



**HM Revenue & Customs (HMRC)
Tendering Instructions**

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Version 6.0**

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Interpretations In this document

Award	means the award process used to evaluate tenders using pre-defined criteria compatible with those described in Regulation 67 of the 2015 Public Contracts Regulations.
Award Criteria	means the criteria against which the Tender will be evaluated as part of the Award of the Contract.
Bid Field	means the area within an ITT type eSourcing Event where pricing information is requested and provided.
Candidate	means an Economic Operator that has sought an invitation to tender or that has been invited to take part in a restricted procedure, a competitive procedure with negotiation, a negotiated procedure without prior publication, a competitive dialogue or an innovation partnership.
Call Off	means the process used to establish the exact terms, for the provision of goods and/or services as outlined in an existing Framework Agreement in relation to quantity, quality, schedule, place of delivery and, when not previously determined, price.
Client Organisation	means a Public Sector organisation, other than the Contracting Authority, enabled to make use of any resulting contract/agreement
Close Time	means the time shown on the clock in the eSourcing Event when the eSourcing Event will close.
Competitive Procurement Exercise	means an exercise carried out to allow Economic Operators to compete for a contract for the supply of goods and/or services in an open and transparent manner.
Conditions of Contract	means the terms and conditions under which the Contract will be awarded.
Contract	means the document used to specify the types, terms and conditions for the provision of goods and/or services as established during the Competitive Procurement Exercise.
Contract Notice	means the notice published in the Official Journal of the European Union (OJEU) and/or in Contracts Finder in compliance with the 2015 Public Contracts Regulations.
Contract Start Date	means the date on which the Contract and/or provision of goods and services commences or comes into effect.
Contracting Authority	means HM Revenue and Customs (HMRC) or any contracting body represented by HMRC.
Contracts Finder	means the website provided by Business Link where Public Sector Competitive Procurement Exercise Contract Notices are displayed.
Economic Operator	means any person or public entity or group of such persons and entities, including any temporary association of undertakings, which offers the execution of works or a work, the supply of products or the provision of services on the market.
eSourcing Event	means an event set up within the eSourcing Portal that allows Candidates/Tenderers to submit an Expression of Interest or Tender.
eSourcing Portal	means the computer application, provided by SAP Ariba, that is used by HMRC to manage the Competitive Procurement Exercise.

Expression of Interest	means the stage in the Competitive Procurement Exercise where an initial expression is made by the Economic Operator that they would be interested in tendering for a contract, as described in a Contract Notice, if selected.
Framework Agreement	means an agreement which sets out the general terms under which specific purchases/call off contracts may be made.
Lots	means sub-division or specialist parts of a requirement, such as in the form of functional or geographical Lots.
Open Type Procedure	means a procedure where Candidates/Tenderers are provided with the opportunity to provide a Tender in respect of both Selection and Award Criteria at the outset of a Competitive Procurement Exercise.
Parent Company Guarantee	means the deed of guarantee as set out by any company which is the ultimate Holding Company of the Economic Operator and which is directly or indirectly responsible for the activities of the Economic Operator.
Public Contracts Regulations	means the Regulations laid down in statute in the Public Contracts Regulations 2015 and any subsequent amendments.
Selection Questionnaire (SQ)	means the questions contained within questionnaires in an eSourcing Event, which Economic Operators are required to complete to provide an Expression of Interest response when requested to do so in a Contract Notice.
Regulation	means the applicable regulation numerically identified within the Public Contracts Regulations 2015.
Restricted Type Procedure	means a procedure where Candidates are provided with the opportunity to submit an Expression of Interest, by providing information in respect of the Selection Criteria only, which will be evaluated to select which Candidates should be invited to tender.
Service Order	means the Contract document used to specify the types, terms and conditions, as established during the Call Off process, for goods and/or services to be provided from a Framework Agreement.
Selection	means the process used to select which Economic Operators are capable of providing the goods and/or services required for further consideration at the Award stage.
Selection Criteria	means the pre-determined criteria compatible with the Selection Criteria (Regulation 58) including Exclusion Grounds (Regulation 57) stated in the Public Contracts Regulations by which the information provided by an Economic Operator will be evaluated against to establish whether the Economic Operator meets the necessary criteria to be allowed to be further considered in the procurement procedure for contract award.
SMEs	means Small and Medium sized Enterprises which are defined as having up to 249 employees, a turnover of less than £50M and balance sheet total assets of less than £5.6M.
Tender	means the formal offer or proposal submitted by a Tenderer in response to the Client's invitation to tender.
Tenderer	means an Economic Operator that has submitted a Tender.

Tender Clarification	means a clarification that can be requested by either the Client, in respect of a response received or the Tenderer, in respect of the specification of requirement provided at any stage of the Competitive Procurement Exercise.
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1. PURPOSE OF THIS DOCUMENT

- 1.1 This document provides important information about the format and general conduct of HMRC Competitive Procurement Exercises and is intended to help ensure: (a) that Tenders are submitted in the required format; (b) that the Competitive Procurement Exercise is conducted in accordance with the Public Contracts Regulations and/or any other relevant regulatory requirements or codes of practice; and (c) that all Tenders are given equal and fair consideration.
- 1.2 Candidates/Tenderers should therefore read this document, as well as all the other documentation attached within the HMRC eSourcing Portal or Event, before attempting to prepare their Tender and complete the relevant on-line questionnaires.

2. BACKGROUND

- 2.1 HMRC will be the Contracting Authority for any contracts or agreements awarded as consequence of the Competitive Procurement Exercise.
- 2.2 HMRC's Commercial Directorate, based in Salford, will manage the Competitive Procurement Exercise on behalf of the Departmental stakeholders or lines of business who have identified the need for a particular contract or agreement.
- 2.3 The precise form of any contract or agreement that will be awarded as a consequence of an HMRC Competitive Procurement Exercise will be specified in the relevant Contract Notice, Contract documentation or Service Order and will normally or most commonly relate to:
 - Contracts for goods and/or services
 - Framework Agreements for goods and/or services
 - Call Off contracts awarded under the terms of an existing Framework Agreement
 - Dynamic Purchasing Systems (DPS)
- 2.4 Further general information on selling to HMRC is provided in the HMRC Suppliers Guide which may be accessed via the following link:

<https://www.gov.uk/government/organisations/hm-revenue-customs/about/procurement#supplying-to-hmrc>

3. HMRC's e-SOURCING PORTAL

General

- 3.1 HM Revenue & Customs (HMRC) routinely uses a web-based eSourcing Portal (provided by SAP Ariba) to manage its Competitive Procurement Exercises.
- 3.2 The eSourcing Portal allows Candidates/Tenderers to prepare their Tender in a standardised format, with the aim of ensuring a simpler, more consistent approach to tendering and removing some of the barriers which make it difficult for businesses, in particular SMEs, to access public sector contracts.

- 3.3 The eSourcing Portal allows HMRC to:
- invite Candidates/Tenderers to take part in a Competitive Procurement Exercise, referred to as an eSourcing Event, across a secure web link.
 - use the eSourcing Event to provide Candidates/Tenderers with access to Contract documents.
 - request Candidates/Tenderers to answer a series of questions contained in questionnaires within the eSourcing Event in order to obtain a standardised e-format Tender.
 - evaluate Tenders using inbuilt scoring functionality.
 - optionally conduct electronic reverse e-auctions as part of the evaluation process.
 - maintain an efficient audit trail of all the key actions and correspondence relating to a particular Competitive Procurement Exercise.
- 3.4 As detailed in paragraphs 8.15 and 8.16, the eSourcing Portal will not be used to process purchase orders and pay invoices.

Accessing a HMRC eSourcing Event

- 3.5 Prior to being given access to an eSourcing Event, a Candidate/Tenderer will have to obtain an Ariba Supplier Network registration number. This can be accomplished by accessing the relevant HMRC registration home page via the following link:

<http://hmrc.supplier-eu.ariba.com/ad/register/SSOActions?type=full>

- 3.6 Candidates/Tenderers will only be able to receive access to the eSourcing Event once registration has been completed.
- 3.7 Once Candidates/Tenderers have completed the registration process referred to above, the eSourcing portal home page can be accessed via the following link:

<http://seller.ariba.com>

- 3.8 When accessing an eSourcing Event for the first time, Candidates/Tenderers will need to accept the conditions in the bidder agreement, a copy of which can be found at Annex A of this document.

Communication and/or Notification Messages

- 3.9 Any communications or notifications in connection with the Competitive Procurement Exercise, both at the Selection stage and beyond, will routinely be sent by HMRC to Candidates/Tenderers using the messaging facility within the eSourcing Event.
- 3.10 Communications or notifications sent via the messaging system may relate to and represent material changes to information previously provided. Accordingly, until the Competitive Procurement Exercise has been fully concluded, Candidates/Tenderers must log into the eSourcing Event at regular intervals, and no less frequently than once a week, to check for messages and access their content.
- 3.11 The eSourcing system generates an automated email prompt advising Candidates/Tenderers to log into the eSourcing Event to view messages. This will be sent to the email address of the administrator nominated by Candidates/Tenderers during the Ariba/eSourcing registration process.

3.12 All messages sent via the eSourcing system are retained within the messages section of the eSourcing Event. This allows the messages to be accessed and the information therein to be reviewed at any time.

3.13 Paragraphs 8.13 and 8.14 also refer.

Contact Email Address

3.14 A Candidate's/Tenderer's nominated administrator can create multiple user accounts for personnel within their organisation, but invitations to eSourcing Events and the email prompts referred to above will only be sent to the nominated administrator.

3.15 Candidates/Tenderers should therefore ensure that the details of the nominated administrator remain current.

Technical Guidance

3.16 Once logged onto the system, technical guidance relating to the use of the eSourcing Portal can be found in the Help Centre that can be accessed via the help tab at the top of the screen.

SAP Ariba Sourcing Professional Supplier's Guide

3.17 Before attempting to use the eSourcing Portal, Candidates/Tenderers must ensure that they have read the SAP Ariba Sourcing Professional Supplier's Guide which may be accessed via the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/528355/SAP_Ariba_Sourcing_Professional_Supplier_s_Guide_-_June_2016.pdf

4. COMPLIANCE WITH INSTRUCTIONS

4.1 Before attempting to complete any of the Selection or Award stage questionnaires, Candidates/Tenderers should acquaint themselves fully with and take account of all the applicable procedural and contract requirements specified in these Tendering Instructions and all the other relevant procurement documents.

4.2 Failure to (a) comply with any of the instructions or requirements contained in this document or in the procurement documentation, (b) provide all of the information requested in the course of the Competitive Procurement Exercise or (c) provide the requested information in the requested/correct format may result in disqualification prior to the Tender or Award stage or in a Tender not being fully evaluated or being rejected in its entirety.

5. CONTRACT DOCUMENT

Draft Contract

5.1 The draft Contract documents are located within the eSourcing Event as attachments.

5.2 At the outset of the Competitive Procurement Exercise, Candidates/Tenderers must familiarise themselves with the content of the draft Contract documents and assure themselves that they are prepared to enter into a contract or agreement on the basis of the various requirements expressed therein.

- 5.3 Candidates/Tenderers must not alter any aspect of the draft Contract documents.
- 5.4 Where a Candidate/Tenderer believes that a change is required to the draft Contract documents, for example in respect of the specification of requirement, then the Candidate/Tenderer should bring this to the attention of HMRC with a view to HMRC making any necessary changes.
- 5.5 HMRC reserves the right to modify the Contract documents at any time prior to the deadline for receipt of Tenders and, where any modifications or amendments are considered by HMRC to be significant, HMRC may, at its discretion, extend the deadline for receipt of Tenders.
- 5.6 Any modifications to the Contract documents or timetable changes will be notified to the Candidates/Tenderers in writing via the eSourcing Portal messaging facility.

