Service Information document please can you clarify the missing reference to data standards (Error! Reference source not found)</p>	
			<p><u>Answer:</u></p> <p>Please see Q&A 11</p>	30/08/18
13	24/08/18	Service Information	<p><u>Question:</u></p> <p>Within the Table 11 of the Service Information document please you clarify the missing reference relating to the accuracy of data for all data records listed (Error! Reference source not found?)</p>	
			<p><u>Answer:</u></p> <p>Please see Q&A 11</p>	30/08/18
14	24/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>The form of PCG supplied does not tie into the powers under Z29 in that Recital B restricts the grant to the ultimate parent company. This limits Highways England's flexibility and ability to consider the group structure of any incumbent contractor at the time a PCG may be called on. Please can this be amended?</p>	
			<p><u>Answer:</u></p> <p>Please see Q&A 15</p>	30/08/18
15	24/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>The services under this call-off are for delivery of data processing and management without the inherent risks of construction's lengthy supply chains and complex matrices of sub-contractors. It is neither market practice to require a PCG nor at such modest contract value. Please can the client reconsider removal of Z29 and Z55.</p>	

			<p><u>Answer:</u></p> <p>Highways England is not requesting a PCG from any Supplier at this stage. We will if required at onset of contract. However, during the life of a contract, a situation may arise where one needs to be requested (for example, we find out a Supplier is in financial difficulties and/ or very late with accounts). Therefore Z29 will not be removed</p>	30/08/18
16	24/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>We do not currently have pollution and contamination cover as part of its suite of standard insurance covers. Pollution and contamination cover is generally procured on a contract specific basis and in this instance it is deemed that insurance cover is unnecessary and therefore would Highways England consider removing this requirement?</p>	
			<p><u>Answer:</u></p> <p><u>Tender Amendment 7 – TA7</u></p> <p>The insurances are as per the Call Off Agreement. However we note that the Insurances table (Annex A) of the Service Information was omitted in error. This table has been reinstated with gives further information in relation to insurances. Please see revised Service Information (V2) via Bravo</p>	30/08/18
17	24/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>Please can Highways England confirm the Contract Date</p>	
			<p><u>Answer:</u></p> <p>The Contract Date will be the award date</p>	30/08/18
18	24/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>Please can Highways England limit the right of set off to this contract only</p>	
			<p><u>Answer:</u></p> <p>We do not understand the question. Please can you supply us with further information</p>	30/08/18

19	24/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>Due to the size and nature of this contract please can Highways England remove the requirement for a Project Bank account as we believe it is not necessarily appropriate for this type of work.</p>	
			<p><u>Answer:</u></p> <p>Project Bank Accounts (PBAs) are a standard across the majority of our contracts Z9 Project Bank Account is only applicable if the Contractor uses subcontractors. If Contractor is not engaging subcontractors this clause does not apply.</p>	30/08/18
20	24/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>With reference to assignment, there are no limits to how many times the employer can assign the contract. Our insurers do not accept more than one assignment. Please can Highways England provide a cap to a single assignment</p>	
			<p><u>Answer:</u></p> <p>The insurances are as per the Call Off Agreement and the wording will not be amended</p>	30/08/18
21	24/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>Please can Highways England provide clause X15 limiting any design liability to "Reasonable Skill and Care". The reason being is that whilst there is no direct design, the tenderers are required to provide Design PI. The contract is silent on Design and therefore reverts to "Fitness for Purpose" which is not insurable.</p>	
			<p><u>Answer:</u></p> <p>X15 is not used for NEC3 Term Service Contracts. X15 is only used on ECC contracts therefore will not be added</p>	30/08/18
22	24/08/18	RfQ	<p><u>Question:</u></p> <p>In order to allow us additional time to engage with the limited specialist supply chain required for this contract and deliver the best possible value to Highways England we request a 2 week extension of time to the tender period</p>	

			<p><u>Answer:</u></p> <p>Due data outputs from this project being a priority to some areas of the business any extensions to the tender period will introduce risk to some of these deliverables. Therefore there will be no extension granted to the tender period.</p>	30/08/18
23	28/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>TMTii Call Off Agreement (V4) Clause Z19 Intellectual Property Rights - Clause Z19.3 states that “The Contractor hereby assigns to the Employer all present and future Intellectual Property Rights..” – we do not consider the assignment of any present IPR to be reasonable, therefore can “present and” be deleted</p>	
			<p><u>Answer:</u></p> <p>Background IPR is IPR owned or created by the Contractor or third party prior to the Contract, for use during the service period. This clause is not intended to allow use of IPR for anything other than the performance of this Contract. The only Background IPR Highways England wants the rights to is the Background IPR which allows the Contractor to perform its obligations under, or in connection, with this contract. The Z19 clause will remain and not be amended.</p>	30/08/18
24	28/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>TMTii Call Off Agreement (V4) - NEC Term Service Contract - Core Clause s.20.1 “The Contractor Provides the Services in accordance with the Service Information.” Given the fact that In the NEC3 TSC precludes an X-15 clause as per ECC or 21.2 clause PSC, which imposes a reasonable skill and care obligation. Therefore would Highways England consider the inclusion of a Z clause subject to s.20.1 as following “The Contractor Provides the Services in accordance with the Service Information in a manner consistent with the degree of care and skill normally used by professionals providing services similar to the services”</p>	
			<p><u>Answer:</u></p> <p><u>Tender Amendment 8 – TA8</u></p> <p>The inclusion of ‘Contractor additional insurances to be provided’ has been removed from the call off agreement. Please see revised Call Off Agreement (V4) via Bravo</p>	30/08/18
25	28/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>TMTii Call Off Agreement (V4) Clause X18 Limitation of Liability</p>	

