

**GUIDANCE NOTE ON USE OF THE
MODEL SERVICES REQUEST FOR TENDER**

THIS GUIDE IS FOR INFORMATION PURPOSES ONLY AND
DOES NOT CONSTITUTE LEGAL ADVICE

INTRODUCTION TO THIS GUIDE

The Office of Government Procurement 'Model Services Request for Tenders' (the "RFT") provides a template for low to medium risk services public procurement competitions. The Contracting Authority must complete various parts of the document as indicated, including Appendices, before it issues to the market.

The RFT is provided in a protected Word format, in which the Contracting Authority can insert the particulars of the requirements and the tender process. When using the RFT, Contracting Authorities can move between the editable fields using the TAB key, or by clicking the mouse at any point in the text – the cursor will automatically position itself at the next point at which text can be entered or edited. In some paragraphs of the RFT (for example paragraph 1.3), there is an option to delete text. If the Contracting Authority does not wish for the relevant provision to apply to the RFT, it must delete the text of that paragraph and replace with the words "Not Used".

Public procurement is not an administrative process alone, but is one based on legal obligations for which Ireland is answerable at EU level. It is a key element in competition law and underscores several policy objectives of the EU (tax compliance, employment protective legislation compliance, environmental compliance, no access to State funds for criminality, social security compliance). Accordingly, the Contracting Authority must not amend or delete any provisions or parts of the RFT without first having consulted the Office of Government Procurement (the "OGP") in writing.

The RFT is designed to be used within the following parameters:

1	For contracts above the EU threshold using the open procedure. This notwithstanding, the RFT can also be used for public procurement competitions: <ul style="list-style-type: none">- for social, health, educational and other specific services identified in Annex XIV of EU Procurement Directive 2014/24/EU ('the Procurement Directive') and having a value equal or greater to €750,000. Guidance on the obligations for social, health, educational and other specific services listed in Annex XIV of the Procurement Directive can be obtained from the OGP.- having a value below the relevant EU thresholds.
2	For the procurement of low to medium risk services only (whether professional or generic, such as catering, janitorial, secretarial or similar). Where the services are bespoke or Contracting Authorities have concerns with regard to any procurement aspect, then legal or other appropriate advices should be sought.
3	The RFT is not suitable for use for procurements in respect of ICT, for which specific legal advices should be sought.
4	The RFT is drafted for use with the OGP 'Model Services Contract' (the "Services Contract").
5	The RFT is not suitable for use in public procurement competitions relating to works or goods.
6	The RFT reflects the position as at May 2017. The RFT may be revised from time to time. Contracting Authorities are advised to ensure that they are using the most up-to-date version and follow the advice or directions of the OGP with regard to the introduction and use of revised editions. This edition can be identified, as noted on each page, by the following reference: ServicesRFTGuidance2016/01213/10905.
7	The RFT is not suitable for the establishment of a panel or framework.

This Guidance Note assumes a familiarity with and knowledge of the public procurement process. Where information is available to assist practitioners further, this is referenced in the document. This is a generic document to assist practitioners in completing the RFT. This is not a guide on how to run a public procurement competition. This Guidance Note does not constitute legal advice.

Defined terms in the RFT have the same meaning in this Guide.

STRUCTURE OF THE RFT

The RFT is divided into the following four Parts:

1	Introduction
2	Instructions to Tenderers
3	Selection and Award Criteria
4	Appendices: Appendix 1 Requirements and Specifications Appendix 2 Pricing Schedule Appendix 3 Tenderers' Statement Appendix 4 European Single Procurement Document Appendix 5 Declaration as to Personal Circumstances of Tenderer Appendix 6 Services Contract Appendix 7 Confidentiality Agreement

References in this document to an "Appendix" or to "Appendices" are references to the Appendices in the RFT. With the exception of the Pricing Schedule in Appendix 2, references in this document to a "Schedule" or to "Schedules" are references to the Schedules to the Services Contract. The Schedules to the Services Contract included in the RFT should not be completed when issuing the RFT because the information to be contained in those Schedules will be informed by the successful Tender as accepted.