Final Contract Document

- 5.7 The Tender submitted by a Candidate/Tenderer in response to the eSourcing Event questionnaires, will, together with any other undertakings made in connection with the Competitive Procurement Exercise, form part of the final Contract.
- 5.8 For the avoidance of doubt, the content of the signed final Contract document will supersede any information provided in the Contract Notice, the eSourcing Event attachments and/or the draft Contract documents.

6. THE REQUIREMENT

Contract Requirements - General

- 6.1 The full specification and set of requirements for the particular agreement or contract being tendered is detailed in the procurement documentation or draft Contract documents attached to the eSourcing Event.
- 6.2 When preparing their Tender, Candidates/Tenderers should take into account all of the requirements detailed in the procurement documents, including those detailed in the HMRC Terms and Conditions and related Schedules.

Call Off Contracts

- 6.3 Where the purpose of the Competitive Procurement Exercise is to award a call off contract from an existing framework agreement, the full contract requirement will consist of (a) any general requirements specified in the overarching framework agreement to which all framework suppliers are subject and (b) the specific requirement for the particular call off contract, which will be detailed in the corresponding HMRC Service Order.

Contracts and Framework Agreements

- 6.4 Where the purpose of the Competitive Procurement Exercise is to award a contract or framework agreement, the detailed requirement will be provided within the draft Contract or procurement documents attached to the eSourcing

Event, with an outline of the requirement provided in the corresponding Contract Notice.

Errors and Omissions

- 6.5 Where a Candidate/Tenderer believes that there is (a) a fundamental difference between the outline requirement in the Contract Notice and the more detailed specification of requirement in the draft Contract or procurement documents and/or (b) a fundamental error or omission in the specification of requirement which affects its ability to provide the goods and/or services, then this should be brought to the attention of HMRC as soon as possible and no later than the time specified for the submission of clarification questions.

HMRC Security Requirements

- 6.6 Candidates/Tenderers are required to provide a response to a number of standard security questions contained with the eSourcing Event questionnaires.
- 6.7 Where considered necessary, additional security questions will be included in the questionnaires, the responses to which will form the basis for a Security Plan which will be agreed between HMRC and the successful Tenderer and be incorporated, in the form of a Schedule, into the final Contract.
- 6.8 When the requirement for a Security Plan is identified in the eSourcing questionnaire, Candidates/Tenderers will need to refer to the following hyperlink documents for the purpose of responding to the relevant security questions:
- <https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework>
 - [Public Sector Network \(PSN\)](#)
 - [Data Protection Act](#)
 - <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>
 - [Information Commissioners Office](#)
 - [Government Security Classification](#)
 - [Contractual Process](#)

Corporate and Social Responsibility

- 6.9 HMRC is required to comply with a number of Government Corporate and Social Responsibility requirements, as outlined on the “Procurement at HMRC” webpage which can be accessed via the following link:

<https://www.gov.uk/government/organisations/hm-revenue-customs/about/procurement#supplying-to-hmrc>

- 6.10 Candidates/Tenderers should familiarise themselves with the Government's requirements in respect of Corporate and Social Responsibility and then complete the 'Corporate and Social Responsibility Requirements' questionnaire where provided within the eSourcing Event.
- 6.11 To assist HMRC achieve its Corporate and Social Responsibility targets, successful Tenderers may, after award of contract, also be required to complete questionnaires or provide further information and/or, as may be directed by central government policy, attain particular relevant quality accreditations.
- 6.12 The types of questionnaires referred to above may include, but may not necessarily be limited to:
- Sid4gov <https://sid4gov.cabinetoffice.gov.uk/>
 - Strategic Procurement Management (SPM via the eSourcing Portal)
 - Cyber Essentials
 - Article 6 of the Energy Efficiency Directive

TUPE Requirements

- 6.13 In relation to contracts for the provision of services, attention is drawn to the potential for the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to apply.
- 6.14 Where HMRC believes that TUPE is likely to apply in respect of certain staff involved in the delivery of the service, be it HMRC's staff or the incumbent supplier's staff, then this is normally indicated within the Contract Notice and then referred to in more detail in the other procurement documentation.
- 6.15 In the case of staff being employed by the incumbent supplier:
- a. HMRC would be neither the transferor nor transferee of the staff in the circumstances of any contract awarded as a result of the Competitive Procurement Exercise. Consideration of the application of TUPE in such a case would not be a matter of direct concern to HMRC and it would be the Candidate's/Tenderer's responsibility to consider whether or not TUPE applies in the specific circumstances and to tender accordingly.
 - b. Any TUPE information provided in the Contract documents will have been obtained from the incumbent HMRC supplier performing this work. Whilst HMRC will have obtained this information in good faith, HMRC gives no guarantee or assurance as to the accuracy of this information and cannot be held responsible for errors or omissions in it. It remains the Candidate's/Tenderer's responsibility to ensure that the Tender takes full account of all the relevant circumstances.
- 6.16 Where HMRC believes that TUPE may apply to either HMRC's staff or to the incumbent supplier's staff where the incumbent employs staff previously transferred from HMRC under TUPE, HMRC may require that the successful Candidate/Tenderer secures continued access for those staff to the Civil Service Pension Scheme. Where HMRC indicates that this requirement applies, the successful Candidate/Tenderer will be required to enter into a "Participation Agreement" and must include all costs associated with this Agreement in their bid.
- 6.17 Information provided in connection with TUPE situations for the purpose of

preparing Tenders and formulating bids must be treated on a confidential basis and will be released by HMRC on the understanding (a) that it will not be copied or used except for the purposes of preparing a bid and (b) that it, and any copies of it, will be returned to HMRC if the Candidate/Tenderer is unsuccessful in the Competitive Procurement Exercise.

Equality Act 2010

- 6.18 The Public Sector Equality Duty (PSED) is contained within Section 149 of the Equality Act 2010 and it requires central government departments and their agencies to ensure that they meet their legal obligations and have due regard to the three aims of the duty:
- a. Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act.
 - b. Advance equality of opportunity between people who share a protected characteristic and people who do not share it.
 - c. Foster good relations between people who share a protected characteristic and people who do not share it.
- 6.19 The PSED should help to ensure (a) that public goods and services are accessible to and meet the diverse needs of all users and (b) that no one group is disadvantaged in accessing public goods and services.
- 6.20 The PSED will be incorporated into the Competitive Procurement Exercise proportionately to allow equality related issues to be taken into account where they are relevant to the subject matter of the contract.
- 6.21 Candidates/Tenderers must familiarise themselves, and operate in compliance, with the PSED requirements, which should be reflected in their Tender, where relevant.

Further information can be found at:

http://www.cabinetoffice.gov.uk/sites/default/files/resources/PPN_Procurement_Equality_Jan-13_0.pdf

7. CONFIDENTIALITY

- 7.1 Candidates/Tenderers must keep their intention to submit, and the content of, any Tender confidential from any third party, in order to ensure that the competitive element of the Competitive Procurement Exercise is maintained.
- 7.2 Whilst the content of the draft Contract documents will be in the public domain at the outset of the Competitive Procurement Exercise, information which is communicated in the course of any subsequent negotiations is provided to you under the terms of the Official Secrets Act 1989.
- 7.3 Provided that they are bound by equivalent conditions of confidentiality, a Candidate/Tenderer may communicate, disclose or otherwise make available this information to any employees or professional advisers who require the information in connection with:
- a. the preparation of the Tender;
 - b. attaining sureties or quotations relating to the Tender; or
 - c. supporting any subsequent clarification of the Tender.
- 7.4 All information provided by a Candidate/Tenderer will be treated as "OFFICIAL" by HMRC and (except where required in law) will not be

disclosed to a third party outside of government without the written permission of the Candidate/Tenderer.

Freedom of Information Act

- 7.5 HMRC is committed to meeting its responsibilities under the Freedom of Information Act 2000 (FOIA).
- 7.6 Consequently, information submitted to HMRC may be subject to disclosure to a third party in response to a Freedom of Information Act request.
- 7.7 By participating in the Competitive Procurement Exercise, Candidates/Tenderers are deemed to understand and accept that the decision to disclose information, and the application of any exemptions under the FOIA, will be at HMRC's sole discretion. HMRC will, however, act reasonably and proportionately in exercising its obligations.
- 7.8 Should Candidates/Tenderers consider any of the information they have submitted to be commercially sensitive, then an explanation (in broad terms) of what harm may result from disclosure if a request is received, and the time period applicable to that sensitivity, should be included in the response to the relevant question within the Event questionnaires.
- 7.9 Further information about the FOIA is obtainable on the HMRC website www.hmrc.gov.uk and from the Ministry of Justice website www.justice.gov.uk

8. CONDITIONS OF TENDER

General

- 8.1 This section provides detail of conditions normally applicable to HMRC Competitive Procurement Exercises.
- 8.2 Any conditions specific to a particular Competitive Procurement Exercise which are not stated here or in other parts of this document will be specified in the relevant Contract Notice and procurement documentation.

Canvassing and Inducements

- 8.3 Candidates/Tenderers must not canvass any members of the Board of HMRC, any employee of HMRC or anyone acting on HMRC's behalf with a view to obtaining more favourable consideration. Failure to comply with this requirement may result in disqualification from the Competitive Procurement Exercise.
- 8.4 Offering an inducement in relation to a public contract may constitute a criminal offence and, in accordance with the Bribery Act 2010, any Candidate/Tenderer found offering an inducement of any kind in relation to obtaining a contract with HMRC or any Client Organisation will be disqualified from the Competitive Procurement Exercise and any Tender already submitted by the Candidate/Tenderer will not be considered.

Conflicts of Interest

- 8.5 The concept of a conflict of interest includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the Competitive Procurement Exercise.
- 8.6 As detailed in Section 5 of Appendix A, Candidates/Tenderers are required to

notify HMRC where there is any indication that a conflict of interest exists or may arise and inability to remedy or resolve any conflict of interest to HMRC's satisfaction may result in disqualification from the Competitive Procurement Exercise.

Tender Costs

- 8.7 HMRC will not be liable for any costs, expenditure, expenses, work or effort that may be incurred by Candidates/Tenderers in proceeding with or participating in this Competitive Procurement Exercise, including if the Competitive Procurement Exercise is terminated or amended by HMRC. This applies (a) regardless of whether the Tender is successful and (b) regardless of whether HMRC makes any modifications or amendments to the specification of requirement in the course of the Competitive Procurement Exercise.

HMRC Conditions of Contract

- 8.8 The terms and conditions, that will apply to any Contract or agreement formed as a consequence of the Competitive Procurement Exercise, are included in the draft Contract documents.
- 8.9 In the case of a Call-Off, the Framework Agreement terms and conditions will apply, supplemented, as necessary, by any HMRC special terms or additional requirements.
- 8.10 Candidates/Tenderers should be aware that there will be no opportunity to change the Contract terms and conditions, but there may be a limited opportunity early in the Competitive Procurement Exercise to clarify how they will be applied in practice.
- 8.11 At the outset of the Competitive Procurement Exercise, Candidates/Tenderers must familiarise themselves with the content of the draft Contract documents and assure themselves that they are prepared to enter into an agreement or contract subject to HMRC's terms and conditions.
- 8.12 HMRC reserves the right at any stage of the Competitive Procurement Exercise to exclude any Candidate/Tenderer who does not accept the HMRC Contract terms and conditions.

