



Crown
Commercial
Service

Procurement Policy Note – Taking Account of Suppliers’ Past Performance

Action Note 04/15 25th March 2015

Issue

1. To ensure good delivery of public services and value for money, it is important that suppliers with the necessary technical and professional ability are selected to bid for contracts. One aspect of a supplier’s technical and professional ability is its reliability as demonstrated by its performance of past contracts. This Procurement Policy Note ("PPN") incorporates the requirements of the new Public Contracts Regulations 2015 (Regulations) and sets out Government policy to ensure suppliers' past performance is taken into account in certain procurements.

Dissemination and Scope

2. The contents of this PPN apply to all Central Government Departments, their Executive Agencies and Non Departmental Public Bodies. Together these are referred to in this PPN as 'In-Scope Organisations'. Please circulate this PPN within your organisation, drawing it to the attention of those with a purchasing role. This PPN replaces PPN 09/12 dated 8th November 2012. In this PPN, references to suppliers includes those bidding for contracts but who do not have any existing contracts to supply Government.

Timing

3. This PPN applies from 1 April 2015 to the procurements in respect of all in-scope stand-alone public contracts and framework agreements (as set out in paragraphs 5 and 6 below) for which an OJEU Notice has not yet been published.

Action

4. This PPN sets out two sets of actions.

5. **Part A - Selection Criteria** sets out requirements relating to the assessment of suppliers' reliability as demonstrated by their performance of past contracts. The requirements in Part A apply to In-Scope Organisations when procuring goods and/or services in respect of information and communications technology, facilities management or business processing outsourcing with a total anticipated contract value of £20 million or greater (excluding VAT). It applies in relation to framework agreements only where it is anticipated that there will be Call-off Agreements in respect of such goods and/or services with an individual anticipated value of £20 million or greater (excluding VAT).

6. **Part B – Provision of Information** concerns the provision of information about suppliers' past performance both to and by In-Scope Organisations. This has two aspects.

- a. First, all In-Scope Organisations are required under this policy to provide Certificates of performance to their suppliers on request in the form set out in Annex F (Certificates) This form should also be used where In Scope Organisations obtain Certificates from other organisations (both public and private sector).
- b. Secondly, where In-Scope Organisations carrying out procurement processes collect information about the past performance of suppliers, they are required to provide the information to the CCS, to support the collation of a central database of information.

7. A summary of the key actions is set out in paragraphs 8- 17 below. Annex A to this PPN sets out in more detail what actions should be taken and how this policy should be applied.

Part A – Selection criteria relating to suppliers' past performance

8. For procurements falling within the scope of Part A of this PPN (see paragraph 5 above), In-Scope Organisations are required, as a matter of policy, to establish selection criteria relating to a supplier's reliability as demonstrated by its performance of past contracts. In-Scope Organisations should satisfy themselves:

- a. that suppliers' principal relevant contracts in the last three years are being or have been satisfactorily performed in accordance with their terms; or
- b. where there is evidence that this has not occurred in any case, that the reasons for any such failure will not recur if that supplier were to be awarded the relevant contract.

9. In-Scope Organisations should:

- a. Include a paragraph informing suppliers of the policy in all relevant procurement documentation (see Annex B);
- b. Ensure that selection criteria relating to past performance, and the information required in relation to such criteria, are specified in OJEU Notices (reference to OJEU Notices shall also include the requirement to publish the OJEU Notice on Contracts Finder).
- c. Incorporate the same criteria and requests for evidence from suppliers in other

documentation relating to the selection stage (for example, PQQs or ITTs depending on which procedure is adopted).

d. Obtain necessary information about the contracts suppliers have performed in the last 3 years including, a list of past contracts and Certificates of performance, to allow an assessment against the criterion;

e. where appropriate, verify information provided by any supplier in relation to past performance;

f. apply the selection criteria based on the available information and exclude suppliers which fail to meet them, communicating the outcome to the supplier;

g. re-assess whether a supplier continues to meet the selection criteria at subsequent stages in the procurement process, taking into account updated performance evidence from suppliers;

h. submit all information about past performance which has been collected, including Certificates, to the CCS central database (see paragraph 17 below).

10. Suppliers which rely on sub-contractors or which bid as part of a consortium raise distinct issues which are considered in Annex A. Additional considerations arise in relation to framework agreements as discussed in Annex E.

