

## General Instructions and Tender Competition Rules

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## **1. Scope**

- 1.1 This document covers the general instructions and tender competition rules that will apply to all stages of this procurement competition. These instructions should be read in conjunction with the procurement documentation which will be provided to you throughout the procurement process.

## **2. eTendersNI**

- 2.1 Responses to all stages of this procurement competition must be submitted on eTendersNI by selecting the “Tenders” option in the relevant Call for Tender (CfT). Once selected, associate the users in your organisation with the CfT. You will then see the button “Create your tender online”.

Detailed instructions on how to submit a tender are provided in the ‘Supplier Walkthrough Help Guides’ and also the Simple Tender Preparation document in the Help Section, links to which are located at the bottom of the screen in eTendersNI.

Economic Operators are responsible for ensuring that they have the technical capacity and allow sufficient time for the preparation and submission of tenders to the eTendersNI site before the stated deadline.

The total size of your submission must be less than 100Mb.

Additional detailed guidance on the system functionality can also be accessed via the Help button available on each screen within eTendersNI. The Helpdesk can be contacted on 0800 240 4545 or via email to [ni-eproc-helpdesk@eurodyn.com](mailto:ni-eproc-helpdesk@eurodyn.com)

## **3. Tendering Costs**

- 3.1 Under no circumstances will the Contracting Authority or its advisors be liable for any costs or expenses incurred by Economic Operators, funders and/or its respective advisors arising directly or indirectly from the procurement process or

termination thereof, including, without limitation, any changes or adjustments made to the tender documentation, or the exclusion/disqualification of an Economic Operator.

#### **4. Tender Acceptance**

4.1 A tender shall only be accepted if;

- it is received before the time-limit for receipt of tenders stated in the CfT core information or in the current cycle tab at the bottom of the CfT core information page for a multi stage procurement;
- it is complete and fully compliant with the requirements detailed in the tender documentation; and
- it is in the English language and prices are in pounds sterling.

#### **5. Right to Reject and/or Disqualify**

The Client and Construction & Procurement Delivery (CPD) reserve the right to exclude from participation in a procurement procedure or not award a contract to the tenderer submitting the most economically advantageous tender in any of the following situations;

- a) where the tender does not comply with applicable obligations in the fields of environmental, social and labour law established by retained EU law, national law, collective agreements or by the international environmental, social and labour law provisions.
- b) where the tenderer is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;
- c) where the tenderer is guilty of grave professional misconduct, which renders its integrity questionable;

- d) where the tenderer has entered into agreements with other tenderers aimed at distorting competition;
- e) where there is an actual or perceived conflict of interest arising between the Contracting Authority and the tenderer. Tenderers are therefore advised to review carefully the prior or current involvement of the tenderer and its consortium partners with the Contracting Authority and to notify CPD using the eTendersNI messaging facility prior to submission of their tender identifying actual or perceived conflicts of interest. Tenderers will be required to complete the online 'Conflict of Interest Statement' at the time of tendering;
- f) where a distortion of competition from the prior involvement of the tenderer in the preparation of the procurement procedure, as referred to in regulation 41, cannot be remedied by other, less intrusive, measures;
- g) where the tenderer has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;
- h) where the tenderer—
  - (i) has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or
  - (ii) has withheld such information or is not able to submit supporting documents required under regulation 59; or
- i) where the tenderer has undertaken to unduly influence the decision-making process (including direct or indirect canvassing of officials, public representatives etc) or obtain confidential information that may confer upon it undue advantages in the procurement procedure; or negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

- j) where the tender is completed incorrectly, is incomplete, inadequate or fails to meet the Client's requirements which have been notified to tenderers; and/or
- k) there is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the tenderer.

It is essential that the information provided within the tender response is relevant to the organisation that will be awarded the Contract to deliver the required supplies or services.

Where one part of an organisation is submitting a response on behalf of other entities within the company, a tender response must be submitted through an eTendersNI account set up in the name of the organisation that is to be awarded the contract. Therefore all requirements of the tender process, including the pricing submission in the Financial Envelope, must be provided through the eTendersNI account set up for the entity that the information relates to.

## **6. Assumptions**

- 6.1 Economic Operators must ensure that their responses contain all the information necessary for the purposes of the evaluation/assessment process.
- 6.2 Economic Operators must not make assumptions that the Contracting Authority's Tender Evaluation Panel has prior knowledge (or will rely on such knowledge) of their organisation or their service provision during the evaluation process.