Electronic Communication/Use of the eSourcing Portal

- 8.13 The Tender, and all communications relating to the Tender, should be submitted electronically using the eSourcing Portal, subject only to any specified exceptions referred to below under "Hard Copy Documentation" or as may be agreed in writing with the Candidate/Tenderer due to accessibility needs.
- 8.14 The eSourcing Portal uses a secure password protected web-link for the electronic submission. However, there are risks involved with any electronic communication. By participating in the Event or Competitive Procurement Exercise, Candidates/Tenderers are deemed to have a full understanding and acceptance of these risks.

HMRC eTrading System

- 8.15 HMRC has a "Purchase Order Mandatory Policy" and currently processes purchase orders and invoices using the HMRC SAP ERP system and SAP SRM platform. However, the SAP SRM system will soon be replaced by an SAP Ariba P2P (Procure to Pay) platform.

- 8.16 Successful Tenderers will initially be required to provide information so that they may be adopted onto the current system and, when the SAP Ariba P2P system is deployed, will then need to register on the Ariba Network in order to transact over the HMRC SAP Ariba system and ensure that they will continue to be able to receive purchase orders and issue invoices.
- 8.17 Payment will be made by BACS within 30 days of receipt of a valid invoice.

Sufficiency of Information

- 8.18 Candidates/Tenderers are responsible, at their own expense, for obtaining all information necessary to complete their Tender.
- 8.19 The information provided in the draft Contract documents is considered sufficient to allow the preparation of a Tender, but Candidates/Tenderers must satisfy themselves through their own investigations about the sufficiency of information.
- 8.20 Where a Candidate/Tenderer believes that there is insufficient information, then any additional information considered necessary should be requested using the clarification process referred to in paragraphs 11.26 to 11.30 below.
- 8.21 Where a Candidate/Tenderer believes there is an omission and/or an anomaly in the specification of requirement for the goods and/or services being tendered, for instance in the context of a re-tendering exercise and having been a previous supplier of the same goods or services, the Candidate/Tenderer is obliged to bring the omission and/or anomaly to the attention of HMRC using the clarification process referred to in paragraphs 11.26 to 11.30 below.
- 8.22 No responsibility is accepted by HMRC for any loss, damage or expense of whatever kind arising from the use by a Candidate/Tenderer of any information provided in the Contract documents.

Information Sharing in Government

- 8.23 In February 2014, the Cabinet Office published Procurement Policy/Action Note 01/14 which provided for information sharing in respect of Government procurement exercises. The document may be accessed via the following link:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277102/PPN_0114_Information_Sharing_in_Government_Procurement_Exercises.pdf
- 8.24 Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury in respect of all expenditure and work closely with the Cabinet Office and the Government Commercial Function in the formulation of public procurement policy and best practice.
- 8.25 For these purposes, any documentation/information (including any that the Candidate/Tenderer considers to be confidential and/or commercially sensitive such as specific bid information) submitted by a Candidate/Tenderer during a Competitive Procurement Exercise may be disclosed within Government. This information will not be disclosed outside of Government. Candidates/Tenderers taking part in this Competitive Procurement Exercise are deemed to have consented to these terms or practices.

HMRC's rights in the Competitive Procurement Exercise

- 8.26 HMRC reserves the right to:
- a. waive or change the requirements contained in this document or in the procurement documentation from time to time without prior (or any) notice being given by HMRC;
 - b. seek clarification or documents in respect of a Candidate/Tenderer's submission;
 - c. disqualify any Candidate/Tenderer that does not submit a compliant Tender in accordance with the instructions contained in these Tendering Instructions or in the procurement documentation;
 - d. disqualify any Candidate/Tenderer that is guilty of serious misrepresentation in relation to its Tender, expression of interest, the Selection Questionnaire or the Competitive Procurement Exercise;
 - e. annul a Competitive Procurement Exercise and reject all Tenders at any time prior to Award of Contract without incurring any liability to the Candidate/Tenderer in respect of the cost of participating in the Competitive Procurement Exercise and preparing/submitting a Tender;
 - f. withdraw this Competitive Procurement Exercise at any time, or to re-invite Tenders on the same or any alternative basis;
 - g. choose not to award any contract as a result of the current Competitive Procurement Exercise; or
 - h. make whatever changes it sees fit to the Timetable, structure or content of the Competitive Procurement Exercise, depending on approvals processes or for any other reason.

9. PROPOSED TENDER TIMETABLE

General

- 9.1 The proposed timetable for the Competitive Procurement Exercise, inclusive of the intended key milestone dates and Agreement/Contract Start Date, is shown in the Contract Notice and/or the Contract documents.
- 9.2 The proposed timetable for the Competitive Procurement Exercise takes account of a number of factors, including the nature of the contractual opportunity and, relatedly, the likely number of Candidates/Tenderers and the amount of time likely required for evaluation.
- 9.3 Although it is not normal practice for HMRC to depart from the published timescales, HMRC reserves the right to amend elements of the timetable at any time, including the Contract Award or Contract Start Date.

Tender Close Date/Time

- 9.4 The Close Time, date and remaining time are all shown within the eSourcing Event in the form of a clock which provides a live count down facility in days, hours and minutes to the Close Time. The eSourcing Portal closes down the

Event automatically when the Close Time is reached and prevents any further changes or updates to Tenders.

- 9.5 The Framework/Contract start date and/or Close Time for the Event may be extended by HMRC where:
- a. changes are made to the Contract documents;
 - b. a large number of clarification questions are received; or
 - c. technical issues arise as outlined below.
- 9.6 The Close Time within the Event will accurately reflect any such extensions and therefore supersedes any dates or times provided in the Contract Notice, Contract Documents and/or messages sent via the eSourcing system
- 9.7 It is the responsibility of the Candidate/Tenderer to monitor the clock/countdown facility to ensure that its Tender is complete and that the final version has been submitted using the 'Submit Entire Response' button at the bottom of the screen.
- 9.8 Responses can be revised at any time up until the Close Time for the Event, but the revised response must be saved and the 'Submit Entire Response' button used to re-submit the revised response.
- 9.9 Where a technology issue arises which may prevent a Candidate/Tenderer from submitting its Tender prior to the close time, the Candidate/Tenderer must advise the HMRC Systems Management Team immediately, using the contact details below:
- Email: e.procurement@hmrc.gsi.gov.uk
Telephone: 03000 587778 or 03000 587787
- 9.10 Whilst the HMRC Systems Management Team will provide assistance to ensure that Candidates/Tenderers are able to submit their Tender prior to the Close Time, HMRC does not undertake any obligation to resolve any issues that may prevent submission.
- 9.11 Candidates/Tenderers must therefore ensure that they leave themselves sufficient time to submit their Tender, especially where it has been prepared using the 'offline' facility detailed in the training guides.
- 9.12 Candidates/Tenderers should be aware that the eSourcing Portal will prevent evaluators from viewing any information which has not been submitted or saved correctly prior to the Event closing.

10. FORM OF TENDER

General

- 10.1 Candidates/Tenderers must ensure that the content and submission of any information or Tender provided has been approved by a duly authorised person within their organisation.

Tender Validity

- 10.2 The Tender shall remain open for acceptance for a period of six months from the Close Time of the eSourcing Event.

11.0 SUBMISSION OF TENDERS

Submission in English

- 11.1 Tenders must be submitted in English. Any printed literature furnished by a Candidate/Tenderer may be written in any other language, but must be accompanied by an English translation of its relevant pages.
- 11.2 In such a case, for the purpose of interpretation in relation to the Tender, the English translation shall prevail.

Contract Price

- 11.3 Proposed costs or prices shall be in GB Pounds/Sterling (exclusive of Value Added Tax) and **must** be submitted within the bid section or Bid Fields of the eSourcing Event.
- 11.4 Currency fluctuations shall be at the Candidate's/Tenderer's risk.

Electronic Submission of Tenders

- 11.5 Tenders, and all correspondence relating to the Tender, including clarification questions or requests, should be submitted electronically using the eSourcing Portal, subject only to any specified exceptions referred to below under "Hard Copy Documentation" or as may be agreed in writing with the Candidate/Tenderer due to accessibility needs.

Accessibility Needs

- 11.6 Accessibility needs, which cover a range of disabilities, should be highlighted by the Candidate/Tenderer at the earliest opportunity if it is felt that they may hinder the ability of the Candidate/Tenderer to submit a Tender.

Completeness of Tenders

- 11.7 Candidates/Tenderers must ensure that their questionnaire response or Tender contains all of the required information as only the information provided by the Candidate/Tenderer will be taken into account during the course of the Competitive Procurement Exercise.
- 11.8 Candidates/Tenderers must not assume that HMRC will take into account any prior knowledge it may have of the Candidate/Tenderer.

Division into Lots

- 11.9 Where a contract requirement is not divided into Lots, all questionnaire questions and price-related Bid Fields contained within the eSourcing Event must be completed.
- 11.10 Where a contract requirement **is** divided into Lots, the Candidate/Tenderer must provide a response to all questionnaires which are not Lot specific, but need only provide a response to the Lot specific questionnaire(s) and price-related Bid Fields applicable to the Lot(s) for which the Candidate/Tenderer wishes to submit a Tender.
- 11.11 Paragraph 6 (Selection and Award Criteria: Lots) of Appendix A also refers.

Completion of Question Text Fields

- 11.12 Where it is believed that a question does not necessitate a response, an answer of some form must nonetheless be entered. For instance, if the question is considered irrelevant, please state 'not applicable' and provide a short explanation justifying this and clarifying why a full answer to the

question is believed to be inappropriate.

- 11.13 Candidates/Tenderers should be aware that if no answer is provided to a question an auto-generated zero score will be applied.
- 11.14 An answer to a question must not include a cross reference to a previous answer provided to a previous question.
- 11.15 Where a Candidate/Tenderer believes that information provided in response to one question is relevant to the response required to another question, then the information should be duplicated in order that each question is answered in full and that each response may be evaluated in its own right without reference to responses to other questions and questionnaires.
- 11.16 Answers to questions should fit within the text field space provided or, where specified within the question, be limited to a maximum number of words or characters.

Attachments

- 11.17 Attachments should ONLY be submitted in full or part response to a question where a question specifically requests or permits their use.
- 11.18 Where the question does specifically request or permit the use of attachments and attachments have been used, Candidates/Tenderers should confirm in the question text field that an attachment has been submitted.
- 11.19 Candidates/Tenderers must ensure that any attachment only contains the information that has been specifically asked for and attachments must not be used to provide information that has not been requested. Only the information specifically requested will be considered or evaluated.
- 11.20 Where the Candidate/Tenderer believes that any attachment contained in an attachment for one question is also relevant to the answer required for another question, then, provided the other question also specifically provides for the use of attachments, the attachment should be attached to both questions and appropriate reference to the provision of an attachment made in the answer or question text field of each of the questions.
- 11.21 Attachments must have a maximum file size of 10mb per attachment.

Hard Copy Documentation

- 11.22 Hard copy documentation should only be forwarded where a question has specifically requested or permitted information to be submitted as an attachment and the information is not available in an electronic format.
- 11.23 Where the question allows for, and the Candidate/Tenderer intends to provide, information in a hard copy format, then the Candidate/Tenderer must provide in the question text field a description of the hard copy information sent.
- 11.24 Where the questionnaire has specifically provided for material to be submitted in hard copy format:
 - a. such information should be placed in a sealed envelope and forwarded to the address provided by the HMRC nominated contact person as stated in the Contract Notice;
 - b. the envelope should bear no reference to the Candidate/Tenderer by name and should merely bear the HMRC Tender reference number; and

- c. the messaging facility within the eSourcing Portal should be used by the Candidate/Tenderer to provide a notification that hard copy information should be expected.
- 11.25 The Candidate/Tenderer will be responsible for all costs of carriage and should ensure that documents are sent by appropriate means so as to ensure that they are received by HMRC by the notified Close Time.