Part B – Provision of Information including Certificates of Performance

11. Assessing a supplier's compliance with the selection criteria relating to past performance requires the provision of information about past contracts to the contracting authority. The Public Contracts Regulations 2015 (Regulations) state that this information may include references and Certificates of satisfactory performance.

12. Certificates will be provided by In-Scope Organisations in their capacities as customers. Although called a Certificate, the required information should normally be provided in the form of an email. All Certificates should contain the relevant text provided at Annex F. Completed certificates should be provided to the supplier along with a copy to CCS at pastperformance@crownccommercial.gov.uk

13. Suppliers may also request and submit Certificates for relevant contracts from other public and private sector organisations beyond In-Scope Organisations. Procuring In-Scope Organisations should make it clear in their procurement documentation, that these Certificates should contain the relevant text as provided in Annex F

14. Where a Certificate indicates that the supplier has not performed satisfactorily, it should include reasons why performance was not in accordance with the contract. The reasons may include:

- a. delays in providing the goods and/or services in accordance with the contract;
- b. failure to supply all the goods and/or services in accordance with the scope set out in the contract;
- c. failures to meet any service levels and/or supply the goods and/or services in accordance with quality standards;
- d. any other failure by the supplier to comply with its obligations under the contract.

15. In addition to the provision of Certificates in their capacity as customers (as outlined in paragraph 12), In-Scope Organisations carrying out procurement processes will collect information about the past performance of suppliers bidding for the contract. This will include not only Certificates but any other information provided by suppliers to the In-Scope Organisation in relation to past performance, such as information explaining why any past performance problems are unlikely to recur.

16. At the completion of the selection stage under any procurement process, In-Scope Organisations are required under this policy to provide all of the information they have collected, i.e. the Certificates and any other information in relation to past performance, to the CCS to support the collation of the central database referred to above. All information and any queries should be sent to pastperformance@crownccommercial.gov.uk. Exceptions may be agreed with the CCS where the In-Scope Organisation is aware of any objection to the provision of particular items of information.

17. Centrally storing both these issued Certificates and the information collected from suppliers during each relevant procurement will enable the reduction of the burden of providing evidence, the verification of the information provided by suppliers against previous submissions and may be used in the co-ordination of supplier management more generally.

Contact

18. Enquiries about this PPN should be directed to the Service Desk 0345 410 2222 or service.desk@crownccommercial.gov.uk. The CCS is also keen to receive feedback on this policy in order to improve its application. Feedback should be directed to the Service Desk entitled "Supplier Past Performance - Feedback".

Background

19. The Regulations provide that contracting authorities can choose the suppliers who will be invited to tender. This has two aspects. First, suppliers may be disqualified on the basis of various grounds for exclusion (see regulation 57). Secondly, suppliers may need to meet stated

selection criteria (see regulation 58).

20. This PPN is concerned with the second of these possibilities - the application of selection criteria relating to suppliers' past performance. However, In-Scope Organisations should note that regulation 57(8)(g) creates a new discretionary ground for exclusion relating to past contractual performance. In particular, an economic operator may be excluded if it has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract which led to early termination of that prior contract, damages or other comparable sanctions.

21. In-Scope Organisations are reminded of the requirement to observe the general principles of equal treatment, non discrimination, transparency and proportionality which apply to all aspects of a procurement including the identification and application of selection criteria.

22. The Regulations provide that compliance with selection criteria may in due course be addressed through the European Single Procurement Document (ESPD) which is intended to simplify the process of qualification for tendering (see regulation 59). The ESPD is not yet in effect, and pending its introduction this PPN should apply. This PPN will be revised and updated as and when the ESPD comes into effect.

Annex A: Detailed Guidance on Application of the Policy

Legal Framework

1. Under the Regulations, contracting authorities are entitled to establish selection criteria as conditions for participation in a procurement process. These criteria may relate to technical or professional ability and economic and professional standards. Selection criteria may be expressed as minimum levels of ability (see generally regulation 58).
2. In relation to technical and professional ability, contracting authorities may impose requirements ensuring that suppliers possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard (regulation 58(15)). In addition, the regulations provide that in relation to contracts for services (as well as works and certain supply contracts), the professional ability of suppliers to provide the service may be evaluated with regard to their skills, efficiency, experience and reliability (regulation 58(18)).
3. The Regulations also set out the information which contracting authorities are entitled to require from suppliers in order to assess compliance with any selection criteria. In particular, contracting authorities may require that the supplier has a sufficient level of experience demonstrated by suitable references from contracts performed in the past (regulation 58(16)). The provision of information relating to past contracts including Certificates of satisfactory performance is further addressed in regulation 60(9).
4. Any selection criteria to be applied, and the means of proving compliance with the criterion, must be stated in the OJEU notice – see Regulation 58(19).