Key principles in planning a public procurement competition

The following is a non-exhaustive list which may assist Contracting Authorities in completing the RFT and its Appendices:

- Allow sufficient time for planning and completion of the competition.
- Seek appropriate advices at an early stage if required, such as legal, financial or insurance. Procurement is a multidisciplinary exercise.
- Do not plan the competition or draft the documentation as separate parts of the procurement process. All aspects of the competition are interconnected. Contracting Authorities must consider their requirements in relation to the Services being sought when determining their specifications, selection criteria and award criteria. They must ensure that the Contract Notice does not conflict with the RFT provisions. The RFT should be cross-checked against the Contract Notice prior to issue. Contract Notices must be clearly drafted and include all likely required objectives of and any options for the competition. An option, for example, would be where a Contracting Authority proposes to award a contract for, say 3 years, with an option to extend for a fourth year (see Part 3).
- Ensure that the Contracting Authority has the legal power, in accordance with its statutory obligations, to enter into the contract.

- Conduct a risk assessment to identify risks which must be considered and dealt with appropriately in the tender documentation. The risk assessment required will depend upon the type of Services being sought. The risk assessment may include consideration of the following (this is not an exhaustive list):

Operational risks	<ul style="list-style-type: none"> ■ Confidentiality ■ Data protection (of information or personal data) ■ Impact of delays on project ■ Project management and reporting controls ■ Knowledge transfer ■ Key personnel availability ■ Child protection, protection of vulnerable adults and older adults
Commercial risks	<ul style="list-style-type: none"> ■ Escalation of costs/prices ■ Ministerial financial protection e.g. insurances, indemnities ■ Costs/expenses of contractor
Procedural risks	<ul style="list-style-type: none"> ■ Competition delays ■ Gaps in knowledge ■ Lack of clarity or information in specifications ■ Incorrect selection or award criteria ■ Legal challenge to competition ■ Termination of contract with existing provider

THE RFT

PART 1 INTRODUCTION

- 1.1 The introduction sets out some of the terms that will be used throughout the RFT. Contracting Authorities should use these terms when completing the documentation. This paragraph also identifies the Contracting Authority. Contracting Authorities should ensure that the correct entity is conducting the competition.
- 1.2 The Contracting Authority should set out a summary of the Services sought under the competition. This paragraph can be inserted so as to put the competition into context for the market. The text should be concise, reasonably short and consistent with the Requirements and Specifications. Any detailed description of the Contracting Authority role, historical data or other information should be set out at Appendix 1: Requirements and Specifications.
- 1.3 Under the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the “Procurement Regulations”), Contracting Authorities are encouraged to divide large contracts into Lots, making public procurement competitions more accessible to SMEs. The possibility of dividing the contract into Lots is included in paragraph 1.3 of the RFT. The Contracting Authority is not required to divide a contract into Lots, but, if it does not, then it must keep a written record setting out the main reasons for its decision. If the contract is divided into Lots, the Contracting Authority should indicate in the RFT the number of Lots, a description of the Lots and any rules / instructions in relation to the Lots.
- 1.4-1.5 These paragraphs set out the envisaged duration of the Services Contract and any option reserved to the Contracting Authority for extension of the initial term, subject always to obligations at law. The Contracting Authority must decide whether the Services Contract may be extended. If it decides that the contract may be extended then it must complete the editable fields in paragraph 1.5 accordingly.
- 1.6 The Contracting Authority should insert the estimated value of the Services Contract here. The value should be the aggregate value over the term of the Services Contract (as set out in paragraphs 1.4 and 1.5 of the RFT). This value should be identical to the value inserted in the Contract Notice for the competition.
- 1.7 This paragraph sets out OGP policy which seeks to encourage participation on a fair and equal basis by small and medium enterprises in the competition.

PART 2 INSTRUCTIONS TO TENDERERS

2.1 Introduction to this RFT

- 2.1.1 This provision states that Tenderers shall form their own conclusions with regard to the solution needed to meet the Contracting Authority requirements.
- 2.1.2 These provisions provide that no contract will exist until the Contracting Authority has signed the Services Contract. This permits the Contracting Authority to cancel the competition (or any Lot) at any time up to the signing of the contract by it. However the Contracting Authority should ensure that it does not unwittingly enter into a contract by allowing part performance of the contract by Tenderers. This has particular importance in regard to the standstill requirements under the European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 (Statutory Instrument 130 of 2010), as amended by the

European Communities (Public Authorities' Contracts) (Review Procedures) (Amendment) Regulations 2015 (Statutory Instrument 192 of 2015)) (the "Remedies Regulations"). The exercise of the right of cancellation of a competition should be used only after careful consideration and may require legal advice. If the competition is cancelled, Contracting Authorities must:

- Notify all Tenderers immediately in writing and give reasons, and
- Keep a record of the cancellation decision and correspondence on its file.

