



Volume One (1)

Instructions and Information

Applicants should read this Volume first

**Ref 1991 / WATER HYGIENE SERVICE  
TERM CONTRACT 2021 AT VARIOUS  
LOCATIONS MANAGED BY  
TEIGNBRIDGE DISTRICT COUNCIL.**

If you would like this information in another format please email  
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PURPOSES



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# 1 Definitions

<b>Applicant</b>	Shall mean the organisation responding to the procurement through the procurement process
<b>Authority</b>	Shall mean the organisation preparing the procurement documents and/or the organisation for whom the resultant Contract will be performed
<b>Authority Authorised Representative</b>	Shall mean the main client Officer for the procurement process and/or resultant Contract
<b>Award</b>	Shall mean the process by which the Authority shall determine to whom the Contract will be awarded in accordance with the criteria listed at Regulation 67 of the Public Contracts Regulations 2015
<b>Awarding Authority</b>	Shall mean the organisation for whom the resultant Contract will be performed; this may be a different organisation than is referred to under Authority (in instances where the Authority is procuring a Contract on behalf of another organisation, for example)
<b>Bid</b>	Shall mean the Applicant's offer to the Authority, which shall be submitted as the completed procurement documents
<b>Call-Off Contract</b>	Shall mean a Contract awarded under a Framework Agreement
<b>Clarification</b>	Shall mean the process by which queries on the Authority's procurement document are raised by the Applicants and the process by which queries on the Applicant's Bid are raised by the Authority
<b>Commercially Sensitive information</b>	Shall mean the information listed by an Applicant within its Bid at Volume Two (2) Applicant's Offer comprising the information of a commercially sensitive nature relating to the Contractor, its intellectual property rights or its business or which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss
<b>Consortia/Consortium</b>	Shall mean two (2) or more companies or organisations, at least one of whom is an economic operator, acting jointly for the purpose of being awarded a public contract (pursuant to Regulation 19 Public Contracts Regulations 2015)
<b>Contract</b>	Shall mean a formal and legally binding agreement entered in to between two or more parties to provide Goods, Services or Works in return for financial remuneration including all documents to which reference may properly be made in order to ascertain the rights and obligations of all the parties involved
<b>Contract Notice</b>	Shall mean the publication in the OJEU of an Authority's intention to procure a public supplies, services, or works Contract
<b>Contract Procedure Rules</b>	Shall mean the Authority's internal rules regulating the award of Contracts

<b>Contracting Authority</b>	Shall mean the Authority and any other organisation on whose behalf the Authority may be working
<b>Contractor</b>	Shall mean the Applicant awarded the Contract culminating from an offer to supply accepted by this Authority
<b>Corporate Procurement Officer</b>	Shall mean the Officer assigned to assist the Authority Authorised Officer in the preparation of the procurement documents and management of the process
<b>Council</b>	As Authority
<b>DPA 2018</b>	Data Protection Act 2018
<b>Data Protection Legislation</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
<b>Disclosure and Barring Service (DBS) check</b>	Shall mean the organisation formed on 01 December 2012 from the merger of the Criminal Records Bureau and Independent Safeguarding Authority  Further information can be found at the following:  <a href="http://www.homeoffice.gov.uk/dbs">www.homeoffice.gov.uk/dbs</a>
<b>Eligible User</b>	Shall mean any organisation given access to a Contract as a result of the procurement process and on whose behalf the Authority may be establishing the arrangements
<b>Employers' Liability (Compulsory Insurance)</b>	Shall mean an insurance that enables organisations to meet the costs of damages and legal fees for employees who are injured or made ill at work through the fault of the employer. Employees injured due to an employer's negligence can seek compensation even if the organisation goes into liquidation or receivership. The NHS can also claim the costs of hospital treatment (including ambulance costs) when personal injury compensation is paid. This applies to incidents that occur either on or after 29 January 2007.  By law, an employer must have EL insurance and be insured for at least £5 million. Most insurers automatically provide cover of at least £10 million. The insurance must cover all the organisation's employees in England, Scotland, Wales and Northern Ireland.  If the organisation is not a limited company, and you are the only employee or you only employ close family members, you do not need compulsory Employers' Liability Insurance. Limited companies with only one employee, where that employee also owns 50 per cent or more of the issued share capital in the company, are also exempt from compulsory Employers' Liability Insurance. However, there is nothing to prevent an exempt employer from choosing to buy this insurance in view of the financial security it can provide.
<b>Evaluation</b>	Shall mean the process through which the Applicant's Bid is reviewed in accordance with the Evaluation Criteria, following which a decision to award a Contract is made