Actions

5. The actions In-Scope Organisations should take at each stage of the procurement process in relation to in-scope procurements are set out below.

Informing suppliers of the policy

6. A paragraph informing suppliers of the policy set out in this PPN should be included in all relevant procurement documentation, such as PQQs and ITTs, to ensure they are aware of Government's approach to managing supplier performance. Template wording is included at Annex B to this PPN.

OJEU Notice

7. Selection criteria which suppliers have to meet, including those relating to reliability based

on past performance, must be stated in the OJEU Notice along with details of the information required for the In-Scope Organisation to assess whether or not a supplier meets the selection criteria. The following paragraphs consider the choice of criterion and the information required.

Choice of selection criteria

8. Selection criteria should be chosen and defined with reference to the particular procurement. However, in general terms, In-Scope Organisations should assess whether a supplier's principal contracts for goods or services delivered in the previous 3 years have been provided satisfactorily in accordance with the contracts in question. This criterion will be assessed on the basis of a list of past contracts which suppliers will be required to provide.
9. In-Scope Organisations may also require satisfactory performance of a specified minimum number of contracts. This approach may however exclude suppliers who have provided goods and/or services on a sufficient scale under a smaller number of contracts. Instead therefore, the requirement may instead apply to a specified value, quantity or description of contracts.
10. In-Scope Organisations should also consider whether the requirement should be limited to particular categories of goods sold and/or services provided (see further below).
11. Template wording that presents a range of alternatives and can be used by In-Scope Organisations with appropriate modifications is set out in Annex C to this PPN.

Information required

12. As part of the material provided to satisfy any selection criteria, suppliers should provide a list comprising a statement of the principal goods sold and/or services provided by the supplier in the previous 3 years. However, In-Scope Organisations may wish to define or limit what are regarded as relevant goods and/or services for this purpose.
13. The performance of a previous contract may assist an assessment of the reliability of the supplier even if the goods or services provided under that contract were not the same as those being procured. However, In-Scope Organisations may be most concerned with the past performance of contracts of a similar scale, complexity, value and/or duration as that to be awarded. In-Scope Organisations may therefore wish to limit the type of the goods and services which will be used for the purposes of assessing reliability. Further, given the size of the contracts to which this PPN relates and the entities likely to bid for them (who may supply many different types of goods and/or services), In-Scope Organisations may wish to limit the Certificates of performance and other information required from suppliers to that which is directly relevant.
14. In deciding whether to limit the relevant goods or services, In-Scope Organisations should ensure both that they have sufficient evidence to make a proper assessment of reliability and also that suppliers have sufficient opportunity to demonstrate their reliability by reference to a sufficient number, type or nature of contracts in that period. In-Scope

Organisations should take account of the administrative burden on suppliers of these requests.

15. As regards each contract on the list, In-Scope Organisations should request Certificates of performance prepared by the customer to whom the goods and/or services on the list were provided. The format of the certificate is in Annex F. This indicates that the Certificate will be held on CCS' central database. The process for obtaining a Certificate is considered in paragraphs 20-22 below.
16. In order to reduce the burden on suppliers, a supplier shall be entitled to submit Certificates already previously obtained in the following two situations. First, Certificates obtained after performance of the contract has ended and there have been no further developments and secondly, Certificates which were prepared in the last 3 months for contracts, which are still being performed. Both provisions are subject to paragraphs 17 and 22 below.
17. Paragraph 16 above is subject to the supplier's responsibility not to mislead a contracting authority. This will be particularly relevant where there has been a relevant change of circumstance since the Certificate was prepared. Contracting authorities have the power to exclude a supplier which provides misleading, material information.
18. If a Certificate prepared by the customer cannot be obtained, the certification may be prepared by the supplier itself. Suppliers will appreciate the need to provide accurate and not misleading information.
19. If a Certificate does not state that the goods and/or services have been provided satisfactorily in accordance with the terms of the contract under which they were to be provided, then suppliers should provide information to show that the reason or reasons for such failure will not recur in the performance of the contract being procured. All Certificates submitted by the Supplier should be accompanied by a covering email which makes clear whether or not additional information is being provided with the Certificate. The format of the covering email is in Annex F.