2.1.3 This paragraph indicates that for the purposes of the competition, the Contracting Authority will only consider the documentation submitted by the Tenderer.

2.2 Compliant Tenders

2.2.1 This paragraph sets the Contracting Authority's procedural and documentary requirements for the competition. If these requirements are not met, the Contracting Authority may, at its discretion, decide to seek written clarification from the Tenderer, seek further information from the Tenderer, waive any requirement which in the Contracting Authority's view is non-material or procedural or reject the Tender. However, this discretion must be exercised in a fair, transparent and non-discriminatory manner and the Contracting Authority should consider the circumstances and materiality of any non-compliance. Compliant tenders will be evaluated in accordance with the Selection and Award criteria set out at Part 3 of the RFT.

The RFT is not to be edited or altered by the Tenderer. This may be applicable where a Contracting Authority has inserted documentation that must be completed and returned with the Tender. In effect, what this means is that if a Tenderer alters the structure/content of say, a pricing schedule, which must be completed and returned, the Contracting Authority may reject any such edited premise on which a Tender is submitted. Similarly, if there are forms to be completed in the Requirements and Specifications (Appendix 1) and these are edited and returned, the Contracting Authority is not obliged to accept and so may reject any such edited premise on which a Tender is submitted. If this arises, legal advice may be sought.

If the Contracting Authority's requirements under this section are not met, the Tender will be rejected.

Tenderers must complete and submit the 'European Single Procurement Document' (the "ESPD") with their Tender. The ESPD is effectively a "self-declaration" by a Tenderer that: (i) it does not fall within any of the situations which would exclude it from participating in a public procurement competition (the 'exclusion grounds'); and (ii) it meets the Selection Criteria for the competition specified in paragraph 3.2 of the RFT - ie, it has the necessary economic and financial standing and technical and professional ability to meet the Contracting Authority's requirements.

2.2.2 This paragraph informs Tenderers that failure to comply with the tender submission requirements set out in paragraph 2.6 of the RFT will result in the Tender being rejected.

2.3 Services Contract

2.3.1- The Contracting Authority must ensure that the Services Contract appears in Appendix 6.

2.3.2 This paragraph informs Tenderers that they are not permitted to amend the Services Contract.

2.4 Acceptance of RFT requirements

- 2.4 All Tenderers are required to comply with the provisions set out in the RFT and to return the signed Tenderer's Statement at Appendix 3. The Tenderer's Statement must not be amended by Tenderers. A scanned signed copy of the Tenderer's Statement printed on the Tenderer's letterhead must be included in the Tender.

2.5 Consortia and Prime/Subcontractors

- 2.5 This paragraph provides that a Tender may be submitted by a group of undertakings (including sub-contractors) coming together as a single entity (ie, a group or consortium) so as to supply the Services, called the 'Tenderer'. However a Prime Contractor must be appointed from amongst them. Regulation 19(3) of the Procurement Regulations provides that a Contracting Authority cannot require a group of entities to form a specific legal form for the purpose of tendering. The Tenderer is required to nominate points of contact.

This paragraph also requires that the Tenderer identifies the Prime Contractor, its sub-contractors and/or consortium members (if any) together with their respective roles.

2.6 Tender Submission Requirements

- 2.6.1 The Procurement Regulations require that all public procurement competitions are to be conducted using electronic means by 2018 at the latest. The Procurement Regulations require that all public procurement competitions conducted by a central purchasing body are to be conducted using electronic means from 18 April 2017. Tenders must be submitted either:
- (i) electronically via the eTenders postbox. This paragraph does not permit the submission of Tenders by any other means such as email, facsimile, post, or hand delivery. This paragraph also reminds Tenderers to allow themselves sufficient time to upload and submit all required tender documentation, or
 - (ii) by hand or by post to a specified postal address. This paragraph does not permit the submission of Tenders by any other means such as email or facsimile.
- 2.6.2 Contracting Authorities must insert a closing date and time for the receipt of Tenders (the closing date is to be proportionate relevant to the Services sought under the competition). However, Contracting Authorities should have regard to the minimum time limits set out in Regulation 27 of the Procurement Regulations. Contracting Authorities should ensure that the date and time inserted here are identical to what is inserted on the cover page of the RFT.
- 2.6.3 The RFT allows for submission in the English language only.
- 2.6.4 This paragraph permits each Tenderer to submit one Tender on their own and one Tender as part of a consortium/group of undertakings.
- 2.6.5 This paragraph deals with the issue of 'corruption in electronic documents'. It is for Tenderers to ensure that electronic documents are not corrupt.