## **7. False Information**

- 7.1 Economic Operators are responsible for ensuring that all information included within their responses is accurate at the time of submission and shall remain so throughout the procurement process (subject to any further changes which may occur and which should be disclosed to the Contracting Authority promptly).

7.2 The inclusion of information that is found to be false or misleading may result in the Economic Operator's exclusion from this tender.

## **8. Economic Operators Clarification Requests**

8.1 Economic Operators are strongly advised to seek clarification in relation to a CfT where they consider any part of the documentation or any other aspect of the procurement process unclear.

8.2 Any clarification requested during the tender submission phase of the procurement must be communicated using the messaging link within the CfT Menu. The messaging system will be monitored throughout the procurement competition and all messages will be acknowledged.

8.3 It is the responsibility of Economic Operators to regularly monitor all communications and publications via the eTendersNI portal. The Contracting Authority shall have no liability for any communications provided by it which are missed or not received by an Economic Operator or for communications provided by the Economic Operator which are not received via the eTendersNI portal.

8.4 Economic Operators must note that clarifications are to be submitted no later than the date stated in the CfT core information or in the current cycle tab at the bottom of the CfT core information page for a multi stage procurement. The Contracting Authority is not obliged to provide a response to clarification questions received after this date.

8.5 All clarifications published by the Contracting Authority for review by Economic Operators are visible through the messaging link within the CfT Menu.

8.6 Where the clarification is issued following a request from an Economic Operator, the identity of the Economic Operator seeking the initial clarification will not be disclosed.

- 8.7 Where an Economic Operator believes that a clarification is confidential in nature, this should be clearly stated on the request. In all circumstances, the Contracting Authority reserves the right to communicate clarification responses to all Economic Operators at any stage, at its sole discretion.
- 8.8 When a clarification is published by the Contracting Authority, the Economic Operators that have expressed an interest in the opportunity, through the CfT menu, will receive an email to notify them that a new message is now available to view within the system.
- 8.9 Published clarifications shall become part of the tender and must be treated as such by the Economic Operator.
- 8.10 Occasionally it is necessary for a Contracting Authority to modify a CfT after it is published on eTendersNI. If the Economic Operator has not yet submitted a tender for the CfT and they try to access the tender menu while the CfT is being modified they will see a message on screen advising that the CfT is paused and that tender preparation and submission will be available again once the new tender structure is available.
- 8.11 If the Economic Operator has already submitted a tender for the CfT, all Economic Operator users associated with the CfT will receive two notification e-mails from eTendersNI.

8.12 The first notification will advise that:

“The submission of the tenders for CFT with title **xxxx** has paused. A new Tender Structure will be available soon. The tenders you have already submitted will be considered invalid. You will be able to re-submit your tender once the new Tender Structure is available”.

The second notification will advise that:

“The submission of the tenders for CFT with title **xxxx** has resumed. There is a new Tender Structure available. In case you have already submitted a tender, you will

have to remove it and then prepare and submit a new one based on the updated Tender Structure”.

## **9. Right to seek information/clarification from Economic Operators**

9.1 The Contracting Authority reserves the right to seek information/clarification from Economic Operators if necessary in order to validate their responses and to complete the evaluation process. Economic Operators may be required to furnish information as to economic and financial standing prior to the award of any tender.

## **10. Changes to Information provided by an Economic Operator**

10.1 Where any information provided by an Economic Operator changes following submission to the Contracting Authority, the Economic Operator must notify the Contracting Authority as soon as possible, providing full details of the changes and an explanation as to why these have occurred.

10.2 Failure to notify such changes may result in the rejection of the Economic Operator from the procurement process.

10.3 In particular, but without limitation, the Economic Operator must notify the Contracting Authority of:

- any proposed changes to consortium members or any third party entities being relied on;
- any significant deterioration in the financial standing of the Economic Operator, or any consortium member or third party entity being relied on; and
- if any of the grounds set out in Regulation 57 of the Regulations apply in respect of the Economic Operator, or any consortium member or third party entity being relied on.

10.4 The Contracting Authority may require the Economic Operator to provide such further information as may be required in order to allow the Contracting Authority to assess the Economic Operator's ability to continue participating in the procurement process.



## **11. Non-collusion and canvassing**

11.1 Direct requests to any other member of staff of the Contracting Authority or other individuals linked to the procurement process for information or clarification, at any stage of the process, will not be answered.