<b>Evaluation Criteria</b>	The means by which the Authority will Evaluate an Applicant's Bid, to include all of the issues that must be considered so as to be able to judge the suitability of an Applicant's Bid
<b>Framework Agreement</b>	Shall mean an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies
<b>Further Competition</b>	Shall mean the procurement process by which the Authority shall call a Contract off against a Framework Agreement
<b>GDPR</b>	the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> )
<b>Goods</b>	Shall mean the items offered by an Applicant and/or the items requested by the Authority
<b>Invitation to Tender (ITT)</b>	Shall mean the written request by the Authority for an interested Applicant to submit a written Bid to facilitate the Authority's requirements
<b>Lead Applicant</b>	Shall mean the organisation leading the bidding process on behalf of its consortia or sub-contractor partners
<b>Lowest Price</b>	Shall mean a means of evaluation whereby all Applicants to a procurement process will be assessed solely on the basis of their offer of price
<b>Lot(s)</b>	One of a number of categories of goods or services which a single procurement process has been divided into. The use of lots potentially allows for multiple providers to be appointed following one procurement process. An example might be a computer hardware procurement with one lot for "laptops" and a second lot for "desktops".
<b>Mandatory Requirements: Pass/Fail</b>	Shall mean the Authority's essential requirements that Applicants will be required to demonstrate their ability to meet so as to be able to pass through to the next stage of the procurement process
<b>Mandatory Requirements: Scored</b>	Shall mean the Authority's essential requirements that Applicants will be required to demonstrate their ability to meet and that will be scored so as to be able to pass through to the next stage of the procurement process and/or as part of the Award criteria
<b>Most Economically Advantageous Tender (MEAT)</b>	Shall mean a means of evaluation whereby all Applicants to a procurement process will be assessed the basis of their offer of a combination of both quality factors and price
<b>Officer</b>	Shall mean the individual completing the procurement documents on behalf of the Authority
<b>Official Purchase Order</b>	Shall mean the Authority's Official Purchase Order, to which these conditions apply
<b>OJEU</b>	Shall mean the Official Journal of the European Union
<b>Open</b>	Shall mean the procurement process determined by the Public Contracts Regulations 2015 and which requires the publication of an OJEU Contract Notice plus an Invitation to Tender prior to the award of a Contract

<b>Pre-Qualification</b>	Shall mean the process by which Applicants will be selected to move forward to the next stage of the procurement process, in accordance with the criteria listed at Regulation 58 of the Public Contracts Regulations 2015
<b>Pricing</b>	Shall mean the value placed on a Bid by the Applicant that will purchase their offer to facilitate the Authority's requirements
<b>ProContract</b>	Shall mean the e-Tendering portal through which the Authority advertises procurement opportunities and conducts procurement processes.  The system can be found at the following website address:  <a href="https://procontract.due-north.com/Login">https://procontract.due-north.com/Login</a>
<b>Procurement</b>	Shall mean the acquisition of Goods, Services or Works from an external source
<b>Procurement Officer</b>	Shall mean the Corporate Procurement Officer
<b>Procurement Representative</b>	As Procurement Representative
<b>Product Liability Insurance</b>	In Product Liability Insurance terms, a product is any physical item that is sold or given away.  Products must be 'fit for purpose'. The organisation is legally responsible for any damage or injury that a product it supplies may cause (in some circumstances this also includes products that the organisation does not manufacture).  Product Liability Insurance covers the organisation against damages awarded as a result of damage to property or personal injury caused by the product. If damages are paid for personal injury, the NHS can claim to recover the costs of hospital treatment (including ambulance costs). This applies to incidents that occur either on or after 29 January 2007.
<b>Professional Indemnity Insurance</b>	Shall mean a liability cover that provides protection for negligent advice or a service provided by the organisation, it also protects against damages the organisation becomes liable for in relation to mistakes made such as errors of judgement, basic administration errors, mislay of or damage to clients' documents. It is designed to safeguard it against claims made by clients for any resulting financial loss or damage to their reputation. This type of insurance should also cover legal fees and costs.  Individuals and organisations that provide professional advice or consultancy services need Professional Indemnity cover.
<b>Project Brief</b>	This is a document which outlines to bidders the nature of the good/services or works against which you wish them to submit an expression of interest
<b>Public Contracts Regulations 2015</b>	Shall mean the legislation of the United Kingdom concerning the procedures for the award of public works contracts, public supply contracts and public service contracts
<b>Public Liability Insurance</b>	Shall mean an insurance that covers members of the public or customers coming to the organisation's premises or if the organisation's staff go to theirs (including if the organisation is based 'at home').