Clarification Questions

- 11.26 Any clarification questions that the Candidate/Tenderer may have in respect of any aspect of the Competitive Procurement Exercise, must be submitted using the eSourcing Portal messaging facility and “Event Messages” function within the eSourcing Event.
- 11.27 Exceptionally, such as in the event of technical failure, queries may be raised by email with the HMRC contact person named in the Contract Notice or other relevant procurement documentation, but under no circumstances should information be sought from any other party within HMRC unless previously agreed in writing.
- 11.28 Clarification questions relating to the specification of requirement must be submitted a minimum of 14 days before the Event Close date or as otherwise specified within the Tender documentation. Particularly relevant where Regulation 47 of the 2015 Public Contracts Regulations applies, this will allow sufficient time in advance of the Tender close date for HMRC to prepare and issue a response and, as necessary, for Candidates/Tenderers to amend their Tender or questionnaire responses.
- 11.29 If HMRC considers any clarification to be of material and general significance, both the query and the response will be communicated (in a suitably anonymous form) using the messaging facility within the eSourcing Portal to all Candidate/Tenderers registered on the eSourcing Event.
- 11.30 Where any clarification provided results in amendment of the specification of requirement, and HMRC considers these changes to be significant, HMRC may, at its discretion, extend the deadline for receipt of Tenders.

Modification of Tenders

- 11.31 Tenders submitted electronically can be modified at any time prior to the eSourcing Event Close Time, but, as referred to in Section 9 above, care should be taken to ensure that any modified or revised versions are saved and submitted in the correct manner.
- 11.32 Where hard copy information has been despatched prior to the Event closing, and the Candidate/Tenderer subsequently wishes to provide an updated version, this is permissible as long as the updated information is received prior to the Event Close Time.
- 11.33 Where updated hard copy information is forwarded, Candidates/Tenderers should act in accordance with the relevant procedures described in paragraphs 11.22 to 11.25 above and notify HMRC that replacement documentation has been sent.

Withdrawal of Tenders

- 11.34 Tenders may be withdrawn at any time prior to accepting the notification of award by sending a notice of withdrawal to HMRC. Any such notice should be sent electronically via the messaging facility within the eSourcing Portal.

Accuracy of Tenders

- 11.35 Candidates/Tenderers should make all efforts to ensure that any information provided in their questionnaire responses and Tender is valid and accurate.
- 11.36 HMRC reserves the right to exclude Candidates/Tenderers from further participation in the Competitive Procurement Exercise in the event that any information provided in their questionnaire responses or Tender is found to be a misrepresentation, false or deliberately misleading.
- 11.37 The Tender submitted by the successful Tenderer(s), including information provided in respect of the Selection Criteria, will form part of the final Contract documents and any error or misrepresentations discovered after award of contract or agreement may result in termination.
- 11.38 The Candidate/Tenderer must inform HMRC immediately (irrelevant of what stage the Competitive Procurement Exercise is at) if any changes occur within its operations that may impact on its questionnaire responses or any Tender submitted, such as, but not limited to ,an organisation being the subject of:
- a. a major restructuring which leads to a change in capacity;
 - b. administration/liquidation activity; and/or
 - c. a buy-out/takeover by another organisation

12. CONSORTIA AND SUBCONTRACTING

- 12.1 Where a consortium or sub-contracting approach is proposed, the Candidate/Tenderer must provide within the Event questionnaires all of the information requested in respect of the proposed consortium leader or prime contractor.
- 12.2 Information will also be required in respect of proposed consortium members or sub-contractors who would play a significant role in the delivery of any contract awarded as a consequence of the Competitive Procurement Exercise and on which the capability of the Candidate/Tenderer relies.
- 12.3 In order to enable HMRC to assess overall capability, information must be provided clarifying the extent to which the proposed consortium leader or prime contractor would call upon the resources and expertise of the other parties in the performance of any contract.

Changes in Circumstances

- 12.4 Consortium arrangements may be subject to change and any updates should be provided to HMRC so that a further assessment can be carried out by applying the Selection criteria to the new information provided.
- 12.5 Where the Candidate/Tenderer becomes aware of the intention to sub-contract (or enter into a consortium) at a later stage in the procurement, it must provide HMRC with the sub-contractor (or consortium) information requested in the Event questionnaires as soon as possible and within 14 days.

- 12.6 HMRC reserves the right, based on an assessment of the updated information and change in circumstances, to deselect a Candidate/Tenderer prior to any award of contract.

Legal Form

- 12.7 HMRC may require members of the consortium to assume a specific legal form, such as a Special Purpose Vehicle (SPV), if awarded the contract, to the extent that it is necessary for the satisfactory performance of the contract.

13. VARIANT PROPOSALS

- 13.1 Candidates/Tenderers MUST submit a Tender in the required format which will form or represent the primary or main proposal.
- 13.2 Where provision exists in the Contract Notice or procurement documentation to do so, Candidates/Tenderers may additionally submit a secondary variant proposal, where they believe they can deliver the requirement in an alternative way to that stated in the specification.
- 13.3 Any secondary variant proposal submitted must meet any specified minimum requirements and will need to result in increased efficiency, cost savings and/or enhancements relative to the specification of requirement provided by HMRC in the draft Contract documents or procurement documentation.
- 13.4 Variant proposals will be subject to separate evaluation by HMRC and should therefore be submitted (as a response to the questions in the “variant proposal questionnaire”) in the form of a separate second offer to the primary or main proposal.
- 13.5 Variant proposals should be written in such a way that the variant aspects can be easily identified when it is compared with the primary or main proposal and must be fully detailed and costed, so as to clearly demonstrate where increased efficiency, cost savings and/or enhancements will arise relative to the specification of requirement and the Candidate’s/Tenderer’s primary proposal.
- 13.6 Section 8 (Variant Proposals) of Appendix A also refers.

14. MANDATORY STANDSTILL PERIOD (BEFORE CONTRACT AWARD)

- 14.1 The European Court of Justice Alcatel judgement (C-81/98) means that all public sector procurements covered by Regulation 87 of the 2015 Public Contracts Regulations must have a standstill notice period of not less than 10 calendar days between the electronic notification of the award decision to all Candidates/Tenderers and the commencement of the contract. This is to allow unsuccessful Candidates/Tenderers a reasonable opportunity to make any legal challenges to the award decision.
- 14.2 The standstill notice issued to unsuccessful Candidates/Tenderers must contain:
- a. the criteria for the award of the Contract;
 - b. the reasons for the decision, including the:
 - i. characteristics and relative advantages of the successful tender;
 - ii. unsuccessful Candidate’s/Tenderer’s score;

- iii. successful Candidate's/Tenderer's score;
- c. if applicable, the reasons why the unsuccessful Candidate/Tenderer did not meet the technical specification;
- d. the name of the successful Candidate/Tenderer;
- e. a precise statement of when the standstill period will end, subject to no challenge being made; and
- f. the transformation weighting, where a reverse e-Auction has been used in the evaluation process.

14.3 Candidates/Tenderers are deemed to have a full understanding and acceptance of the above requirements by virtue of having participated in the Competitive Procurement Exercise.

15. PUBLICATION OF AWARD

15.1 HMRC is obliged, under the provisions of the Public Contracts Regulations 2015 and the UK Government's policy on transparency, to publish details (including contract value) of contract award in the Official Journal of the European Union (OJEU) and on the Contracts Finder portal.

15.2 By participating in the Competitive Procurement Exercise and submitting a Tender, Candidates/Tenderers are deemed to have a full understanding and acceptance of the various requirements which are outlined below.

Official Journal of the European Union (OJEU)

15.3 Award notices must be published in OJEU in respect of any contract or framework agreement that was originally advertised in the EU via the Official Journal.

Contracts Finder

15.4 Award notices, including detail of Tender and Contract documentation, must be published in Contracts Finder in respect of contracts and framework agreements (including call off contracts awarded under the terms of a framework agreement) with a whole life value of over £10,000.

16. ELECTRONIC SIGNATURES

16.1 HMRC proposes to utilise electronic signature of contracts functionality following award of contract.

16.2 Use by the successful Tenderer(s) of this functionality, though much preferred by HMRC, will not be mandatory. Willingness to use electronic signatures will be discussed with the successful Tenderer(s) prior to award of contract, but will not influence or form any part of the selection or evaluation process.

16.3 Further information on the use of electronic signatures can be found within the HMRC Supplier Guide referred to in paragraph 2.4 above.

APPENDIX A

1. GENERAL

Award Procedure

- 1.1 All Competitive Procurement Exercises undertaken by HMRC are conducted in accordance with the provisions of the Public Contracts Regulations 2015 and/or any other applicable regulatory requirements and codes of practice and are most commonly carried out using either (a) the Open or an Open Type Award Procedure or (b) the Restricted or a Restricted Type Award Procedure.
- 1.2 The extent to which the Public Contracts Regulations will apply will depend on the subject-matter and value of the contractual opportunity.
- 1.3 The methodology or formal procedure by which the Competitive Procurement Exercise will be conducted and any contract or framework agreement awarded is normally outlined in the Contract Notice and detailed in the corresponding procurement documentation.

Selection and Award Criteria

- 1.4 Competitive Procurement Exercises contain both Selection and Award stages or phases and criteria, as detailed below and as referred to in the Public Contracts Regulations 2015.

Preliminary Examination or Appraisal

- 1.5 At both the Selection and Award stage of the Competitive Procurement Exercise, HMRC will, prior to conducting a full assessment or evaluation of the questionnaire responses, undertake a preliminary examination to ensure that the Candidate/Tenderer has complied with the various requirements set out in these Tendering Instructions and in all the other procurement documentation, including the questionnaires themselves.
- 1.6 Failure to (a) comply with any of the requirements contained in these Tendering Instructions or in the other procurement documentation, (b) provide all of the information requested in the questionnaires or (c) provide the requested information in the requested/correct format may result in disqualification at the Selection stage and/or in a Tender not being fully evaluated or being rejected in its entirety.

2. THE SELECTION STAGE - GENERAL

Selection Criteria

- 2.1 In the Selection stage or phase of a Competitive Procurement Exercise, Candidates/Tenderers are assessed using criteria compliant or consistent with Regulation 57 (Exclusion Grounds) and Regulation 58 (Selection Criteria) of the Public Contracts Regulations 2015.

Selection Stage Assessment

- 2.2 The purpose and precise content of the Selection stage assessment and questionnaires will vary according to the nature of the Competitive Procurement

Exercise and the methodology or formal procedure by which the related contract or framework agreement is to be awarded.

Open or Open Type Procedure

- 2.3 Under an Open or Open Type Procedure, everyone who responds to the Contract Notice is provided with access to the procurement documentation and is invited to submit a Tender.
- 2.4 Accordingly, the purpose of the Selection stage assessment and questionnaires in an Open or Open Type Procedure is to ensure, prior to and as a condition for evaluating their full Tender, that Candidates/Tenderers have the necessary economic, financial and technical capacity to deliver the contract (including the ability to comply with any specified minimum standards) and that they are otherwise suitable to be awarded a public contract.
- 2.5 Candidates/Tenderers will be appraised on a pass or fail basis. All Candidates/Tenderers who pass the Selection stage screening process will be included in the Award stage and have their Tender fully evaluated. Candidates/Tenderers who fail the Selection stage screening process will not progress beyond the Selection stage and will be excluded from further participation in the Competitive Procurement Exercise.