Process for obtaining Certificates

20. The Regulations provide that contracting authorities should not require suppliers to submit documentary evidence where the authority has the possibility of obtaining the document from a national database or similar, or is already held by the contracting authority.
21. The CCS maintains a central database of Certificates. Although use may be made of this database to obtain Certificates, it is important that information provided about contract performance remains current and up to date. For this reason, it will generally be reasonable for In-Scope Organisations to require suppliers to provide up to date Certificates together with their lists of principal contracts.
22. Nevertheless, if a supplier is aware that a copy of a Certificate which was prepared in the last 3 months and has not been subject to any change of circumstances, or which relates to a completed contract, is held by the CCS, the supplier may inform the In-Scope Organisation accordingly, rather than provide a copy itself. However, the supplier may be willing to provide a copy of the Certificate in any event.

Clarification / verification of information provided by suppliers

23. The Regulations provide that a contracting authority may invite economic operators to supplement or clarify Certificates and the Supplier's list of contracts. The need for clarification should be assessed on a case by case basis, recognising the limits on the permitted scope of clarification (see regulation 56(4)).
24. In-Scope Organisations are not however obliged to accept whatever information a supplier may provide without question, but are entitled to take reasonable steps to verify whether or not what the supplier says is correct. This may concern:
 - a. whether the list of contracts provided is comprehensive;
 - b. whether a supplier has tried to obtain a Certificate from a person to whom it supplied goods or services and has been unable to do so;
 - c. whether a contract has in fact been performed satisfactorily in accordance with its terms, notwithstanding a Certificate stating that to be the case;
 - d. whether the reasons given for any past performance not being in accordance with the relevant entity's contractual obligations are comprehensively stated; or
 - e. whether any remedial action taken in regard to these reasons will be effective in ensuring that they will not recur in the performance of any contract to be awarded as a result of the procurement.
25. It will generally be appropriate to verify on the basis of a random selection of such Certificates. It is advisable to make this clear in the tender documents, or (if a different approach is to be adopted) to state what other approach is to be taken.
26. Any verification carried out must be done in a consistent and non-discriminatory way. However, this does not necessarily mean treating every case identically. For instance, it may be easier or more practical (and hence more proportionate) for a In-Scope Organisation to verify in some cases than in others. The fact that verification is difficult to achieve in certain cases should not preclude an In-Scope Organisation from taking steps to verify where it is proportionate to do so.
27. To illustrate this point, one source of information for verification purposes is the central database established by the CCS. The information held by the CCS will not however be comprehensive. That should not prevent verification through the central database where practicable. Other means of verification should however be considered.
28. It is recommended that decisions on whether or not to verify information supplied by suppliers and how to do so should be documented with reasons.
29. Before taking any decision adverse to a supplier in the light of any further information obtained as a result of a verification process, In-Scope Organisations should inform the supplier of that information and give the supplier an opportunity to make representations or to provide further information in response.

Reliance on others including sub-contractors and consortia

30. The Regulations provide that suppliers are entitled to rely on the capacities of other entities if those other entities will in fact perform the contract (see regulation 63). These provisions should be applied where a supplier proposes to rely on a sub-contractor, or forms part of a consortium, and in other similar situations – for example where a supplier relies on another group entity.
31. In these situations, the supplier must prove that the resources of the other entity are at its disposal, and further that the other entity meets any selection criterion. In-Scope Organisations may wish this requirement to be subject to a minimum threshold – say that the value of the sub-contract is at least 5% of the total contract value. The template in Annex C contains draft wording.
32. A supplier that intends to appoint a sub-contractor may not always have done at the point when selection criteria are to be applied. That need not in itself require the supplier to be disqualified. As described below, a supplier's reliability should be re-assessed at various points during the procurement process. If at any such point, the sub-contractor has been appointed, its reliability can and should be assessed as part of that re-assessment. If the sub-contractor is appointed after any contract has been concluded, In-Scope Organisations should ensure that, under the terms of the contract, their approval is required and that the sub-contractor at least meets the requirement for reliability based on past performance that it would have had to meet had it been appointed earlier.
33. A supplier for a public contract may be a consortium rather than a single entity. Consortia may wish to rely on the resources of the members of the consortium to meet any selection criteria. In-Scope Organisations should enable suppliers to satisfy the selection criteria relating to reliability by reference to the past performance of such other entities.
34. Where bids are made by consortia, and a particular consortium member is only responsible for one function under that consortium, it may only be relevant to seek information in relation to function which a particular member is to perform.
35. A supplier may also be a recently formed entity that is continuing an undertaking or undertakings (or part of an undertaking or undertakings) previously conducted by one or more other entities. In-Scope Organisations should enable such suppliers to satisfy selection criteria for reliability by reference to the previous performance by the relevant undertaking or undertakings (or parts of them).