	<p>It covers any awards of damages given to a member of the public because of an injury or damage to their property caused by the organisation. It also covers any related legal fees, costs and expenses as well as costs of hospital treatment (including ambulance costs) that the NHS may claim from the organisation.</p> <p>Premiums are based on the type of business and rated on an estimate for the level of activity of the business.</p>
<b>Restricted</b>	Shall mean the procurement process determined by the Public Contracts Regulations 2015, which includes the publication of an OJEU Contract Notice plus a Pre-Qualification Questionnaire and Invitation to Tender prior to the award of a Contract
<b>Safeguarding</b>	The process of protecting children from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care that enables children to have optimum life chances and enter adulthood successfully
<b>Selection</b>	Shall mean the process by which Applicants will be selected to move forward to the next stage of the procurement process, in accordance with the criteria listed at Regulation 58 of the Public Contracts Regulations 2015
<b>Selection Questionnaire</b>	Shall mean the pro-forma that all Applicants will be required to complete and submit as part of their Bid, pursuant to Regulation 58 of the Public Contracts Regulations 2015
<b>Services</b>	Shall mean a system supplying a need such as communications and transport, utilities such as electricity and fuel, the provision of advice or the performance of routine maintenance or repair work
<b>Specification</b>	Shall mean the detailed description of the Authority's requirements
<b>Standstill</b>	Shall mean the period between the notification of the Authority's intention to award a Contract and the award of the Contract, in accordance with Regulation 87 of the Public Contracts Regulations 2015
<b>TUPE</b>	Shall mean the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014"
<b>Volume One (1) Instructions and Information</b>	Shall mean the document containing advice to Applicants concerning the way that the procurement process will be conducted and the way in which the documentation should be completed
<b>Volume Two (2) Applicant's Offer</b>	Shall mean the document containing information specific to the opportunity, to include the specification, the Selection and Award criteria to be used in the procurement process and shall be the document in which the Applicant shall make its response to those criteria plus pricing and information concerning the Applicant's organisation
<b>Works</b>	Shall mean the carrying out of any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property

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## 2 Instructions

### 2.1 Accessing the Procurement Opportunity

New users to ProContract must register first to obtain a user name and password before returning to this opportunity. Applicants should refer to the help link under Useful Links that provides guidance on how to register and use the system.

Potential Applicants interested in this opportunity should express their interest by clicking on the 'Login and register interest in this opportunity' link within the advertisement on ProContract.

Once the Applicant has expressed its interest they can access the procurement documentation from 'My Activities' on their home page or on the header bar.

### 2.2 Authority's Warranties and Disclaimers

The fact that an Applicant has been invited to bid does not necessarily mean that the Applicant has completely satisfied all the Authority's criteria and the Authority may require further information as appropriate and assess this as part of the evaluation process.

The Applicant shall have no claim whatsoever against the Authority in respect of such matters and in particular (but without limitation) the Authority shall not make any payments to the successful Applicant save as expressly provided for in the (Call-Off) Contract and (save to the extent set out in the (Call-Off) Contract) no compensation or remuneration shall otherwise be payable by the Authority to the Applicant in respect of the services by reason of the specification being different from that envisaged by the Applicant or otherwise.

Whilst the information in this document has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified. With the exception of statements made fraudulently, the Authority does not accept any liability or responsibility for the adequacy, accuracy or completeness of such information. The Authority does not make any representation or warranty (express or implied) with respect to the information contained in the document or with respect to any written or oral information made or to be made available to any Applicant or its professional advisors.

Each Applicant to whom the document is sent must make its own independent assessment of the proposed terms after making such investigation and taking such professional advice as it deems necessary to determine its interest in the Contract or Framework Agreement.

This document is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded the Applicant to bid or enter into any other contractual agreement. Under no circumstances shall the Authority be liable to an Applicant in respect of any costs incurred by an Applicant (whether directly or otherwise) in relation to the preparation or submission of an offer.

### 2.3 Bribery Act

The Bribery Act 2010 modernises the law on bribery and came in to force on 01 July 2011. The Act requires Public Bodies to ensure that they have procedures in place to prevent bribery by persons associated with them. As part of this responsibility all Applicants should make themselves aware of the obligations set out at <http://www.justice.gov.uk/legislation/bribery>.

## **2.4 Public Services (Social Value) Act**

The Public Services (Social Value) Act 2012 brings in a statutory requirement for public authorities to have regard to economic, social and environmental well-being in connection with public services contracts in a way that is relevant to the subject matter of the contract and compliant with the Public Contracts Regulations 2015. It is important to note that this applies to Service contracts only and not to Works and Goods contracts. Applicants must note that they may be asked to comply with particular requirements based around such considerations as part of the selection and/or award process.

## **2.5 Freedom of Information Act 2000 and Environmental Information Regulations 2004 and Data Protection Act 2018**

The Authority is subject to the provisions of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR"). This provides that anyone can ask the Authority for any information held by it, or on its behalf and, unless an exemption applies, the information must be supplied. This means that all the information which an Applicant has provided in respect of this procurement and may provide in future to the contracting authorities will be subject to the FOIA or EIR.

In the absence of special circumstances, any part of the procurement documentation may be regarded as not subject to any exemptions, and therefore capable of being disclosed under the FOIA or EIR.

In respect of any completed Bid, where the Authority is required to consider whether any information contained therein should be disclosed further to the FOIA, it will be necessary to consider whether any exemption applies. Where the Applicant considers that any of the information contained in its Bid is subject to any exemption, this shall be stated in the submitted Bid at Volume Two (2) Applicant's Offer with an explanation setting out what exemption it considers applicable and the reasons for it. The Authority may have regard to this explanation when considering its response to FOIA requests.