			<p>a. There is no definition of consequential losses therefore would Highways England consider inserting the following “consequential losses means any loss of profits or savings, loss of contracts, loss of use or loss of efficiency, claims by suppliers of contractors and any special, indirect or consequential loss or damage”</p> <p>b. There is no consideration of aggregation, would Highways England consider inserting “in the aggregate” after each limit value</p>	
			<p><u>Answer:</u></p> <p>The X18 clause wording will not be amended</p>	30/08/18
26	30/08/18	RfQ	<p><u>Question:</u></p> <p>Within the RFQ document, paragraph 34 states that "The page limit and font size relate to the entire Quality Submission including paper covers, title pages and annexes". Please can you confirm that Annex G is not one of the 'annexes' referred to in paragraph 34 and therefore sits outside of the 30 page limit?</p>	
			<p><u>Answer:</u></p> <p>Annex G is not included in the overall page limit. However CVs provided should be no more than 2 sides per CV.</p>	30/08/18
<p><u>Questions asked after the Tender Question Deadline (31/08/18 11:00)</u> Note Highways England can't guarantee to answer these questions however will endeavour to do so</p>				
27	31/08/18	Service Information	<p><u>Question:</u></p> <p>Can the Employer confirm whether or not it will be acceptable to process the data through a third party data processing company based outside of the UK?</p>	
			<p><u>Answer:</u></p> <p>Highways England confirms it will be acceptable to process the data through a third party data processing company based outside of the UK, however the third party must be based in Europe and must comply with the GDPR policy for data protection.</p>	04/09/18

28	31/08/18	Service Information	<p><u>Question:</u></p> <p>The Service Information contains SI211 which bring in distinct, conflicting obligations to that set out in the proposed call-off. The call-off is based on the form agreed at the Framework stage. Adding these obligations in the Service Information does not follow proper process and needs to be resolved. Please advise.</p>	
			<p><u>Answer:</u></p> <p>The conflict of interest in SI 211 is in relation to the <i>Employer</i> and the <i>Contractor</i> in relation to the <i>Services</i> of this contract. The Framework agreement COI clause is in relation between the supplier and CCS. SI 211 will not be amended or removed.</p>	04/09/18
29	31/08/18	Service Information	<p><u>Question:</u></p> <p>We agreed to HE's request to amend the Framework by way of Deed of Variation sent to HE on 3 May and which records the parties agreement to vary their relevant data protection obligations. The terms of the Service Information are not consistent with this Deed and need to be omitted.</p>	
			<p><u>Answer:</u></p> <p>The deed you signed was in relation to the new GDPR regulations and this was done at a framework level in relationship with your company and CCS as the framework owners. The Service Information also contains the updated information in relation to GDPR to satisfy the Highways England of your GDPR obligations are met at a call off level</p>	04/09/18
30	31/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>At clause Z4.2, can you please provide for delivery of notice of assignment to the Contractor? This provides a record of an accurate, effective date and allows the Contractor to alert its insurers and other interested parties.</p>	
			<p><u>Answer:</u></p> <p>This is a standard NEC3 Z clause. The <i>Employer</i> has the unrestricted ability to assign the benefit of this contract or interest under it. The clause will remain unchanged.</p>	04/09/18

31	31/08/18	Call Off Agreement	<p><u>Question:</u></p> <p>At clause Z3, the recovery of sums awards HE a right of set-off across all contracts with this Contractor. This is a wide right. Given the specialist nature of this project, and its complexity, it should be considered stand-alone and this set-off right limited to this contract only. Please can the client reconsider.</p>	
			<p><u>Answer:</u></p> <p>Where monies are outstanding from the <i>Contractor</i> to the <i>Employer</i>, on this or any other contract between both parties, any sum of money is recoverable or payable by the <i>Contractor</i>. Such sums may be deducted from, or reduced by, the amount due. This is a standard Highways England mandatory clause and will not be changed or removed</p>	04/09/18
32	05/09/18	RFQ	<p><u>Question:</u></p> <p>Please can Highways England consider a 1 week extension to the tender period? The additional time will allow us to optimise our supply chain offer which will ultimately benefit Highways England.</p>	
			<p><u>Answer:</u></p> <p>Unfortunately and even though it may be advantageous, Highways England cannot agree to this 1 week extension. This task has to be let and surveying commenced by Mid October 2018 to be able to realistically meet critical data requirements for Asset Delivery contracts within the limited timeframe remaining for the first year of this project.</p>	05/09/18