Assessment and the exclusion of suppliers

36. In-Scope Organisations should normally have an appropriately qualified panel to determine whether any supplier meets any minimum standards for professional and technical ability.
37. If following receipt and review of all the information initially provided by the supplier, that obtained as a result of verification and any further supplementary or clarifying information supplied by the supplier, the supplier does not meet the minimum standards of reliability set, the In-Scope Organisation should exclude the supplier from the procurement. Decisions to

exclude should be documented with reasons and suppliers should be notified accordingly.

38. The In-Scope Organisation may also find itself considering a difference of views between a customer and a supplier as to whether performance of a previous contract was in accordance with its terms (for example where there is a continuing dispute between the parties). In such cases, the In-Scope Organisation will need to form its own view as to whether it is satisfied that performance was or was not satisfactory based on the available evidence, notwithstanding that the same issue may be under consideration in court or arbitration proceedings. If the In-Scope Organisation is not satisfied that performance was satisfactory, then the selection criterion will not have been met.

Re-assessment during subsequent stages in the procurement process (not relevant to procurements adopting the open procedure)

39. The suitability of the supplier may be assessed more than once at different stages in the procurement process. Particularly in complex or lengthy procurement processes, In-Scope Organisations should take steps to ensure that any material changes to the suppliers' circumstances since the initial assessment of reliability at selection stage are considered at appropriate points, (for example, before appointment of a preferred supplier or the conclusion of any contract). This will allow the In-Scope Organisation to take into account performance on more recent contracts and any new developments in relation to contracts which had already commenced at the time of the selection stage.
40. This can be achieved by:
 - a. ensuring that appropriate wording to make this clear to suppliers is included in the OJEU Notice (see Annex C); and
 - b. asking the suppliers to update the evidence provided in relation to past performance at an earlier selection stage to reflect more recent performance on new or existing contracts (or confirm if nothing has changed) and re-assessing whether they meet any specified minimum standards.
41. The selection criteria must however remain the same throughout the procurement and should be replicated in any invitation to tender for the open procedure, any pre-qualification questionnaire or any other document setting out the selection criteria and information required to assess whether or not they have been met.
42. In-Scope Organisations may verify evidence which suppliers provide in their update as set out above.

Annex B - Template Wording Informing Suppliers of the Policy

This template wording should be included in all relevant procurement documentation, such as PQQs and ITTs and in other appropriate correspondence with suppliers in respect of contracts to which the PPN applies, to ensure they are aware of Government's approach to ensuring that there can be confidence that, based on their past performance, those suppliers who are awarded contracts can be relied on to perform them satisfactorily in accordance with their terms.

“The Government has developed an approach to ensuring that previous poor performance by suppliers can be taken into account and robustly assessed prior to entering into certain new contracts (as described in “Procurement Policy Note 04/15 Taking Account of Suppliers’ Past Performance”. This will give the Government confidence, based on past performance, in the reliability of suppliers.

The policy is that, as part of any assessment of a supplier’s technical and professional ability, contracting authorities should ensure that any failure by the supplier to provide satisfactory performance of previous principal contracts is taken into account in the assessment of whether specified minimum standards for reliability for such contracts are met.

Evidence will be collected from suppliers to enable this assessment to be made [and a random sample of the evidence collected may be verified].

In addition, under the policy, contracting authorities will re-assess reliability based on past performance before key points in the procurement process (i.e. short listing, preferred bidder status, conclusion of contract etc.). Suppliers will accordingly be asked to update the evidence they provide in relation to past performance to reflect more recent performance on new or existing contracts (or to confirm that nothing has changed).”