The attention of Applicants is drawn to Section 43 of the Freedom of Information Act Guidance ([http://www.ico.gov.uk/for\\_organisations/guidance\\_index/freedom\\_of\\_information\\_and\\_environmental\\_information.aspx](http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx)) which provides that information may be exempt information if it constitutes a trade secret, or if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the Authority). Applicants are further advised that, if the Authority considers this exemption applies, it will then be necessary for the Authority to determine whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

## **2.6 Transparency in Local Government**

The Government has set out the need for greater transparency across its operations to enable the public to hold public bodies and politicians to account. This includes commitments about public expenditure, intended to help achieve better value for money.

As part of the transparency agenda, the Government has made the following commitments for procurement and contracting.

Local authorities must publish details of any contract, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000.

The Authority may also publish the contract entered into with the successful Applicant. In making publication the Authority intends to follow guidance set out in A practitioner's guide to publishing information in accordance with the local government transparency code 2015.

## **2.7 GDPR and Data Protection Act 2018**

The Applicant and Authority shall comply with the provisions of the EU General Data Protection Regulation (GDPR) and the DPA 2018 where it applies in regards to any contract resulting from this procurement procedure.

## **2.8 Counter Terrorism and Security Act 2015**

Section 29 of the Counter Terrorism and Security Act 2015 places a duty on Local Authorities in the performance of their duties to have "due regard to the need to prevent people from being drawn into terrorism". The Act requires the Authority to ensure that its procedures help to ensure a better understanding of radicalisation so that strategies can be put in place to deal with it. As part of this responsibility all Applicants should make themselves aware of the obligations set out at <http://www.legislation.gov.uk/ukpga/2015/6/contents>.

## **2.9 Modern Slavery Act 2015**

Regulation 19 of the Modern Slavery Act 2015 incorporates the offences under Section 1, 2 or 4 of the Modern Slavery Act 2015 into Regulation 57 of the Public Contract Regulations as grounds for mandatory exclusion at selection stage. Section 54 of the Act also requires businesses which meet certain criteria to prepare and publish a slavery and human trafficking statement.

As part of this responsibility all Applicants should make themselves aware of the obligations set out at <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.

## **2.10 Late Payment Directive 2015**

The Authority must maintain compliance with the following legislation:

- Late Payment of Commercial Debts (Interest) Act 1998
- Late Payment of Commercial Debts Regulations 2002
- Late Payment of Commercial Debts Regulations 2013

The latter set of Regulations implements an EU Directive on late payment (Directive 2011/7/ EU). In line with this directive, the Authority requires that all contracted suppliers pay their sub-contractors within 30 days.

## **2.11 Framework Agreements**

This section only applies where the Authority is seeking to establish a Framework Agreement. Where this is the case it will be made clear within Volume Two (2) Applicant's Offer.

The Public Contracts Regulations 2015 define a Framework Agreement as:

"an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged." (Regulation 33(2)).

For the avoidance of doubt the Authority does not bind itself to secure the purchase whether in-house or by the customers (internal stakeholders) of any of the Services or specific quantities of any products required under this Framework Agreement.

As such, the Framework Agreement sets out the terms and conditions for subsequent Call-Offs but, unlike contracts, they usually do not place obligations on the procuring entity to buy any services. With this approach, contracts are formed only when services are the subject of an accepted order under the Agreement.

Framework Agreements represent the Bids submitted by the Applicant(s) to the Authority. The Applicant stands ready to accept orders from the Authority for the provision of Goods/Works or Services in accordance with all descriptions, Specifications and Terms and Conditions contained in the Framework Agreement itself.

Any formal Call-Off Contract under a Framework Agreement will be formed by each Authority or another individual Authority to whom the Framework Agreement is available for use through a Further Competition exercise which is the process of competing for work between Contractor(s) on the Framework Agreement.

Each Eligible User will be responsible for their individual Call-Off Contracts under the terms of the Framework Agreement. The contractual clauses incorporated in to those Call-Off Contracts of each Eligible User may vary, and should be considered in each order for the provision of Services.

## **2.12 Study of the Document**

Documents issued by the Authority to a prospective Applicant must not be passed on to a third party without the express permission of the Authority.

Applicants are expected to read, understand and agree to the Volumes (including the terms and conditions) of the document as they will in their entirety form part of the resultant Contract or Framework Agreement.

The Applicant is required to obtain all information as it may require them to make a Bid. The Applicant shall be deemed to have satisfied itself as to the correctness and sufficiency of its Bid. No claims whatsoever shall be entertained arising out of the Applicants failure to study the documents; the information provided will be relied upon as being true and accurate and will form part of the Contract or Framework Agreement with the successful Applicant. If any of the information given by your organisation within the document is subsequently identified as being inaccurate, this may exclude your organisation from further consideration.