Restricted or Restricted Type Procedure

- 2.6 Under a Restricted or Restricted Type Procedure, the Selection stage represents a separate, distinct pre-qualification phase of the Competitive Procurement Exercise and anyone responding to the Contract Notice and submitting a formal Expression of Interest is not automatically invited to tender or provided with access to the full procurement documentation.
- 2.7 Applicants will be screened in terms of general suitability and technical, economic and financial capacity, as with and on the same basis as the Open or Open Type Procedure, but, in addition, they may be comparatively assessed and ranked in terms of technical capacity for the purpose of deciding who to invite to submit a tender, depending on (a) any advertised restriction on the numbers to be invited to tender and relatedly (b) the number and quality of applications received.

Call Off Contracts

- 2.8 Where a Competitive Procurement Exercise is used to call off or award a discrete contract under the terms of an existing framework agreement, the number of Selection questions will be limited relative to other situations as ability to meet relevant Selection criteria will have been demonstrated when applying to be included in the framework agreement panel of suppliers.

Financial Capacity

- 2.9 HMRC will act in accordance with the Public Contracts Regulations 2015 and Cabinet Office Procurement Policy Note 02/13 (Supplier Financial Risk Issues) when specifying any minimum financial standards and undertaking financial assessments.

- 2.10 Where considered appropriate, on the basis of a financial assessment, award of contract may be conditional on a successful Tenderer providing a Parent Company Guarantee. If the guarantor is a charity, HMRC would need to establish whether anything in the charity's constitution prevents them from performing this role and, if so, whether an alternative guarantor may be required.

3. SELECTION - REGULATION 57 EXCLUSION CRITERIA

(a) General Grounds - Mandatory or Discretionary Exclusion

- 3.1 As referred to in Form B1 and Form B2 of the Selection questionnaires, Candidates/Tenderers may under the terms of Regulation 57 of the Public Contracts Regulations 2015 be considered unsuitable to be awarded a public contract and therefore be excluded from the Competitive Procurement Exercise if certain circumstances apply.
- 3.2 As referred to in Form B3, information regarding the status of any proposed consortium members and/or sub-contractors on whom a Candidate/Tenderer would rely for the performance of the Contract is also required for the purpose of assessing (a) their suitability and, if they are deemed unsuitable to be involved in the delivery of the Contract, (b) the impact, including possible exclusion, on the position of the Candidate/Tenderer or potential prime supplier/contractor.

Conflicts of Interest

- 3.3 In accordance with question B2(e) of the Selection questionnaires and Regulation B8(e) of the Public Contracts Regulations, HMRC may exclude the Candidate/Tenderer if there is a conflict of interest which cannot be remedied or resolved.
- 3.4 Provided that it has been carried out in a transparent manner, routine pre-market engagement carried out by HMRC should not represent a conflict of interest for the Candidate/Tenderer.
- 3.5 Please also refer to paragraphs 8.5 and 8.6 of the main body of these Tendering Instructions.

Self Cleaning Provisions

- 3.6 If the response to Forms B1, B2 or B3 indicates the existence of any grounds for mandatory or discretionary exclusion, evidence should be provided in a separate appendix providing summary details of (a) the circumstances and (b) any subsequent remedial actions taken, the purpose of which is to enable HMRC to undertake an assessment based on the "self-cleaning" provisions described in Regulation 57 of the Public Contracts Regulations.
- 3.7 In order for the evidence referred to above to be sufficient, the relevant party must, as a minimum, prove that it has:
- a. paid or undertaken to pay compensation in respect of any damage caused by the 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.
- 3.8 HMRC (whose decision will be final) will evaluate the evidence, taking into account the gravity and particular circumstances of the criminal offence or misconduct, and, if the measures taken are deemed sufficient, the relevant respondent or party may be permitted to participate in the Competitive Procurement Exercise and/or potentially be involved in the delivery of the contract.
- 3.9 Where the measures taken by the relevant party are considered by HMRC to be insufficient, HMRC will provide a statement of the reasons for that decision.

(b) Revenue or Tax Compliance

- 3.10 As referred to in Form C of the Selection questionnaires and Regulation 57(3) and 57(4) of the Public Contracts Regulations, Candidates/Tenderers may be subject to mandatory or discretionary exclusion if they are found to be in breach of their obligations relating to the payment of taxes or social security contributions.
- 3.11 As also referred to in Form C, information relating to any proposed consortium members and/or sub-contractors on whom a Candidate/Tenderer would rely for the performance of the Contract is also required for the purpose of assessing (a) their suitability to be involved in the delivery of the Contract, and, if they are deemed unsuitable, (b) the impact, including possible exclusion, on the position of the Candidate/Tenderer or potential prime supplier or contractor.

Measures to Promote Tax Compliance

- 3.12 In compliance with the provisions set out in Cabinet Office Procurement Policy Note (PPN) 03/14, where HMRC has indicated that the estimated full life value of a framework agreement or contract will be over £5m, there will be an additional requirement to complete a questionnaire and provide information in connection with any "Occasion of Tax Non-Compliance" as defined in the PPN referred to above.

Additional Information

- 3.13 Appendix B contains additional information about the revenue compliance exclusion grounds and, in particular, about HMRC's revenue compliance policy and procedures.
- 3.14 Candidates/Tenderers may use the clarification process referred to in paragraphs 11.26 to 11.30 of the main body of these Tendering Instructions if (a) they have any enquiries about the exclusion grounds and/or HMRC's revenue compliance policy or (b) anticipate potential problems in respect of revenue compliance and wish to obtain advice or an early decision on the likelihood of exclusion.

(c) Taking Account of Past Performance

- 3.15 As described in Cabinet Office Procurement Policy Note 04/15 (Taking Account of Suppliers Past Performance), the Government has developed a specific approach or policy in connection with assessing reliability and taking past performance into account before entering into certain new contracts.
- 3.16 In accordance with this policy, question B2(g) of the Selection questionnaire and Regulation 57(8)(g) and 58 of the Public Contracts Regulations, where the contract to be awarded is an in-scope contract in terms of (a) the subject matter of the contract and (b) having a full life contract value of £20m or more, HMRC may specify minimum standards related to experience and/or reliability and at any stage of the Competitive Procurement Exercise (a) request evidence of satisfactory performance in respect of previous and existing principal relevant contracts and (b) take this into account as part of the evaluation process.

4. THE AWARD STAGE

Award Criteria and Weightings

- 4.1 In the Award stage or phase of the Competitive Procurement Exercise, Tenders are assessed using pre-determined award criteria compliant or consistent with Regulation 67 of the Public Contracts Regulations 2015.
- 4.2 Details of the Award criteria (inclusive of weightings or relative importance) against which Tenders will be evaluated will be published in the Contract Notice and/or procurement documentation and will normally contain both price and non-price elements.
- 4.3 The Award stage questionnaires included in the eSourcing Event will exactly reflect or align with the published Award criteria.
- 4.4 Each questionnaire is weighted in percentage terms relative to 100% for all of the questionnaires and, once all the responses to the Award Criteria questionnaires have been scored, the eSourcing Portal will generate a percentage score for (a) each Award Criteria Questionnaire and, taking onto account the individual Award Criteria weightings, for (b) the eSourcing Event as a whole.

Technical Questionnaires

- 4.5 Individual questions within the technical questionnaires represent sub-criteria and are weighted between 1 and 10, with 10 being the most important in terms of the outcome of the Competitive Procurement Exercise.
- 4.6 The effect an individual question weighting has in relation to the overall technical score will depend on the number of questions in the questionnaire and the weighting allocated to the questionnaire.
- 4.7 The weighting allocated to each question can be viewed within the eSourcing Portal using the "Table Options Menu" and further information or guidance is provided in the "Supplier Response/Proposal Process" section of the SAP Ariba Sourcing Professional Supplier's Guide.

Cost or Cost Effectiveness Questionnaire

- 4.8 The Bid Field section is the part of the eSourcing Event where all proposed costs

and pricing information (exclusive of Value Added Tax) MUST be provided.

- 4.9 As also referred to in paragraphs 6.14 to 6.22 below, the cost or cost effectiveness evaluation questionnaire provides a means of manually recording the scores arrived at following evaluation of the costs or prices provided in the Bid Field section.
- 4.10 All costings arrived at during the tender process will be included in the Contract or agreement formed at Schedule 7.1 (Charges and Invoicing).

5. SELECTION AND AWARD CRITERIA: LOTS

- 5.1 Where the purpose of the Competitive Procurement Exercise is to set up a framework agreement, then the requirement may be sub-divided into Lots.
- 5.2 Selection criteria will apply to or be common across all Lots. Therefore, a response must be provided to **all** of the questions in the Selection Criteria Questionnaires.
- 5.3 Some Award Criteria Questionnaires, such as in the case of the examples listed below, are “common” in the sense that they relate to and ask questions about requirements which apply to all Lots.
 - a. Award Criteria – Technical Merit – Corporate & Social Responsibility Requirements
 - b. Award Criteria – Technical Merit – Framework Support requirements.
- 5.4 The remainder of the Award Criteria Questionnaires, such as in the case of the examples listed below, are “Lot Specific” as they ask questions that specifically relate to a particular Lot:
 - a. Award Criteria – Technical Merit – Lot 1
 - b. Award Criteria – Technical Merit – Lot 2
- 5.5 Candidates/Tenderers must complete (a) all of the “common” questionnaires applicable to all Lots **and** (b) the Lot-specific questionnaire applicable to the particular Lot or Lots for which they are applying as the total score achievable for each Lot will be the sum of the score achieved in respect of both the “common” and the “Lot-specific” questionnaires.
- 5.6 The number of suppliers ultimately appointed to each Lot will normally be as specified in the Contract Notice and/or procurement documentation, but HMRC reserves the right to alter the number of suppliers appointed to each Lot where the scores achieved do not sufficiently differentiate between the prospective suppliers.

6. AWARD STAGE – EVALUATION GUIDANCE

(a) General

- 6.1 Evaluators will be assigned to questionnaires that relate to their functional specialism and they will only be required to (a) score the questions which have been allocated to them and (b) take account of the information provided in direct response to a particular question, without any requirement to consider information provided elsewhere within the Tender.

- 6.2 Evaluation will be objective in the sense that questionnaire responses will be independently scored by a number of evaluators against pre-determined scoring guidelines or standards and will be evaluated on the basis of the question asked and the direct response received.

(b) Award Criteria Technical Questionnaires

Open and Closed Questions

- 6.3 In general, questions are of two types:
- a. 'closed' questions whereby Tenderers are asked to confirm that they can meet a 'conformance' specification laid down in the procurement documents.
 - b. 'open' questions whereby Tenderers are asked to provide a response as to how they would satisfy a set of 'outline requirements' as detailed in a 'performance' type specification.

Closed Questions

- 6.4 For 'closed' type questions, where answers clearly demonstrate that the specification can be met, then the maximum marks should be awarded and care should be taken to ensure respondents who provide a specification that 'exceeds' the requirement should not receive a higher score.
- 6.5 An example of a 'closed' question is where the question relates to the ability to meet a specific requirement for a vehicle with a maximum speed of 80mph. All Candidates/Tenderers who propose a vehicle or offer a solution that meets this requirement should be awarded the maximum score of 100 and anyone who exceeds the requirement (i.e. by offering a vehicle that has a greater maximum speed) should not obtain a higher score.