Annex C - Template Wording for OJEU Notices

Part 1 – Standard Wording

III.2.3) Technical capacity	
Information and formalities necessary for evaluating if requirements are met:	Minimum level(s) of standards possibly required (if applicable):
<p>(1) The supplier must supply a list comprising a statement of all the [relevant]¹ principal goods sold and/or services provided in the previous 3 years.</p> <p>(2) The supplier must also provide:</p> <p>(a) Certificates in the form attached [or hyperlink] from those to whom goods and/or services on the list were provided; or</p> <p>(b) if any such Certificate cannot be obtained, a Certificate in the same form from the entity that provided the goods and/or services; together with an explanation of the steps taken to obtain a Certificate from the customer and the reason why a Certificate from the customer is not available.</p> <p>If any Certificate does not state that the goods and/or services have been provided satisfactorily in accordance with the terms of the contract in question, information to show that the reason why the contract was not performed satisfactorily will not recur in the performance of the contract [framework agreement] to be awarded.</p> <p>Where the supplier proposes to rely on other entities (including sub-contractors or consortium members) to perform the contract, the supplier must describe the function that each such other entity will perform under the contract [framework agreement], and provide the information required in relation to each entity.</p>	<p>Any supplier must meet the selection criterion in relation to reliability based on performance of past contracts – namely, the [Contracting Authority] is satisfied that</p> <ul style="list-style-type: none"> • the contracts on the list to be provided by the supplier have been satisfactorily performed in accordance with their terms or, • where that has not occurred, the reason or reasons why that has not occurred in relation to any such contract, will not recur in the performance of the contract [or framework agreement] to be awarded. <p>Where the supplier proposes to rely on other entities (including sub-contractors or consortium members) to perform the contract, then the selection criterion for reliability must be met by each such entity, save as regards contracts or sub-contracts with a value of less than 5% of the total contract value [and] any sub-contractors not yet appointed.</p> <p>The [Contracting Authority] will assess whether or not this criterion is satisfied at the selection stage [and will re-assess it is satisfied prior to [the down selection of suppliers, the grant of preferred supplier status, contract award and/or the conclusion of the contract [or framework agreement]]. Delete / amend as applicable</p>

¹ See Part 2 below.

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Part 2 – Defining the Scope of the information required

1. As set out in paragraphs 12 to 19 of Annex A, In-Scope Organisations should consider whether to define or limit the categories of contract in relation to which information should be provided by suppliers. Their approach to this issue should be set out in the first column of section III.2.3 of the OJEU Notice (see Part 1 above).
2. If the In-Scope Organisation does not define or limit the information to be provided, suppliers should be asked to explain the basis on which they have identified the principal goods and/or services – for instance

“Suppliers should explain the basis on which the principal goods or services have been identified.”

3. Where In-Scope Organisations do wish to define or limit the contracts to be covered by the list and the Certificates to be provided by suppliers may wish to use one or more of the following options.

Option 1 – defining “relevant” goods and/or services

4. As noted in paragraphs 12 to 14 of Annex A, In-Scope Organisations may wish to define what is to be treated as a “relevant” contract for the purposes of the list and Certificates to be provided – for instance:

“[For the purposes of the list of relevant goods and/or services, relevant goods and/or services are [insert].

OR

[The list of relevant goods or services should include at least any contracts for...].”

Option 2 – setting minimum requirements for the list

5. Alternatively, In-Scope Organisations may state minimum requirements for the list of contracts to be provided (see paragraphs 12 to 14 of Annex A) – for instance:

“The list referred to above must include at least...

... [minimum number of] contracts under which [relevant] goods and/or services have been provided by the supplier] OR

... [a contract] [minimum number of contracts) under which [relevant] goods or services [of some specific value, quantity or description]

Annex D –Template Wording Governing Conditions of Entry to Competition

This template wording should be included in all relevant procurement documentation, such as PQQs and ITTs and in other appropriate correspondence with suppliers in respect of contracts to which the PPN applies, to ensure that they are aware of these conditions of entry to the procurement.