The Applicant's price shall (except in so far as it is otherwise provided in the Contract or Framework Agreement) cover all obligations under the (Call-Off) Contract and Applicants shall also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect it's Bid.

The Applicant is responsible for all costs, expenses and liabilities incurred by the Applicant in connection with preparing its Bid.

## 2.13 Consortia and Sub-contracting

Where an Applicant wishes to make its application as a Consortium or utilising sub-contractors the Authority advises the group of organisations to select a Lead Applicant in whose name the Bid is to be submitted. The Lead Applicant is advised to confirm precisely what the arrangements are within its Bid including providing the names of all of the organisations to be involved, the nature and extent of their involvement and proposals regarding the structure and management of the Consortium or arrangements. Such details should be provided within the Selection Questionnaire where appropriate and should enable the Authority to assess the overall Consortium or core supply base. All members of the consortium are required to provide the information required in all sections of the Selection Questionnaire.

The Lead Applicant should provide details of the actual or proposed percentage shareholding of the constituent members within the Consortium or the exact nature of and degree to which the Goods/Services or Works will be sub-contracted.

Applicants that wish to bid as a Consortium or sub-contractor are discouraged from also making their own individual application or from participating in Consortia or providing sub-contracting arrangements for multiple Lead Applicants.

The Authority recognises that arrangements in relation to Consortia and sub-contracting may (within limits) be subject to future change. Applicants should therefore respond to this opportunity in the light of the arrangements as they are currently envisaged. Applicants are informed that any future change in relation to Consortia and sub-contracting must be notified to the Authority during the procurement process or in the event that they are the successful Contractor and in any event as soon as that change is known. The Authority may then make a further evaluation of that Applicant or Contractor by applying the Selection criteria to the new information provided. In the event that the Authority's evaluation of the new information results in an outcome that is different from the original, the Authority reserves the right to deselect that Applicant from the process on those grounds and the Applicant shall be notified accordingly. As such, the Lead Applicant shall undertake to ensure that any change to its Consortium or sub-contractors shall not have a negative impact upon the arrangements.

If a Consortium is not proposing to form a corporate entity, full details of alternative proposed arrangements should be provided. Where the proposed Lead Applicant is a special purpose vehicle or holding company, information should be provided regarding the extent to which it will call upon the resources and expertise of its members.

Please note that the Authority reserves the right to require a successful Consortium to form a single legal entity in accordance with Regulation 19 of the Public Contracts Regulations 2015.

Where an Applicant requires additional time in the procurement process to establish relationships with suitable consortia partners it is advised to notify the Authority at the earliest convenience and request an extension to the procurement timescales. Applicants may do this through the messaging facility described at section 2.17 Clarification and Circular Advices of this Volume One (1) Instructions and Information.

## 2.14 Ownership

The procurement documentation and all copies thereof are and shall remain the property of the Authority and save for the purposes of the Bid, must not be copied or reproduced in whole or in part and must be returned to the Authority upon demand.

## **2.15 Discrepancies, Omissions and Enquiries concerning the Documents**

Should the Applicant find discrepancies in, or omissions from, the procurement documents, the Authority shall be immediately notified by the Applicant via ProContract:

Should any additions or deletions arising from such notification, or in the event that the Authority requires an amendment to be made, these will be issued by the Authority to Applicants via ProContract and will be deemed to form part of the documentation.

The Authority reserves the right to extend any date of submission accordingly.

## **2.16 Terms and Conditions**

The applicable terms and conditions can be found on ProContract. Applicants will be required to declare that they have read and understood and will comply with said clauses as part of the submission process.

Any queries regarding the terms and conditions, including an Applicant's request to suggest alternative drafting on some or all of the clauses contained therein, may be raised during the clarification period and in accordance with that detailed at section 2.17 Clarification and Circular Advices within this Volume One (1) Instructions and Information. The Authority requests that Applicants' comments, queries and/or suggestions are clear and precise, otherwise they may be rejected.

Where the Authority is in agreement with any changes to the terms and conditions proposed during that period it will update and republish the relevant documentation and all Applicants will be notified accordingly. The Authority reserves the right to extend the submission deadline date in order to allow Applicants sufficient time to take these changes into account. Where the Authority is not in agreement with any changes those proposals shall have been judged to have been rejected and the Authority shall provide an explanation to the Applicants as to the reason/s why it has been judged so.

When the period for clarification has closed Applicants shall no longer be allowed to raise any further queries regarding the terms and conditions and the Applicant shall not be permitted to reserve their right to comment or negotiate upon the terms and conditions at any point thereafter.

Applicants are required to agree to the terms and conditions associated with this procurement opportunity as part of the submission process and the Authority reserves its right to class any Bid submitted to the contrary as non-compliant. All such Applicants shall be judged to have failed with their submitted Bids, shall be evaluated no further and notified accordingly.