Open Questions

- 6.6 For 'open' type questions there is more scope for Candidates/Tenderers to provide more 'innovative' answers that demonstrates that they will be able to achieve the 'outline requirements' detailed as a performance specification.
- 6.7 An example of an 'open Question' is where information is requested in relation to contingency arrangements for business continuity. A good example of a response that demonstrates that they will be able to achieve the requirements is where a Candidate/Tenderer has its own backup generators and therefore an award of the maximum score of 100 could be justified.

Scoring Scheme or Approach

- 6.8 Responses to individual questions will be scored in the range of 0-100 (using the inbuilt scoring facility within the eSourcing Portal) and potential suppliers will have the opportunity to provide an answer that has the potential to achieve the maximum score.
- 6.9 Initial scoring will be kept within bands of 20 and scores allocated for each question will be in line with the scoring scheme detailed at in the table at 6.13 below.

6.10 A Candidate/Tenderer will be expected to achieve a minimum score of 40 for each questionnaire. HMRC reserves the right to exclude a Candidate/Tenderer from the Competitive Procurement Exercise where a Candidate/Tenderer's overall score for any questionnaire is equal to or below 40.

6.11 A Candidate/Tenderer will be expected to achieve an overall technical score (i.e. the average score achieved across all the Technical questionnaires) of 50. HMRC reserves the right to exclude a Candidate/Tenderer from the Competitive Procurement Exercise where a Candidate/Tenderer's overall technical score is equal to or below 50.

6.12 HMRC reserves the right to exclude a Candidate/Tenderer from the Competitive Procurement Exercise where a "0" score has been awarded in respect of an answer to an individual question.

6.13 The following scoring matrix will be used by the evaluators to score individual questions.

Score	'Closed' Question Criteria	'Open' Question Criteria
100	Excellent answer which meets all of the requirements and provides all of the required detail.	The response is excellent and completely relevant. The response is comprehensive, unambiguous and demonstrates an excellent understanding of, and meets, the requirements in all aspects, with no clarification required. The response is well thought out and/or provides <ul style="list-style-type: none"> • highly credible examples; • benefits; or • innovation.
80	Good answer which meets all of the requirements but lacks some minor detail	The response is good and highly relevant. The response indicates a good understanding of the requirements and provides sufficient detail across all areas. The response demonstrates how the requirements will be met in the main, which may require minor clarification only.
60	Satisfactory answer, which meets the requirements in many aspects, but fails to provide sufficient detail in some areas.	The response is satisfactory and relevant. The response indicates a satisfactory understanding of the requirements in most aspects, although may lack detail in certain areas. The response suggests that the requirements would be met satisfactorily, but may require some clarification.
40	Limited answer which satisfies some aspects of the requirements, but fails to meet the specification in the whole.	The response is limited and partially relevant. The response indicates partial understanding of the requirement. The response contains ambiguities which suggests that the requirements would not be met unless clarified.
20	Poor answer which significantly fails to meet the requirements.	The response is poor and only partially relevant. The response addresses some aspects of the requirements but contains insufficient/limited detail or explanation. The response demonstrates only limited understanding of the requirement. The response contains deficiencies which suggest the requirements would not be

		met.
0	The response is not considered relevant. The response is unconvincing, flawed or otherwise unacceptable. The response fails to demonstrate an understanding of the requirement.	

(b) Cost Evaluation, Cost Effectiveness Questionnaire

General

6.14 Cost schedules or bid/pricing information submitted by Tenderers will be extracted from the eSourcing Portal by HMRC and assessed “off line” after which, on completion of the evaluation, the scores achieved by each Tenderer will be input by the evaluator into the HMRC “Buyer View Only” question fields in the Cost Evaluation Questionnaire.

Initial or Preliminary Examination of Bids

6.15 Costs or bids submitted by Candidates/Tenderers will initially be checked to ensure that they are compliant with the specified costing methodology.

6.16 Where irregularities are identified, HMRC reserves the right to seek clarification from Candidates/Tenderers in respect of the costing model used.

6.17 Candidates/Tenderers are referred back to paragraph 4 of the main body of these Tendering Instructions as to the consequences for a failure to provide the requested information in the requested/correct format.

Scoring Methodology

6.18 Using the lowest price as the benchmark, a calculation will be made to establish in percentage terms how much cheaper the lowest bid is relative to other bids and the percentage will then be used to provide a score, as in the following example:

Lowest price is £400 and is awarded a score 100

The next lowest price is £425 therefore $\frac{£400}{£425} = 0.94 \times 100 = \text{Score of } 94$

The next lowest price is £522 therefore $\frac{£400}{£522} = 0.77 \times 100 = \text{Score of } 77$

6.19 In respect of Competitive Procurement Exercises where four, or more, Tenders have been submitted, bids may be compared and (after taking account of any anomalies identified in the course of the initial assessment or examination) the average price across all the bids identified.

6.20 The price or cost of each bid submitted will then be compared to the average price across all bids and where a bid or price is less than 50% of the average price this bid (though allocated a maximum score of 100) will not be used for benchmarking purposes.

6.21 The bid which contains the lowest price that is greater than 50% of the average cost or price across all the bids will be awarded the maximum score of 100 and

provide the benchmark for scoring the other bids.

6.22 The Overall Cost Effectiveness score (the average score achieved across the Cost Effectiveness questionnaire) any Candidate/tenderer would be expected to achieve would be at least 50.

6.23 HMRC reserves the right to disregard/discount any Candidate/Tenderers overall Tender which receives a score which is equal to or below this minimum requirement.

7. ALTERNATIVE/VARIANT BIDS OR PROPOSALS

7.1 Alternative or variants bids or proposals will only be considered where provided for in the Contract Notice and/or procurement documentation and when accompanied by a fully compliant primary proposal or Tender.

7.2 Where an alternative or variant proposal has been invited and submitted, HMRC will first fully evaluate the main or primary proposal by scoring all of the responses to the questions in the Award Criteria questionnaires.

7.3 Once all of the responses to questions in all of the Award Criteria questionnaires in the main or primary proposal have been scored, the eSourcing tool will generate a percentage score for (a) each Award Criteria Questionnaire and, taking into account the individual Award Criteria weightings, for (b) the eSourcing Event as a whole.

7.4 HMRC will then (a) review the alternative or variant proposal in order to identify the differences between the primary and the alternative proposal and (b) adjust each of the Award Criteria questionnaire scores in the main or primary proposals to take account of the extent of changes contained in the secondary variant proposal to arrive at a new overall score for the secondary variant proposal.

7.5 The overall score achieved for the main or primary proposal and the variant proposal will then be compared and the one with the highest overall score will be taken forward for the purpose of comparison with the scores of other Candidates/Tenderers.

8. MODERATION

8.1 The eSourcing Portal will generate an average of the scores awarded for each question by all of the evaluators and this will assist in identifying any differences between the individual scores awarded.

8.2 Where a difference in scores between evaluators is identified, a moderation exercise will take place to discuss the basis on which the scores have been awarded.

8.3 HMRC reserves the right to re-score any question in the interest of ensuring consistency of approach and ensuring that the previously-agreed scoring guidelines and standards have been properly applied.

8.4 As a consequence of the moderation exercise, the evaluator(s) may agree to:
(a) use the system-generated average; (b) adjust any individual score; or (c)

apply an “override average score” moderated score using functionality within the eSourcing Portal.

- 8.5 Where any adjustments are made to scores as a consequence of moderation, both the adjusted and the original score will be stored in the eSourcing system so as to provide a full audit trail of the evaluation process.

9. CLARIFICATION MEETINGS, SITE VISITS

- 9.1 As part of the evaluation process, HMRC reserves the right after the close of the Event to:

- conduct clarifications/clarification meetings to clarify information already provided and/or to request further information as may be necessary to verify all aspects of the Tender submitted, including, but not limited to the financial information that a Candidate/Tenderer has stated that it would be willing to provide.
- visit the Candidate’s/Tenderer’s site to verify that that any resources or equipment stated in the Tender are available.
- visit a customer of the Candidate/Tenderer in order to validate that services are provided in the way described in the Tender.

and, as necessary, on completion of the clarification process, adjust any of the scores that were allocated on the basis of the responses to the Event questionnaires.

- 9.2 HMRC reserves the right to only undertake clarification or clarification visits in respect of Tenders that, in HMRC’s view, contain elements that require clarification, verification or validation.

- 9.3 In accordance with Regulation 69 of the 2015 Public Contracts Regulations, where a Candidate/Tenderer cannot provide a sufficient explanation for an abnormally low tender, HMRC will be entitled to reject the Tender. Rejection will be mandatory in cases where HMRC has established that the abnormally low price or costs proposed results from non-compliance with mandatory Union law or national law comparable with it in the fields of social, labour or environmental law or international labour law provisions.

10. USE OF e-AUCTIONS

General

- 10.1 HMRC reserves the right to use an e-Auction as part of the Contract Award process where the intention or option to use an e-Auction has been specified in the Contract Notice.
- 10.2 Where provision has been made for the use of an e-Auction, the final decision on its use will be made and, as necessary notified, during the evaluation phase of the Competitive Procurement Exercise.
- 10.3 An e-Auction may be used where HMRC considers:

- a. the overall score achieved by the highest ranking Candidate/Tenderer is not significantly higher than the next ranking Candidate/Tenderer in terms of the technical and/or cost effectiveness scores;
- b. there is little difference between the evaluated scores awarded to the highest ranking Candidates/Tenderers and the use of the e-Auction would therefore be the most transparent method of reaching the award decision; and/or
- c. there are a sufficient number of compliant bids (a minimum of three), where the overall score differentials are so marginal that they would allow for a competitive e-Auction to take place.

Selection of Participants

- 10.4 HMRC reserves the right to invite to the e-Auction only those Candidates/Tenderers who have achieved an overall score that is comparable with the scores achieved by other Candidates/Tenderers and where, in such circumstances their involvement in the e-Auction would be competitive.
- 10.5 Therefore, Candidates/Tenderers must ensure that their bids or costings provided in their Tender are competitive from the outset.

Evaluation

- 10.6 The Contract will be awarded on the basis of the Award Criteria specified in the procurement documentation.
- 10.7 Two types of e-Auction may be used: either (a) Lowest Price e-Auction or (b) Transformation e-Auction

Lowest Price e-Auction

- 10.8 Lowest price e-Auction is used where all of the suppliers invited to the e-Auction have demonstrated they will meet the requirements by reaching the necessary technical hurdle score, as stated in the Contract documents. For this type of e-Auction, all Candidates/Tenderers who reach the necessary technical hurdle score are considered equal and the lowest bid will therefore always win.

Transformation e-Auction

- 10.9 Transformation e-Auctions are used to allow technical scores achieved during the evaluation to transform the bids placed as part of the e-Auction. This ensures that those Candidates/Tenderers with a higher technical merit score will benefit.
- 10.10 The Award Criteria Technical/Cost (or Quality/Cost) ratio specified in in the procurement documentation will form the basis of the transformation weighting.
- 10.11 The following example (in which the Award Criteria ratio is 55% Technical and 45% Cost) shows how an individual transformational marking is arrived at:

Tenderer A (highest score from the Technical/Quality evaluation)	90
Tenderer B score	80
Score difference	10
Score difference % (10/90 x 100)	11%
Ratio (55% Technical/45% Cost)	1.222
Transformation weighting (score difference 11% x ratio 1.222)	13.5%
Transformational multiplier (1 + 13.5% transformation weighting)	1.135

In the above example:

Tenderer A (with the highest score from the technical evaluation) would provide the 'benchmark' in the e-Auction with a transformational multiplier of 1.000.