2.7 Queries and Clarifications

- 2.7.1 – These paragraphs specify that all queries and requests for clarification will be directed to the messaging facility on www.etenders.gov.ie. It is recommended that all queries and requests for clarification and replies thereto, together with all clarifications that the Contracting Authority may issue, be printed and kept in a hard copy file. The RFT states that the default method of disseminating clarifications will be by publication on www.etenders.gov.ie and it is imperative that this is done. Contracting Authorities must ensure that all clarifications and corresponding replies are disseminated to all those who are entitled to receive them.
- 2.7.3
- 2.7.4 This paragraph allows the Contracting Authority to make updates or alterations to the RFT. An appropriate extension to the Tender Deadline should be given where necessary. Care should be taken to ensure that such updates or alterations are not so extensive as to materially change the scope of the RFT such that it would be more appropriate to terminate the competition and recommence with the revised scope. Contracting Authorities should note, however, that the Procurement Regulations contains new rules on the type of amendments that can be made and on when the Tender Deadline must be extended. Should an issue arise in this regard, legal advice should be sought.

2.8 Tendering costs

- 2.8.1 - These paragraphs state that Tenderers will bear all costs and expenses (to include the costs of attendance at presentations) incurred by them during their participation in the competition.
- 2.8.2

2.9 Confidentiality

- 2.9 Although the RFT is drafted for use in competitions conducted under the open procedure, there may still be certain information which may need to be kept confidential. Service providers are often given access to sensitive information, systems and personnel.

Equally, whilst the RFT will be published, the information contained in the RFT should only be used for the purposes for which it is published and for no other purpose. Accordingly, it is necessary that the obligation as to confidentiality is expressed and acknowledged. This limits the extent of the 'public domain' nature of the RFT, i.e., only permitted use is for the purpose of the public procurement competition and for no other purpose. Any other use will constitute a breach of intellectual property rights.

Given the provisions of the Remedies Regulations in regard to a declaration of ineffectiveness, as a precautionary measure, provision is made for the completion of a standalone Confidentiality Agreement when contracting so that in the event of a declaration of ineffectiveness being secured against any contract awarded, all obligations in respect of confidentiality, data protection or other security related matters will be protected and will survive notwithstanding the status of the Services Contract.

If the competition is cancelled then the Contracting Authority should monitor any confidentiality issues and in particular seek the return or destruction of documentation as per paragraph 2.9.1(d), if appropriate.

Note: If the subject matter of the contract or the context of the competition or use of the Services by the Contracting Authority could raise confidentiality issues prior to contract award, then a different approach may be necessary. In such circumstances the

Contracting Authority could consider the use of the restricted procedure with a requirement that an economic operator execute a confidentiality agreement prior to receipt of the tender. In such a situation the RFT may not be suitable (without necessary amendments) and legal advice should be sought as how best to protect the Contracting Authority.

2.10 Pricing

- 2.10.1 The Contracting Authority should set out in Appendix 2 a Pricing Schedule to assist Tenderers in costing the Services. This paragraph states that the Tenderer must complete the Pricing Schedule attached at Appendix 2 of the RFT.

The level of detail required by the Contracting Authority in the Pricing Schedule depends on the Services sought and should reflect the Requirements and Specifications in the RFT (Appendix 1).

If the overall project is to be based on a fixed price contract, this should be specified.

If day rates are permitted, the relevant application of these must be identified.

- 2.10.2 This paragraph provides that prices (expressed in Euro only) must include all associated costs, but should exclude VAT which, where applicable, should be set out separately.
- 2.10.3 This paragraph states that Tender prices should remain valid for the period set by the Contracting Authority. The duration provided for must be reasonable and proportionate to the subject matter of the competition.
- 2.10.4 This paragraph provides that the successful Tenderers will bear the cost of any currency variations.
- 2.10.5 This paragraph provides that the charges payable for the Services by the Contracting Authority shall be subject to the Services Contract provisions, attached at Appendix 6.
- 2.10.6 Contracting Authorities may wish to include this provision in the RFT. This provision provides for changes to the prices tendered by the Tenderer only on specific dates and only by the percentage by which the relevant price index has increased or decreased in the edition of the index published most recently prior to the anniversary.