The Contractor/s shall accept the terms and conditions as they are drafted in the final Contract or Framework Agreement. No further negotiation shall take place nor changes allowed. Where a Contractor disputes this position the Authority reserves the right to withdraw the Contract or Framework Agreement award and class the submission as non compliant.

## **2.17 Clarification and Circular Advices**

Upon commencement of the procurement process the Applicant shall not approach any member of the Authority in relation to the opportunity, other than by using the messaging facility within ProContract.



If clarification is required on any issues within the procurement documents, all questions must be submitted via ProContract. Open the messaging area by selecting 'View Messages' and this will show any messages that have already been received and the area to create new messages to the raise any clarification questions.

Applicants should note that unless your question is innovation based, responses will be provided to all Applicants. Where a question is of a commercially confidential nature and the Applicant does not wish it or the associated answer to be shared with other Applicants, the Applicant shall state this clearly within its question. The identity of Applicants raising any questions will remain confidential.

Relevant questions together with the answers will be posted on ProContract and an automated e-mail will be sent to all Applicants informing them that a new message has been posted and that they should visit the electronic tendering system to view it. If the Applicant has unsubscribed to the emails they will not receive the automated notification email, although they will still be able to view the message upon logging in to the system and navigating to the opportunity.

Applicants registering after a clarification has been posted will not receive notification that messages are available for viewing. When Applicants first access the procurement documentation they should satisfy themselves that they have seen any messages posted. It is in the Applicant's interest to visit the messages area regularly as clarifications may fundamentally affect their planned response.

Any instruction by the Authority prior to the due date will be issued to all Applicants via ProContract.

If during the period the Authority or Awarding Authority, in the case of a Framework Agreement, issues any circular letters to Applicants in order to clarify or alter part of the documents then such circular letters shall form part of the (Call-Off) Contract and Applicants shall be deemed to have taken account of them in preparing their Bid. Applicants shall promptly acknowledge any circular letters that they receive.

## **2.18 Completion of the Document**

For the avoidance of doubt all of the sections included within Volume Two (2) Applicant's Offer must be completed and submitted by the Applicant in order to be considered by the Authority as a fully complete and official Bid.

Any Bids made omitting any of the sections, or any of the requirements therein, will be considered as incomplete and may be disqualified from further evaluation and therefore exclusion from the procurement process.

Documents should only be completed and submitted in the format in which they currently appear. It is essential that Applicants do not re-format or re-brand any of the procurement documentation in accordance with their own standards on formatting. An example of this is if the documents are issued in Microsoft Word format, the Authority requires them to be returned in the same format.

All entries such as rates, price totals or any other endorsements entered must be typewritten in English.

.Applicants will answer all appropriate questions and sign (if possible) where specified. You may continue on a separate sheet where permitted to do so. Applicants will clearly reference its replies and any supporting documentation.

Any pro-formas must be fully completed even if your organisation has previously submitted Bids to the Authority. It is not sufficient to cross-refer to previous responses.

Where an Applicant requires assistance in completing the documents or meeting the submission requirements it is advised to notify the Authority at the earliest convenience and request additional support, to include meeting with the Authority Authorised Representative and/or Corporate Procurement Officer. Applicants may do this through the messaging facility described at section 2.17 Clarification and Circular Advices of this Volume One (1) Instructions and Information.

## **2.19 Applicant Site Visits**

The Applicant may visit the sites prior to completing its offer to ensure that it is fully familiar with the site locations, where relevant. The information in the attached schedules is given as an indication of the general requirements of the Contract or Framework Agreement. Claims on the grounds of lack of knowledge of site locations/conditions will not be accepted by the Authority.

## **2.20 Alternatives and Variations**

Innovative offers may be made in addition to making a full and complete Bid unless otherwise stated. The submission of an alternative or variant Bid will not be considered if the Applicant fails to make a compliant Bid in the prescribed format.

Should the Applicant wish to offer a variation or alternative Bid, including innovations to the Specification, please complete the Bid as described. This will constitute the 'compliant Bid'.

The Applicant's alternative or variant Bid should be prepared separately and submitted as such, giving clear details of your organisation's departure from the compliant Bid.

Applicants may submit alternative or variant Bids in instances where it believes it is able to offer an innovative solution to a 'traditional' specification or where elements of its proposed service delivery deviate from the specification and/or procurement requirements such that this may render an Applicant's Bid as non-compliant.

## **2.21 Return of Document**

Documents must be returned in the correct and proper process for submitting the Applicant's Bid electronically.

All Bids shall be submitted via the ProContract system. Supplier help guides are available from the 'Help' menu within the system.

Applicants will not e-mail their Bids directly to any named person/s within the Authority or to any of the Authority's generic e-mail addresses.

Applicants will not attach their Bids to any part of the ProContract system other than described within the document referred to above.

Applicants will not send their Bids to the Authority in a paper or other 'hard' format unless specifically requested to do so within the associated bid documentation.

It is the Applicant's responsibility to ensure that its Bid is submitted prior to the deadline date/time.