11.2 Any attempt by any Economic Operator to collude with any other person to influence the procurement process in any way will result in disqualification from further participation. In particular, Economic Operators shall not:

- canvass, solicit or offer any gift or consideration whatsoever as an inducement, fee or reward to any officer, employee or contractor of the Contracting Authority, or any person acting as an adviser to it in connection with this procurement process;
- commit any act or omission which would constitute a breach of the Bribery Act 2010;
- fix or adjust the amount or content of any SQ Response or tender submission in accordance with any agreement or arrangement with any other person, other than in good faith where such other person is a proposed consortium member, or a supplier, adviser or provider of finance to the Economic Operator;
- communicate to any person other than the Contracting Authority, or seek or obtain from such other person, information about the amount or content of any SQ Response or tender submission, other than in good faith to obtain quotations for supplies, services or finance;
- enter into any agreement or arrangement with any other person that will result in such a person refraining from submitting an SQ Response or tender submission; and
- offer or pay a sum of money, incentive or valuable consideration to any person proposing to effect changes in or omissions from any other SQ Response or tender submission.
- Economic Operators should ensure that the above obligations are brought to the attention of their relevant organisations, sub-contractors and associated companies.

Where an Economic Operator is bidding as a Consortium, Consortium Members are permitted to discuss, agree and communicate such matters with other Consortium Members as are necessary for the preparation of that bid;

- 11.3 Other than where specifically permitted as described in the Procurement Documents, no attempt should be made to contact any Contracting Authority staff or adviser to the Contracting Authority in connection with this procurement process. Any enquiries made concerning this procurement which are not in accordance with the instructions in this document may be regarded as prima facie evidence of canvassing.

## **12. Conflict of Interest**

- 12.1 Any conflict of interest or potential conflict of interest must be fully disclosed to the Contracting Authority as soon as such conflict or potential conflict becomes apparent. Failure to declare a conflict or potential conflict of interest may result in the rejection of the Economic Operator from the procurement process.
- 12.2 The declaration of a conflict or potential conflict of interest shall not result in automatic rejection of an Economic Operator. The Economic Operator must identify the nature of the conflict and its proposed steps to rectify or address the conflict.
- 12.3 The Contracting Authority shall consider the information provided by the Economic Operator at its discretion and any decision it makes in this regard shall be final.

## **13. Abnormally Low Tenders**

- 13.1 Whilst the Contracting Authority is concerned with value for money, it is recognised that Economic Operators will need to make a suitable margin so that the Contract is commercially viable. The Contracting Authority will scrutinise rates submitted to ensure they are sustainable. Where tenders appear to the Contracting Authority to be abnormally low, the Contracting

Authority will require Economic Operators to explain the price or costs proposed in the tender in line with the Regulations. The Contracting Authority;

- (i) reserves the right to reject any tender, in our sole discretion, considers that the evidence supplied in response to such request does not satisfactorily account for the low cost or price; and
- (ii) will reject a tender where it has established that the reason that the tender is abnormally low is that it does not comply with Regulation 56(2) of the Public Contracts Regulations 2015 (as amended), in accordance with the Regulation 69 of the Public Contracts Regulations 2015 (as amended).

#### **14. Period of Validity of Tenders**

- 14.1 Economic Operators are required to keep their tenders valid for acceptance for the period stated within the CfT core information page.

#### **15. Confidentiality**

- 15.1 Economic Operators must treat any information in a tender submission as private and confidential between the Economic Operator, the Contracting Authority, the Client and the Client's advisors.

#### **16. Award Notification**

- 16.1 Notification of the award decision will be sent to the Economic Operators that have expressed an interest in the opportunity via email to notify them that a new message is now available to view within the system.

#### **17. Freedom of Information (FOI)**

- 17.1 The Contracting Authority is bound to comply with the FOI Act and by submitting a tender the Economic Operator acknowledges that their response and any further relevant information provided may be disclosed under FOI. The Contracting Authority will endeavour to ensure that where necessary any FOI requests relating to Economic Operator's information will be answered in liaison with the Economic Operators.

17.2 Economic Operators should be aware that after award of contract, information in relation to the contract may be published on the Contracting Authority's website, this will include the contract title, name and address of the winning Economic Operator and the award value. This will be published without further consultation.

## **18. Data Protection & Privacy Information Statement**

18.1 CPD, within the Department of Finance (DoF), is responsible for providing professional construction and procurement services to NICS departments, agencies and Non Departmental Public Bodies. In order to carry out its functions, CPD is required to process personal information.