1. The tenderer waives any contractual right or other confidentiality obligation in connection with the customers mentioned in a list of contracts used to demonstrate evidence of past performance and agrees that these customers may provide information to the [Contracting Authority] in the form of certificates of performance (in the form set out in [the Annex to the OJEU Notice]) and answer any clarifications that the [Contracting Authority] or anyone acting on behalf of the [Contracting Authority] in connection with this procurement may have. The tenderer confirms that save for any deceitful or maliciously false statements of fact or purported fact included in a certificate or subsequent clarification the customer will not owe the tenderer any duty of care for or otherwise have any legal liability to the tenderer in respect of any factual inaccuracies, whether innocent or negligent, and/or in respect of any expressions of opinion by the customer. This provision is for the benefit of each customer and may be relied on by them for the purposes of the Contracts (Rights of Third Parties) Act 1999.

2. The Crown Commercial Service may hold a copy of the certificate of performance on a central database and the content of any certificates of performance from a customer may be shared with Contracting Authorities, acting as part of the Crown.

3. If in breach of this provision [1] any tenderer commences legal proceedings against a customer in relation to any certificate of performance or subsequent clarification in the courts of any jurisdiction the [relevant entity] agrees that the customer shall be entitled to bring proceedings against the tenderer in the English Courts to enforce the terms of this provision (regardless of whether it is enforceable in the jurisdiction where the proceedings are brought) and to be indemnified in full for any legal costs incurred in defending such proceedings and indemnified in respect of any compensation that the customer is ordered to pay to the tenderer as a result of such proceedings. This provision will not relate to any proceedings commenced in good faith for any liability that falls outside the scope of this provision.

Annex E - Framework Agreements

1. This PPN applies to both owners and users of framework agreements in so far as (i) they cover goods and/or services in respect of information and communications technology, facilities management or business processing outsourcing and (ii) they may involve an individual Call-off Agreement for such matters with an anticipated value of £20 million or greater (excluding VAT).

New Framework Agreements

2. In-Scope Organisations letting new framework agreements, to which this PPN applies, should comply with this PPN in establishing the framework agreements
3. They should include provision for the re-assessment of suppliers' compliance with the selection criteria on request from any framework agreement user prior to the proposed award of a Call-off Agreement with a value of £20 million or greater (excluding VAT).
4. New framework agreements should also include contract conditions that a supplier will not be eligible to be awarded a Call-off Agreement under the framework agreement if it does not comply with the specified minimum standards for reliability based on past performance at the time of the proposed award of the Call-off Agreement.
5. To do this, In-Scope Organisations must include wording in the OJEU Notice and in the framework agreement.

Template wording for New OJEU Notices and Framework Agreements

OJEU Notice

The [Contracting Authority] will also assess whether this selection criterion is met on request from the framework agreement user prior to the proposed conclusion of a call-off agreement with a value of £20 million or greater (excluding VAT). Failure to meet the selection criterion set will render the supplier ineligible for that call-off agreement.

Framework Agreement

1. Re-assessment of Minimum Standards

1.1. No Call-Off Agreement with an anticipated contract value in excess of £20 million (excluding VAT) shall be awarded to the Contractor if it does not show that it meets the Selection Criterion at the time of proposed award of that Call-Off Agreement.

1.2. The [framework agreement owner] shall assess the Contractor's compliance with the Selection Criterion upon the request of the Call-Off Agreement User.

1.3. In the event that the Contractor does not demonstrate that it meets the Selection Criterion in an assessment carried out pursuant to clause 1.2 [of this Agreement], the [framework agreement owner] shall so notify the Contractor and the Call-Off Agreement User in writing.

Definition

" **Selection Criterion** " means the minimum standards for reliability as set out in OJEU Notice Reference [insert OJEU Notice reference]

Existing Framework agreements

6. It may be that an existing framework agreement does not contain provisions permitting a reassessment of the supplier's compliance with the selection criteria before a call off is awarded, particularly if such frameworks pre-date PPN 09/12 dated 8th November 2012.
7. In such cases, where performance issues become apparent with a supplier on an existing framework agreement (whether in delivering contracts under that framework agreement or in delivering other contracts to the In-Scope Organisation or other customers) framework agreement owners and users should work together to ascertain the scope of action possible under the contractual terms and conditions of the framework agreement.