Any submissions that do not accord with the guidelines set out above shall be considered as non-compliant and will be treated as such.

Submissions must be received in advance of the deadline in order to qualify as timely offers. As such, Applicants are urged to make their submission well in advance of the stated deadline in order to avoid such issues as technical difficulties with the electronic system that may be due to the high volume of traffic attempting to submit offers, for example.

Submissions made after the date and time specified on the documents or to a different address, electronically or otherwise, will not be considered under any circumstances. The ProContract system's server timestamps (GMT) Bids when they are submitted and an audit trail of submissions is kept within the system.

Should the Applicant experience any problems with ProContract, it must contact the support desk on the following:

By email: [ProContractSuppliers@proactis.com](mailto:ProContractSuppliers@proactis.com) or going directly to <http://proactis.kayako.com/default>

By telephone: 01670 597137. This line is available between 08:30 and 17:00 Monday to Friday (excluding English bank holidays) and must be reserved exclusively for time-sensitive issues.

## **2.22 Applicant's Warranties**

In submitting their Bid the Applicant warrants and represents and undertakes to the Authority that it has not done any of the acts or matters referred to in Regulation 57 of the Public Contracts Regulations 2015 and has complied in all respects with the requirements;

- it has full power and authority to enter into the Contract or Framework Agreement and provide the Goods/Works or Services will if requested produce evidence of such to the Authority;
- it is of sound financial standing and the Applicant and its partners, directors, officers and employees are not aware of any circumstances (other than such circumstances as may be disclosed in the audited accounts or other financial statements of the Applicant submitted to the Authority) which may adversely affect such financial standing in the future.

## **2.23 Non Submission**

If no offer is to be made, this must be indicated via ProContract. In order that the Authority can better understand its supplier base, the Applicants' comments regarding the reasons behind its non-submission must be provided.

## **2.24 Evaluation of Bids**

All Bids will be treated equally and assessed with transparency throughout the evaluation process. The successful offer(s) will be that which achieves the highest score within a best value framework

(optimum combination of whole-life costs and quality) in line with the best value principles of Most Economically Advantageous Tender (MEAT).

The evaluation process is a critical part of the procurement process and is the means by which the Authority is able to assess to whom the Authority wishes to select to progress to the next stage of this procurement process and/or award the Contract or Framework Agreement.

The information disclosed by Applicants in its Bid will be used for the purposes of evaluation and shall form part of the resultant Contract or Framework Agreement. The Authority's evaluation will consist of two (2) distinct stages: Selection and Award.

Any responses to any of the Selection or Award questions or any other part of your Bid that are later found to be incorrect may lead to you being exempted from this procurement process or any future procurement process lead by the Authority and could cause the termination of any resultant Contract or your removal from the Framework Agreement, where relevant.

## **2.25 Selection Questions**

Selection is the process by which the Authority is able to assess the suitability of the Applicant to undertake work on behalf of the Authority. The questions asked within Selection Questionnaire are compliant with Regulation 57 of the Public Contracts Regulations 2015.

The Authority requires all Applicants to complete all sections of the Selection Questionnaire included within Volume Two (2) Applicant's Offer in full and submit in accordance with the submission requirements outlined within this Volume One (1) Instructions and Information. The selection questions will be assessed on the basis of pass/fail. Any Applicants that who do not fully meet the requirements of or misrepresent any information or evidence provided in relation to Regulation 57 may be excluded from further consideration.

The Applicant's responses to the Selection questions should be succinct, concise and as brief as possible and self contained not referring to additional documents or other supporting statements other than the European Single Procurement Document (ESPD). The Authority will accept submission of the following parts/sections of the ESPD as part of any submission:

- i. ESPD Part II (A,B,C,D)
- ii. ESPD Part III (A,B,C,D)

Where Applicants choose to submit all or any part of the ESPD in place of an element required in the Selection questions this must be clearly identified and referenced by the Applicant. Any ESPD responses will be assessed in the same way as any other response.

## **2.26 Award Questions**

Award is the process that considers the extent to which the Applicant's Bid delivers the Most Economically Advantageous solution to the Authority and as such Applicants responses to the questions asked should give a clear indication of what the organisation is offering for the quoted price.

The Authority has not provided a word limit for responses to the Award questions however, the Authority would like to inform Applicants that responses should be relevant to the question and be

proportionate in length. Supporting information may be submitted, provided that it is clearly referenced in the question to which it relates and appended to the main bid.

## **2.27 Applicant's Price**

The price offered by the Applicant shall be firm and fixed for the duration of the Contract or Framework Agreement. Any percentage discounts that may be applied must be detailed by the Applicant in its Bid. Price variation during the Contract or Framework Agreement term will be by negotiation only via formal performance review meetings. Any price variations will not take effect until they have been mutually agreed by both Authority and Applicant and the former receives confirmation in writing from the latter.

All prices submitted shall be in pounds sterling and shall be exclusive of Value Added Tax (VAT).