Tenderer B's transformation weighting increases any bids placed by 13.5% using a transformation multiplier of 1.135.

If the Tenderers have bid £100, the transformed bids would be:

Tenderer A £100 x 1.000 transformational multiplier = £100 transformed bid.

Tenderer B £100 x 1.135 transformational multiplier = £ 113.50 transformed bid.

- 10.12 When a transformation e-Auction is used, only the actual bid placed and their overall rank in the e-Auction will be visible to the Tenderer and the transformed bids will only visible to HMRC.
- 10.13 The Tenderer whose transformed bid is the lowest at the end of the e-Auction will be offered the Contract.
- 10.14 Where a reverse e-Auction is used and this results in a Tender being unsuccessful, the Tenderer will be informed of the transformation weighting used in the reverse e-Auction in the "standstill" notification letter referred to in Section 14 of these Tendering Instructions.

11. Recommendation for Award of Contract

- 11.1 The Tenderer who, taking into account the respective Award Criteria weightings, achieves the highest overall score in the evaluation exercise will be recommended for award of the contract or framework agreement.
- 11.2 Where provision has been made for more than one supplier, such as in the case of "division into lots" or a framework agreement with multiple suppliers, more than one Tenderer may be recommended for award.
- 11.3 The basis on which the successful Tenderer(s) have been selected will be detailed in a recommendation for award document produced by the HMRC Commercial Manager responsible for the Competitive Procurement Exercise and this will then pass through a governance process leading to approval or sign-off at appropriate levels within HMRC Commercial Directorate and (as applicable) the HMRC business area who have sponsored the procurement.

12. Award of Contract

- 12.1 Once approval of the recommendation for award has been obtained, HMRC Commercial Directorate will follow due process and notify the outcome of the

Competitive Procurement Exercise to the successful and unsuccessful parties.

12.2 Sections 14 and 15 of these Tendering Instructions also refer.

APPENDIX B

HMRC REVENUE COMPLIANCE POLICY

1. REGULATORY PROVISIONS

- 1.1 As referred to in Form C of the selection questionnaires, Regulation 57(3) and 57(4) of the Public Contracts Regulations 2015 respectively provide for the mandatory and discretionary exclusion of economic operators in connection with non-fulfilment of obligations relating to the payment of tax and social security contributions.
- 1.2 Section 3, Appendix A of these Tendering Instructions also refers.

2. REVENUE COMPLIANCE POLICY

General

- 2.1 HMRC, as a revenue collecting Government Department, reserves the right to (a) conduct revenue compliance checks and enquiries throughout the procurement process and (b) exclude any economic operator from participation in the Competitive Procurement Exercise and/or potential delivery of the contract or framework agreement where it can demonstrate the non-payment of taxes or social security contributions, including in instances where no binding legal decision has been taken by a judicial or administrative body.

Scope and Conduct of the Revenue Compliance Checks

- 2.2 HMRC will undertake revenue compliance checks in connection with the fulfilment of obligations relating to the payment of taxes and social security contributions over the last three years of trading.
- 2.3 Where revenue compliance enquiries identify certain circumstances such as, but not necessarily limited to those listed below, the Candidate/Tenderer may be required to provide additional explanations or background information necessary for a full understanding of the situation:
- a. time to pay arrangements;
 - b. late payment of taxes;
 - c. late payment of taxes resulting in interest charges; and
 - d. a breach of obligations, which has been established by a judicial or administrative body having final and binding in accordance with the legal provisions of the country in which it is established or with those of any of the jurisdictions of the United Kingdom.
- 2.4 Decisions whether to exclude any party will be taken on a case by case basis and will take account of (a) the regulatory provisions, (b) the response provided to the relevant Selection questionnaire, including any clarification or additional information that might subsequently be provided, (c) information available to HMRC from its own resources by virtue of its special status as a revenue collecting Department and administrator of direct and indirect taxes and (d) any other relevant information from any other appropriate source.

- 2.5 Revenue compliance checks will be carried out on proposed sub-contractors and/or consortium members regardless of the stage in the Competitive Procurement Exercise at which they are introduced and this may result in the Candidate/Tenderer being excluded from the Award stage in the event that any sub-contractor and/or consortium member on whom the Candidate or Tenderer would rely for the performance of a contract or framework agreement is unable to demonstrate a revenue compliance record or status that is acceptable to HMRC.

Revenue Compliance Consent Form

- 2.6 Potential prime contractors or consortium leaders must ensure that intended sub-contractors or consortium members complete the Sub-Contractor Revenue Compliance Consent Form which is attached as Appendix C.
- 2.7 The purpose of the Sub-Contractor Revenue Compliance Consent Form is to obtain relevant details about any proposed sub-contractors or consortium members and provide/evidence their written consent to (a) revenue compliance checks being carried out and, if an obstacle to their involvement arises on revenue compliance grounds, to (b) the outcome of the checks being notified to the potential contractor or consortium leader.
- 2.8 Where it is necessary to disclose the outcome of the revenue compliance checks to the proposed prime contractor or consortium leader, HMRC will disclose the minimum necessary information.

APPENDIX C

Sub-Contractors Revenue Compliance Consent Form

TENDER/CONTRACT REFERENCE/TITLE:

Instructions for Use

Candidates/Tenderers: After entering your details within the text field [] provided in Section 2, please (a) issue the form to your proposed subcontractor(s) for completion of Section 1 and the remainder of Section 2 and b) return the completed/signed form as instructed in the procurement documents or as directed by the Contract Manager post contract award.

2. Details of Proposed Subcontractor

Organisation Name:	
Registered Business Address:	
Function to be performed on the Contract:	
VAT Registration Number:	
PAYE Reference:	
Corporation Tax Ref:	
Self Assessment Tax Ref:	

3. Subcontractor Declaration

I certify that the above tax details have been provided in order that HMRC may undertake revenue compliance checks to determine suitability on these grounds in connection with possible involvement as a subcontractor in the specified contract and accept that such checks may be conducted during the procurement phase and, if applicable, also during the contract management stage.

Subject to any reservations that may be expressly stated here, by means of a continuation sheet to this form, authority is also hereby given that the outcome of the checks may be disclosed for the above purposes to:

[.....]

This authority will remain in force until I give HM Revenue & Customs written notice to the contrary to: commercial.bmt@hmrc.gsi.gov.uk

Continuation Sheet attached [YES] [NO] (Delete, as appropriate)
Submitted by (Subcontractor Organisation Name):
Signed (Subcontractor Organisation Authorised Signatory):
Signatory Name (Print):
Status
Date

ANNEX A

Copy of Bidders Agreement

In order to use this application, please carefully review and accept the Agreement below.

Please note that by accepting the Agreement, you are representing that you are duly authorised by your organisation to do so on its behalf and creating a binding legal agreement between HMRC and your organisation.

A full copy of this agreement is available at Annex A to these Tendering Instructions.

eSOURCING PORTAL USE AGREEMENT

This eSourcing Portal Use Agreement (the "Agreement") is made between the legal entity on whose behalf you have been given access to this system (the "Bidder") and Her Majesty's Revenue & Customs ("HMRC").

The System (as defined in clause 1 below) is provided by HMRC and hosted by a third party, Ariba Inc. However, specific content and Services (as defined in clause 1 below) provided to the Bidder by means of the System may be provided by one or more employees from the various business areas within HMRC.

This Agreement is legally binding. By clicking the <ACCEPT> button at the end of this Agreement, you are entering into this Agreement for and on behalf of the Bidder. By clicking the <ACCEPT> button you warrant and represent that you are duly authorised by the Bidder to enter into this Agreement on the Bidder's behalf and to use the System and the Services provided through the System, and that your accepting these terms and conditions in this manner shall give rise to a binding agreement between the Bidder and HMRC upon the terms of this Agreement.

1. Licence to use the System and provision of the Services

- 1.1. HMRC grants to the Bidder and the Bidder accepts, a non-exclusive, non-transferable licence to access and use the eSourcing Portal (the "System") for the purpose of participating in an HMRC Competitive Procurement Exercise, subject to this Agreement, and not for any other purpose. HMRC agrees to provide through the System such online sourcing events as HMRC may offer to the Bidder and the Bidder may accept from time to time (the "Services"), on the terms and subject to the conditions set out in this Agreement.
- 1.2. For the avoidance of doubt the terms governing this Agreement are for the use of the System, and separate HMRC terms (as issued with any sourcing events) will govern any goods and or services sourced using the System.

2. Services

- 2.1. The functionality of each element of the System and the Services may be

added to, amended or withdrawn and new elements introduced by HMRC at its complete discretion from time to time (each a "Change"). Prior to any Change, HMRC may, at its complete discretion, notify the Bidder of such Change. The Bidder will not be entitled to continue to receive any System or Service which has been withdrawn by HMRC. Following any Change, the Bidder's continued use of the System and the Services will be deemed to constitute acceptance of such Change.

- 2.2. If, in connection with a Change, or for any other reason any amendments to this Agreement are required, HMRC will notify the Bidder of such amendments by posting the amended version of this Agreement on the System. The Bidder's continued use of the Systems and Services will constitute acceptance of these changes. If the Bidder does not agree with such amendments, it must discontinue its use of the System and Services immediately

3. Users

- 3.1. The Bidder has notified HMRC of the names of the Bidder's officers and/or employees that the Bidder has selected to have access to the System ("Users"). The Bidder hereby represents and warrants to HMRC that:
 - a. such Users shall be authorised to access and use the System on behalf of the Bidder;
 - b. such Users are experienced and knowledgeable regarding the matters in respect of which they will use the System;
 - c. the Bidder shall be bound by and accountable for each User's acts and omissions; and
 - d. in using the System and the Services, the Bidder's Users will at all times be acting within the scope of their authority. The Bidder agrees to promptly notify HMRC of any changes to the authority or status of any User and acknowledges that HMRC may rely exclusively on the names of the Users notified by the Bidder to HMRC in granting access to the System on behalf of the Bidder.
- 3.2. Upon receipt of such Users' names HMRC shall, in reliance on the Bidder's foregoing representations and warranties regarding such Users, allocate a username and password in respect of each User. Notwithstanding the foregoing, HMRC retains the right, at its complete discretion, to deny any User access to the System. Each password will continue in force until it is terminated by HMRC, changed by User or expires automatically after a period, if any, specified by HMRC and HMRC will provide the facility for Users to replace their passwords prior to such expiry. HMRC may provide replacement username(s) and password(s) at any other time as it thinks fit. The Bidder shall take, and procure that Users take, all reasonable steps to protect the security of such usernames and passwords and prevent any person who is not a User from accessing the System or using the Services. For the avoidance of doubt, each username and password is strictly confidential to and shall only be used by the User to whom it is issued and is not transferable.
- 3.3. The Bidder will ensure that each User complies at all times with all applicable laws, rules and regulations, the terms and conditions of this Agreement, and any additional terms and conditions presented in any part of the System and any other terms and conditions pertaining to the System and the provision of the Services from time to time.