18.2 In submitting a Response, Economic Operators agree to such Personal Data being collected, held and used in accordance with and for the purposes of administering the procurement as contemplated by the Procurement Documents and for contract management of any Contract subsequently awarded.

18.3 The purpose for processing is outlined below:

- The Public Contracts Regulations (PCR) 2015 (as amended) and the principles of transparency place requirements on contracting authorities to publish information in relation to contract award decisions.
- Economic Operators should be aware that if their tender offer is successful, information in relation to the contract may be published on the CPD website. This will include the contract title, name and address of the winning Economic Operator and the award value. For contracts awarded in compliance with the PCR 2015 (as amended) contracting authorities are required to publish a Contract Award Notice through the UK e-notification service [www.find-tender.service.gov.uk](http://www.find-tender.service.gov.uk) which will include the name and address of the winning Economic Operator. This will be published without further consultation.\*

- The PCR 2015 (as amended) also places a requirement on contracting authorities to provide each Economic Operator with the name of the winning Economic Operator to be awarded the contract and on request from the Cabinet Office a report detailing, amongst other things, the names of bidders (successful and unsuccessful) and associated subcontractors for procurement exercises.
- Personal data will also be collected for the purposes of managing any subsequent Contract(s) arising from this procurement competition.

18.4 CPD may also request personal information as part of the tender process. Such information may be requested when assessing financial, technical and/or professional capability as part of the tender evaluation stage. Clear instruction on the information requested and its specific use will be detailed within the tender documentation. The information will not be used for any other purpose.

\* Please note that this information in relation to contracts awarded by CPD on behalf of DOJ/PPS/NIO/PSNI, their executive agencies, NDPBs and arm's length bodies will not be published for security reasons.

18.5 Details of the collection, use and storage is provided in the table below:

|                             |   |
|-----------------------------|---|
| Type(s) of personal data    | <ul style="list-style-type: none"> <li>• Email address; name; business address; telephone number; financial information and/or experience and qualifications as required as part of the tender process</li> </ul> |
| Lawful basis for processing | <ul style="list-style-type: none"> <li>• Public task</li> </ul>   |
| How we obtain it            | <ul style="list-style-type: none"> <li>• Data subjects</li> </ul>   |
| Who it will be shared with  | <ul style="list-style-type: none"> <li>• Contracting authority users and evaluation panel members</li> </ul>  |
| How it will be used         | <ul style="list-style-type: none"> <li>• To award, manage and deliver the project</li> </ul>  |
| How long we keep it         | <ul style="list-style-type: none"> <li>• Information held for 21 years from date of award; or six years after</li> </ul>  |

|  |  |
|--|--|
|  | the Contract expires (whichever date is the longest) |
|--|--|

Full details of the Department of Finance’s role as a data controller and your rights in relation to information we hold about you can be found in the DoF Privacy Notice [https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/DoF%20Privacy%20Notice\\_1.pdf](https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/DoF%20Privacy%20Notice_1.pdf)

The Contracting Authority has a data protection policy in place (with which all Economic Operators are required to comply).

18.6 The Economic Operator warrants, on a continuing basis, that it has:

- obtained and will maintain all necessary consents required under the Data Protection Act 1998, the General Data Protection Regulation 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all relevant regulations together with any codes of conduct and guidance issued by the Information Commissioner Data Protection Regulations; and
- otherwise fully complied with all of its obligations under the Data Protection Regulations, in order to disclose to the Contracting Authority the Personal Data and allow the Contracting Authority to carry out the procurement.

18.7 The Economic Operator shall immediately notify the Contracting Authority if any of the consents are revoked or changed in any way which impacts on the Contracting Authority’s rights or obligations in relation to such Personal Data.

**19. Transfer of Undertakings and Protection of Employment (TUPE)**

19.1 Economic Operators are advised to seek their own legal advice with regard to the application of TUPE.

19.2 Where TUPE information is provided, Economic Operators:

- are responsible for ensuring they have organisational and security measures in place to protect the lawful use of any information shared;
- will ensure a reasonable level of security for supplied information, personal or non-personal, and process the information accordingly;

- will comply with the eight data protection principles of the Data Protection Act (DPA) and the General Data Protection Regulation 2018 in all their processing of the data being shared;
- will ensure that staff are only given access to personal data where there is a legitimate need, in order for them to perform their duties in connection with the Tendering process;
- will take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss to, destruction of, or damage to, personal data;
- the data should NOT be removed from third party office;
- will ensure that only people who have a genuine business need to see the data will have access to it; and
- will ensure TUPE data is destroyed at the end of the tender process and no longer required. This should be done for both paper and electronic records.