2.11 Environmental, Social and Labour Law

- 2.11.1 This paragraph state that the successful Tenderer and its Subcontractors shall be required to comply with environmental, social and labour laws. This is also reflected in clause 1.B.4. of Schedule A to the Services Contract. Tenderers are required to sign the Tenderers' Statement at Appendix 3 of the RFT, in order to confirm their agreement that if awarded any Services Contract, they will comply with all obligations in the field of environmental, social and labour laws (see point 5 of Appendix 3).
- 2.11.2 This paragraph notifies Tenderers that they will be required to undertake to comply with any obligations that may arise under the Acquired Rights Directive (2001/23/EC), as implemented into Irish law by the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No.131 of 2003).
- 2.11.3 This paragraph provides that where the provision of the Services will involve the provision to the Contracting Authority of Agency Workers (within the meaning of the Protection of Employees (Temporary Agency Work) Act 2012), Tenderers should ensure that they consider their obligations under that Act when pricing their Tender.

2.12 Publicity

- 2.12 This paragraph prohibits Tenderers from publicising the competition or award of contract without the written consent of the Contracting Authority. Contracting Authorities should also be aware that there is a similar provision at clause 19 of the Services Contract.

2.13 Registrable Interests

- 2.13 This paragraph requires Tenderers to notify the Contracting Authority of any 'registrable interest' and points to where information can be obtained. The directions of the Contracting Authority must be followed and Tenderers are on notice that directions might include their elimination from the competition, or in due course termination of any contract awarded. Should an issue arise, legal advice should be sought.

2.14 Anti-competitive conduct

- 2.14 Anti-competitive activity attracts significant civil and criminal sanctions for Tenderers under the Competition Act 2002, as amended. If a Tenderer's conduct indicates that it may be acting in an anti-competitive manner, such as engaging in bid suppression, price-fixing, market sharing, bid rigging/collusive tendering or limiting production, then the Contracting Authority should contact the Competition and Consumer Protection Commission.

In November 2009 the Irish Competition Authority published a booklet titled 'The Detection and Prevention of Collusive Tendering', a copy of which is available on the Competition and Consumer Protection Commission website at: www.ccpc.ie.

2.15 Industry terms in RFT

- 2.15 This paragraph states that references to industry terms are to be given the same meaning generally understood in the relevant industry.

When drafting the Requirements and Specifications (Appendix 1), Contracting Authorities should note the requirements of Regulation 42 of the Procurement Regulations with regard to technical specifications.

2.16 Freedom of Information

- 2.16 This paragraph informs Tenderers that the Contracting Authority has obligations under the Freedom of Information Act 2014.

2.17 Tax Clearance

- 2.17 Tenderers are required to comply with domestic and European Union law and administrative requirements.

Prior to the award of any contract, but after the expiry of the Standstill Period (see paragraph 3.5 below) the successful Tenderer(s) will be required to submit their Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Contracting Authority.

2.18 Conflicts of Interest

- 2.18 This paragraph requires Tenderers to notify the Contracting Authority of any 'conflicts of interest' whether actual or potential on the part of the Tenderer, Subcontractor or individual employee(s) or agent(s) of the Tenderer or Subcontractor. Directions of the Contracting Authority must be followed and Tenderers are on notice that directions might include their elimination from the competition, or in due course termination of any contract awarded. Should an issue arise, legal advice should be sought.

2.19 Withdrawal from the public procurement competition

- 2.19 Tenderers who wish to withdraw from the competition are asked to formally do so by the e-tenders website. The Contracting Authority should reply confirming receipt of the withdrawal e-mail and place a copy of same on their file. This will be important for determining who should receive a Standstill Notice (see paragraph 3.5 below).

2.20 Site Visit

- 2.20.1 This paragraph states that the Contracting Authority will facilitate site visits by Tenderers. If this paragraph is not required then delete the text of that paragraph and replace with "Not Used".
- 2.20.2 If the Contracting Authority considers that, given the subject matter of the public procurement competition, it is or may be necessary to carry out a site visit of the Tenderer's premises and/or facilities, this should be specified here. Guidance can be sought from the OGP on appropriate text for project-specific circumstances. If there is no such requirement, insert the words 'Not Used' in paragraph 2.20.2.