- 3.4. In the event that any User ceases to be employed by the Bidder or authorised by the Bidder to access and use the System, the Bidder will notify HMRC without delay and HMRC will, within a commercially reasonable time, disable the relevant username, password and digital certificate and so deny that User access to the System.
- 3.5. The Bidder agrees that, subject to the confidentiality obligations in clause 7, HMRC may also collect and maintain general data regarding each User's individual, and the Bidder's, access to and use of the System and the Services and the Bidder consents and agrees to procure that its Users consent to the use of such devices. Such general data will be used for administering access controls, providing assistance for use of the System and maintaining a record of communications effected through the System. The data may also be used for monitoring usage and performance of the System, and, in HMRC's opinion, improving the System's usefulness to HMRC's suppliers generally and to the Bidder in particular. This may include the offering of additional systems and services to the Bidder. Such general data may be transferred to third parties acting on behalf of HMRC, including outsourcing service providers.

4. Conditions of Access

- 4.1. The Bidder is responsible for and must provide at its sole cost all software, telephony, Internet connectivity and other equipment necessary for the Bidder to access and use the System and the Services and obtain any relevant licences and/or consents.
- 4.2. The Bidder acknowledges that the System incorporates encryption technology. The Bidder agrees to comply with all laws, rules and regulations relating to the Bidder's use of such encryption technology applicable in any jurisdiction in which the Bidder does business, and not to export or re-export such technology in violation of any such laws, rules or regulations. HMRC shall not be responsible for any breakdown of any technology used for encryption or electronic transmission of information.
- 4.3. The Bidder agrees not to upload onto the System any software, file, information, data or other content: (a) which infringes any HMRC or third party intellectual property rights; (b) which adversely affects the performance or availability of the System or other HMRC resources or systems; (c) which is false, fraudulent or speculative; (d) which is defamatory of any person; (e) which is offensive in any manner; (f) which materially misrepresents facts or which may be damaging or injurious to HMRC, the Bidder, Users, or any third party; (g) which would result in a breach of any obligation of confidentiality; or (h) in the case of personal data, without having obtained the informed consent of the person to whom such data relates. The Bidder is responsible for checking the accuracy of any information the Bidder uploads into the System and for keeping such Information up-to-date.
- 4.4. The Bidder agrees that, when using the Internet or other communication media provided by third parties to connect to the System, the Bidder will be using media and a physical network not controlled, maintained or provided by HMRC. The Bidder acknowledges that the Internet and any third party websites accessed from the System by hypertext link are beyond HMRC's control and are not in any way endorsed, warranted or supported by HMRC. The Bidder assumes all risk and liability of any such use of the Internet and any such third party websites.

- 4.5. The Bidder shall not (and shall procure that each of its Users shall not) use the System for any illegal or unlawful purpose, or access or attempt to access any part of the System access to which would be denied to the Bidder and its Users by the System's normal operation.
- 4.6. Submission of a proposal and/or bid via the System does not obligate either party to enter into a contract for the provision of goods or services or otherwise, nor prevent HMRC from entering into a contract with any third party for the provision of goods or services. No binding commitment is created between HMRC and the Bidder through this Agreement or the System in respect of any future supply of goods or services.

5. Intellectual Property Rights

- 5.1. All title, ownership rights and intellectual property rights in or relating to the System, the Services, and any information transmitted by, HMRC over the System are owned by HMRC, or under licence to HMRC. Nothing on the System or the Services shall be construed as conferring on the Bidder any licence, save as expressly set out herein, of any of HMRC's or any third party's intellectual property rights, whether by estoppel, implication or otherwise.
- 5.2. Subject to clause 6.6, the Bidder may use data derived from and relating to its use of the System and the Services in accordance with this Agreement for its normal business purposes in so far as they concern the HMRC Competitive Procurement Exercise (as determined by HMRC from time to time in its sole discretion), provided that such use shall at all-time comply with all applicable laws, rules and regulations.
- 5.3. Except as permitted in clause 5.2, the Bidder shall not (and shall procure that each of its Users shall not) reproduce, distribute, transmit, publish or otherwise transfer, commercially exploit, reverse engineer or decompile (except to the extent expressly permitted by law) or make any derivative product from the System or the Services or any software, file, data, information, know-how, idea, communication or other content received or accessed through or in connection with the System or the Services.
- 5.4. The Bidder agrees to notify HMRC forthwith on becoming aware of any claim by any third party that any element of the System or the Services infringes any intellectual property right of any third party.

6. Warranty and Liability

- 6.1. HMRC warrants that it has the right to grant the licence as set out in this Agreement. Subject only to this express warranty, the system and the services including, without limitation, their content, features and any related services are provided to the Bidder on an "as is" and "as available" basis at the Bidder's sole risk and without representations or warranties of any kind.
- 6.2. HMRC does not guarantee that the system, the services or any part of them will be available to or accessible by the Bidder. All warranties, conditions or terms (express or implied, statutory or otherwise including without limitation any warranty, condition or term as to satisfactory quality, merchantability, fitness for a particular purpose and any warranties or commitments that access or use will be uninterrupted or error free), other than those expressly set out in this agreement, are expressly excluded to the fullest extent permitted by law.
- 6.3. Neither HMRC nor any third party providing services to HMRC for the

purposes of this Agreement will have any liability for any loss or damage however caused arising under or in connection with this Agreement, including, without limitation, the Bidder's use of or inability to access the system and/or the services, any product or service provided by any third party and any failure by HMRC to act on any information notified to it in any system user list, whether in contract, tort or otherwise.

- 6.4. HMRC shall not be considered in breach of this Agreement in the event of any failure or delay for reasons not within HMRC's reasonable control, including, without limitation, war, disaster, acts of nature, power failure, failure of communications services or networks, labour stoppage, sabotage, computer virus, hacking, unrest or disputes, acts or omissions of the Bidder or any third party including national and/or supranational government agencies or bodies and courts of law.
- 6.5. HMRC may at any time and without giving any notice suspend the provision of all or any part of the System and/the Services to the Bidder in whole or in part with immediate effect in the event of any of the force majeure circumstances described above, planned or unplanned maintenance and upgrading of the System or related Systems, any breach of this Agreement by the Bidder or its Users and/or action by the Bidder or its Users which is prejudicial or potentially prejudicial to the System, HMRC or other the Bidders.
- 6.6. The System and the Services are provided to the Bidder solely for the Bidder's benefit and use in accordance with the terms of this Agreement. HMRC accepts no liability or responsibility to any third party who gains access to the System or the Services as a result of any act or omission by the Bidder or any Users or otherwise. The Bidder agrees to indemnify HMRC and its officers and/or employees on demand against any liabilities, losses, costs, claims, expenses (including legal fees) and damages in connection with any claims against HMRC by any such third party, including but not limited to any claim by any third party which has access to data derived from the System and/or the Services pursuant to clause 5.2.
- 6.7. The Bidder agrees to indemnify HMRC and its officers and/or employees on demand against any liabilities, costs, claims, losses, expenses and damages (including, but not limited to, legal fees) arising out of or relating to any breach of this Agreement by the Bidder or any User.

7. Confidentiality

- 7.1. In this Agreement:

"Confidential Information" means any and all information disclosed in connection with the provision by HMRC to the Bidder and/or the use by the Bidder of the System and the Services (whether before, on or after the date of acceptance by the Bidder of this Agreement, whether verbally, in writing, electronically or by any other means, whether directly or indirectly and whether or not marked "Confidential") by the Disclosing Party or any person on its behalf to the Receiving Party or otherwise obtained by the Receiving Party or any person on its behalf from the Disclosing Party. For the avoidance of doubt, HMRC's Confidential Information includes, without limitation, all information relating to the System, the Services and the existence and terms of this Agreement;

"*Disclosing Party*" means a party disclosing Confidential Information; and

"*Receiving Party*" means a party receiving Confidential Information.

- 7.2. In consideration of the disclosure of the Confidential Information supplied to it by the other party, each party agrees that it shall keep the other party's Confidential Information confidential, not use such Confidential Information and not disclose such Confidential Information to another person except as permitted in clause 7.3.
- 7.3. Each party may disclose the Confidential Information of the other party:
 - 7.3.1. to its businesses and any of its and its businesses' officers and employees (together, "Recipients"); provided that before disclosure of any Confidential Information to any Recipient, the Receiving Party shall ensure that the Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement;
 - 7.3.2. with the prior written consent of the other party; or
 - 7.3.3. where disclosure is required by law, by a court of competent jurisdiction or by any regulatory body which regulates the conduct of the Receiving Party, provided that the Receiving Party shall give the Disclosing Party as much notice as is practicable of any such requirement and shall not disclose any more Confidential Information than is reasonably necessary in the circumstances.
- 7.4. HMRC may disclose the Confidential Information of the Bidder to any third party that provides hosting or other services to HMRC in respect of the System and/or Services, provided that such third parties will have agreed with HMRC to keep such information confidential.
- 7.5. The Receiving Party shall within 7 days following receipt of a written request from the Disclosing Party return to the Disclosing Party, or at the Receiving Party's option destroy or delete, all documents, electronic storage media and other materials in its possession, custody or control to the extent the same contain any of the Disclosing Party's Confidential Information, and certify to the other party that this has been done, provided that the Receiving Party shall be entitled to retain in its possession such Confidential Information as it is required to retain by applicable law or regulation or internal policy and information obtained pursuant to clauses 3.4 and 3.5.
- 7.6. Except as expressly set out in this Agreement, nothing contained in this Agreement shall be construed as granting any right or licence to either party's Confidential Information or to any invention or discovery derived from or improvement made to such Confidential Information, whether conceived or created prior to or after the date of acceptance of this Agreement.
- 7.7. Each party is entitled to the remedies of injunction, specific performance and other equitable relief in respect of any actual breach or threatened breach of this clause 7, in addition to any other legal remedies which may be available.

8. Termination

- 8.1. Each of HMRC and the Bidder is entitled to terminate the Bidder's access to and use of the System and/or any of the Services at any time and without cause by written notice to the other.

- 8.2. If the Bidder's access to and use of the System and the Services is terminated by either party, HMRC shall be entitled to disable the Bidder's usernames, passwords and digital certificates and the licence granted under clause 1 and the provision of the System and the Services shall terminate with immediate effect.
- 8.3. Clauses 3.5, 3.6, 5, 6, 7, 9, 10, 11 and 12 shall survive termination of the Bidder's access to the System and the Services.

9. Entire Agreement

- 9.1. The entire agreement between the Bidder and HMRC with regard to the Bidder's access to and use of the System and the Services is comprised of the following:
 - 9.1.1. this Agreement, as amended by HMRC from time to time; and
 - 9.1.2. any additional terms and conditions governing access to specific areas of the System and/or specific Services which HMRC may post on any part of the System from time to time, as amended by HMRC from time to time (and any such additional terms shall take precedence over this Agreement).
- 9.2. This Agreement replaces any and all preceding versions of this Agreement, whether in electronic or tangible form, accepted and/or executed prior to the date of acceptance of this Agreement.

10. Notices

- 10.1. Any notice to be given by the Bidder to HMRC under or in connection with this Agreement shall be in writing.
- 10.2. Any notice or communication given by HMRC to the Bidder under or in connection with this Agreement may be given through the System, by email to the email address of any the Bidder User, or in writing to the address or facsimile number of the Bidder that HMRC has in its records from time to time. Any such notice or communication shall be deemed to have been delivered and communicated to the Bidder at such time as it is available for the Bidder to view through the System.

11. Third Party Rights

- 11.1. Each of the HMRC businesses may enforce the Bidder's obligations under this Agreement, as if it was a party to this Agreement.
- 11.2. Subject to Clause 11.1, a person who is not party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. The parties may vary the terms of or rescind this Agreement without the consent of any third party.

12. Governing Law and Jurisdiction.

- 12.1. This Agreement shall be governed by and construed in accordance with English law. The Parties agree to submit to the exclusive jurisdiction of the courts of England in relation to this Agreement.