19.3 Economic Operators shall notify CPD of any information loss or breach.

## **20. CPD Supplier Code of Conduct**

20.1 When tendering for a contract/framework, Tenderers must not share information with other Economic Operators who are likely to be submitting separate tenders in the same competition. This will lead to the exclusion of the tenderers from the competition and may also mean that you are breaking the Law. The Competition and Markets Authority has produced guidance for businesses and procuring bodies on how to identify and report collusion or other anti-competitive practices.

<https://cheatingorcompeting.campaign.gov.uk/>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/477569/SME\\_Compliance\\_At-A-Glance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/477569/SME_Compliance_At-A-Glance.pdf)

20.2 The CPD Supplier Code of Conduct sets out the values and principles CPD expects of suppliers wishing to do business with it and its clients. It is expected suppliers will see the benefits of following the Code when dealing

with CPD and that any compliance issues will be resolved locally. You will be asked to confirm that you will comply with the Code when you submit your tender. The CPD Supplier Code of Conduct can be found on the Construction & Procurement Delivery website.

## **21. Contract Management**

- 21.1 The successful Contractor's performance on this Contract will be managed as per the specification and regularly monitored (see Procurement Guidance Note 01/12 - Contract Management - Procedures and Principles <https://www.finance-ni.gov.uk/publications/procurement-guidance-note-0112-contract-management-principles-and-procedures>)

Contractors not delivering on contract requirements is a serious matter. It means the public purse is not getting what it is paying for. If a contractor fails to reach satisfactory levels of contract performance they will be given a specified time to improve. If, after the specified time, they still fail to reach satisfactory levels of contract performance, the matter will be escalated to senior management in CPD for further action.

- 21.2 If this occurs and their performance still does not improve to satisfactory levels within the specified period, it may be regarded as an act of grave professional misconduct and they may be issued with a Notice of Unsatisfactory Performance and this Contract may be terminated. A central register of such Notices for supplies and services contracts will be maintained and published on the CPD website.
- 21.3 Any contractor in receipt of a Notice of Unsatisfactory Performance will be required to declare this in future tender submissions for a period of three years from the date of issue of the Notice. It may also result in the contractor being excluded from all procurement competitions being undertaken by Centres of Procurement Expertise on behalf of bodies covered by the Northern Ireland Procurement Policy.

## **22. Complaints Procedure**

- 22.1 Any clarifications regarding a procurement competition must be communicated through the eTendersNI portal.



All other queries not related to a specific procurement competition can be sent by email to: [SSDAdmin.CPD@finance-ni.gov.uk](mailto:SSDAdmin.CPD@finance-ni.gov.uk).

**Please note that as the majority of CPD staff are remotely working, correspondence should not be sent hardcopy via post to Clare House.**

22.2 Economic Operators should consult the [CPD Supplier Charter](#) if they wish to make a complaint regarding the conduct of CPD staff during the procurement process.

22.3 This process, however, is not an appeal mechanism for Economic Operators who are dissatisfied with the outcome of a procurement competition and should not be used if you are seeking a remedy under The Public Contracts Regulations 2015 (as amended), or other legal action through the courts. The complaints process cannot be used to halt or delay a procurement competition.

## **23. Disclaimers**

23.1 Without prejudice to any warranties given, your responses to this procurement competition will not form a separate, collateral or implied contract between the Economic Operator and the Contracting Authority.

23.2 Neither the issue of the Procurement Documents, nor any of the information presented in them, should be regarded as a commitment or representation on the part of the Contracting Authority (or any other person) to enter into a contractual arrangement. Nothing in these Procurement Documents should be interpreted as a commitment by the Contracting Authority to award a contract to an Economic Operator as a result of this procurement process, nor to accept the lowest price or any tender.

23.3 As such, the Contracting Authority reserves the right at any time to cancel or withdraw the procurement process at any stage

- 23.4 Whilst prepared in good faith and the information contained in these Procurement Documents is believed to be correct at the time of issue, Economic Operators should carry out their own due diligence checks and verify the accuracy of any information provided.
- 23.5 Only the express terms of the contractual documents, if and when executed shall have any contractual effect in connection with the matters to which this procurement process relates.