The Applicant's price will be evaluated in accordance with the scoring methodology and weightings as set by the Authority and declared within Volume Two (2) Applicant's Offer.

## **2.28 Errors and Omissions in the Applicant's Bid**

If the Authority discovers errors or omissions in the Bid, the Applicant may be required to justify the price or item(s) concerned. Any price adjustments to the Bid made by agreement between the parties concerned shall be confirmed in writing by the Applicant to the Authority before final acceptance of the Bid.

## **2.29 Abnormally Low Bids**

In the event that the Authority receives a Bid which is abnormally low, in accordance with Regulation 69 of the Public Contracts Regulations 2015, it shall require the Applicant to explain in writing the price or cost proposed in the submission. The Authority shall assess the information provided by the Applicant and may reject the Bid where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.

## **2.30 Authority Site Visits**

The Authority reserves the right to pay a site visit to short listed Applicant's premises and/or exemplar site/s at which it performs the service required under the Contract or Framework Agreement.

Applicants may or may not be contacted to be made aware that a site visit will take place. Any notification that is made will detail the date, time and details of those Members/Officers that are anticipated to attend.

Applicants must grant access to any premises requested to be visited by the Authority within that allocated time period.

Site visits will be for the purpose of ensuring that Applicants are appropriately skilled and experienced to deliver the service required under the Contract or Framework Agreement and that any claims made to that effect are accurate.

## **2.31 Demonstrations and Presentations**

The Authority reserves the right to invite Applicants, to attend a presentation or demonstration at which stage it will be a requirement to reinforce your position by presenting your bid to the key

stakeholders involved. Where this forms part of the evaluation this will be detailed in Volume Two (2) Applicant's Offer.

Applicants will be contacted to be invited to the presentation/demonstration. The invite will detail the date, time and location and the required content of the demonstration/presentation, which will include any specific questions/topics to be covered and the marking system.

Presentations/demonstrations will be for the purpose of ensuring that shortlisted Applicants have full comprehension of all that is required under this Contract or Framework Agreement and that all information submitted is accurate.

## 2.32 Rejection of Offers

The Authority may at its absolute discretion refrain from considering or reject a Bid if:

- (i) it is incomplete or vague or is submitted later than the prescribed date and time; or
- (ii) it is not in accordance with the approved format and all other provisions of the documents; or
- (iii) is in breach of any condition contained within it.

The Authority reserves the right, subject to relevant legislation, at any time to reject any Bid and/or terminate the procurement process with one or all of the Applicants.

The Authority reserves the right to disqualify any or all Applicants who makes material changes to, or (in the Authority's opinion) a material change takes place in respect of, any aspect of either its pre-qualification submission or Bid unless substantial justification can be provided to the satisfaction of the Authority.

Any submission in respect of which the Applicant

- has directly or indirectly canvassed any Official, Member, Officer, Agent or Advisor of the Authority or obtained information from any other person who has been contracted to supply Goods or provide the Service or Works to the Authority concerning the award of the Contract or Framework Agreement or who has directly or indirectly obtained or attempted to obtain information from any such Official, Member, Officer, Agent or Advisor concerning any other Applicant; or
- fixes or adjusts the prices by or in accordance with any agreement or arrangement with any other person; or
- communicates to any person other than the Authority the price or approximate price except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the bid or for the purposes of insurance or financing; or
- enters into any agreement with any other person that such other person shall refrain from submitting an offer or shall limit or restrict the prices to be shown or referred to by another Applicant; or
- offers to agree to pay to any person having direct connection with the procurement process or does pay or give any sum of money, inducement or valuable consideration, directly or indirectly, for doing or having done or causing or having caused to be done in relation to any other Applicant or any other person's proposal, any act or omission

shall not be considered for acceptance and shall accordingly be rejected by the Authority provided always that such non-acceptance or rejection shall be without prejudice to any other civil remedies available to the Authority or any criminal liability which such conduct by a Applicant may attract.

### **2.33 Acceptance of Offers**

The Authority does not bind itself to accept the lowest or any Bid, and reserves the right to accept a Bid either in whole or in part, or such item or items specified in the procurement documents, and for such place or places of delivery as it thinks fit, each item and establishment being for this purpose considered as bid for separately, or to make no award at all.

### **2.34 Award of Contract or Framework Agreement**

Submitted documents shall constitute an irrevocable offer to provide the Goods/Works or Services. Any acceptance of it by the Authority shall be communicated in writing to the Applicant. Upon such acceptance the Contract or Framework Agreement shall become binding on all parties.

The successful Applicant shall conclude a formal Contract or Framework Agreement with the Authority, which shall embody the Applicant's offer. No Applicant may consider itself successful unless and until a formal Contract has been signed by a Duly Authorised Officer of the Authority and co-signed by the Applicant's Authorised Officer.

The offer shall remain open for acceptance for a period of six (6) months from the closing date for the receipt of submission.

ADVERT NOT FOR TENDER PURPOSES