Annex F – Certificate of Past Performance

Performance Certificate - Source Email Form

Directions – to be completed and returned to Supplier and additional copy to be sent to CCS via pastperformance@crownccommercial.gov.uk

Performance Certificate under Procurement Policy Note 04/15 as requested by:	<i>[In-Scope Organisation issuing tender]</i>
Requested under Contract Notice:	<i>[OJEU Contract Notice e.g. 2011/S 239-387260]</i>
Name of Entity Providing Certificate:	<i>[Customer or Supplier for Self Certification]</i>
Performance Certificate - Contract Header Information (details of the contract to be certified)	
Name of Contract Customer ("Customer"):	<i>[Registered Name]</i>
Name of Contracted Supplier ("Supplier"):	<i>[Registered Name]</i>
Contract Title ("Contract"):	<i>[Agreed Contract Name for Contract]</i>
FOR PUBLIC SECTOR CONTRACTS ONLY - OJEU Award Notice Reference:	<i>[OJEU reference e.g. 2011/S 239-387260]</i>
Person Submitting this Certificate - Contact Details (with whom further queries, if any, can be raised)	
Source Contact Name:	<i>[Name of source authorised by entity providing Certificate]</i>
Source Contact Address:	<i>[Authorised source business address]</i>
Source Contact Direct Line:	<i>[Authorised source direct telephone line]</i>
Source Contact Email:	<i>[Authorised source email]</i>
Further Contract Detail	
Description of the goods and/or services:	<i>[Brief description max 50 words]</i>
Consideration received:	<i>[Monetary value or equivalent]</i>
Goods/Services provision start date:	<i>[dd/mm/yyyy]</i>
Goods/Services provision end date:	<i>[dd/mm/yyyy]</i>

Performance (Please submit either Option A or B)	
OPTION A:	
We hereby certify that, to the best of our knowledge and belief, the Supplier has satisfactorily supplied the goods and/or services described in the table above in accordance with the Contract.	
OR	
OPTION B:	
We are unable to certify that the Supplier has satisfactorily supplied the goods and/or services described in the table above in accordance with the Contract for the following reasons:	<i>Reason 1;</i> <i>Reason n; etc.</i>
<i>By submitting this information ("Certificate") you are agreeing that it will be added to the central database held by the CCS and may be made available to other Crown bodies.</i>	
<u><i>Liability of any Customer certifying</i></u> <i>Whilst the information in this Certificate has been provided in good faith in the belief that it is truthful and accurate, the Customer does not assume any responsibility or any liability nor make any guarantee, representation or warranty as to the contents of this Certificate. The Customer shall not be liable for and hereby excludes liability for any loss, damage (including any special, exemplary, indirect, incidental, consequential damages, costs or associated legal fees) that may be suffered as a result of use of the Certificate and its content, to the fullest extent permitted by law. Nothing in this Certificate shall affect, or constitute a waiver of, the Customer's rights or remedies in relation to the Contract.</i>	
Guidance for Entities providing Certificates	
<i>If you are unable to certify that the Supplier has satisfactorily supplied the goods and/or services in accordance with the Contract, please provide the reason or reasons why performance was not in accordance with the Contract. These may include the following or other reasons:</i> <ol style="list-style-type: none"> <i>1. delays in supplying the goods and/or services;</i> <i>2. failures to supply all the goods and/or services in accordance with the scope set out in the Contract;</i> <i>3. failures to meet any service levels and/or supply the goods and/or services in accordance with quality standards;</i> <i>4. any other failure by the Supplier to comply with its obligations under the Contract.</i> 	

Performance Certificate - Supplier Submission Covering E-Mail (for submitting Certificates in response to PQQs and selection questions)

Performance Certificate - Supplier Submission Covering E-Mail	
Name of Supplier:	<i>[Registered Name]</i>
Submitted for Contract Notice:	<i>[OJEU Contract Notice e.g. 2011/S 239-387260]</i>
Performance Certificate Contract Title:	<i>[The "Contract" field from the Performance Certificate]</i>
For Public Sector Contracts Only - OJEU Award Notice Reference:	<i>[OJEU Award ref e.g. 2011/S 239-387260]</i>
Supplier Representative Submitting the Performance Certificate - Contact Details (with whom further queries, if any, can be raised)	
Supplier Contact Name:	<i>[Name of authorised representative forwarding Certificate]</i>
Supplier Contact Address:	<i>[Authorised representative business address]</i>
Supplier Contact Direct Line:	<i>[Authorised representative direct telephone line]</i>
Supplier Contact Email:	<i>[Authorised representative email]</i>
Supplier's Additional Information (please provide details of the Supplier's response to the content of the Performance Certificate or such other information as the Supplier wishes to be made known in the section below. If the Supplier does not have anything to add please state 'no additional information to be provided'):	