2.21 Insurance

- 2.21.1 These paragraphs set out the Contracting Authority's insurance requirements. Contracting
– Authorities should only require such types and levels of insurance which are proportionate
2.21.3 and reasonable for the contract. Factors which may be considered by the Contracting
Authority include the risks involved, the value of the contract and the subject matter of the
contract. The Contracting Authority may contact *Risk Unit, State Claims Agency, Treasury
Building, Grand Canal Street, Dublin 2: Tel: (01) 238 4900* for assistance in this matter.

Under the provisions of the Services Contract, the successful Tenderer will be required to maintain specified insurances (if any) for the term of the Services Contract and upon request produce proof of current premiums paid so as to show that the insurance remains valid and is not vitiated or nullified because the premiums have lapsed.

Paragraph 2.21.1 permits the Contracting Authority to insert the level (amount) of insurance that is required of the successful Tenderer. Where one or more types of insurance listed in the paragraph are not required for the Services Contract then the Contracting Authority must insert the word 'none' directly opposite it in the right hand column. Contracting Authorities may insert additional types of insurance to those listed in the left hand column(s). If more than one additional type is required, press return and add in the one cell and insert relevant text.

In accordance with the Procurement Regulations and the ESPD, only the successful Tenderer will be required to produce the requisite supporting documentation. All Tenderers will be required to self-certify under the Tenderer's Statement (Appendix 3, point 8) *"We shall, if awarded any contract under the RFT, have in place on the Effective Date of the Services Contract all insurances (if any) as required by paragraph 2.21.1 of the RFT"*.

PART 3 SELECTION AND AWARD CRITERIA

3.1 Overview

The stages in the evaluation of Tenders in the procurement of Services are:

1	Tenderers must submit a compliant Tender in accordance with paragraph 2.2 of the RFT. If a compliant Tender is not submitted then it is eliminated from the competition at this stage;
2	Tenderers must declare by way of ESPD that (i) no grounds for exclusion of the Tenderer pursuant to Regulation 57 of the Procurement Regulations apply to them, or where they apply, that Tenderers can demonstrate they have taken measures to demonstrate their reliability, and (ii) that they satisfy the Selection Criteria as set out in paragraph 3.2 of the RFT. Failure to provide such a declaration will result in elimination of the Tender from the competition at that stage; and
3	When the Tender passes the above, it is marked against the Award Criteria (see paragraph 3.3).

The following principles of EU law are to be applied by the Contracting Authority when drafting Selection and Award Criteria and in the evaluation of Tenders:

- Non-discrimination,
- Transparency,
- Proportionality,
- Equal treatment and
- Mutual recognition.

The documents which are required by the Contracting Authority to provide evidence that the Tenderer is not affected by any exclusion grounds (i.e., the formal Declaration at Appendix 5 to the RFT) and that the Tenderer meets the Selection Criteria (e.g., financial information, details of previous projects, references, etc.) are not required to be provided with the Tender and will generally be requested from the preferred Tenderer only prior to the contract award decision. Nonetheless, the Contracting Authority reserves the right to seek these “supporting documents” at any point where it is considered necessary to do so. For completeness, “supporting documents” are not required if the relevant information in respect of the Tenderer is available to the Contracting Authority electronically and free of charge by accessing a national database in the Member State concerned.

Once Tenderers have passed the Selection Criteria, they proceed to have their Tenders evaluated under the Award Criteria.

Once the highest-ranking most economically advantageous Tenderer is identified (by application of the Award Criteria set out in paragraph 3.3 of the RFT), the Contracting Authority then calls for the evidentiary documentation to demonstrate that the Tenderer meets the Selection Criteria (if any) and that no grounds for exclusion of the Tenderer pursuant to Regulation 57 of the Procurement Regulations apply to them, giving a reasonable time period to respond. If the highest-ranking Tenderer passes, the highest-ranking Tenderer is then the preferred Tenderer and the Standstill Notices can issue (see paragraph 3.5). If the highest-ranking Tenderer fails, the process is carried out for the Tenderer provisionally ranked number 2 and the process is repeated. Table A below sets out the process.

Table A: Tender Award and Evaluation Process

Stage	Description of Stage	Conditions to be met
1	Compliant Tender – paragraph 2.2	<ul style="list-style-type: none"> -All specified documentation submitted (including ESPD). -Format of response -Language of Tender -Received on time
2	Selection - paragraph 3.2	<p>Tenders passing Stage 1 must declare by way of ESPD that (i) no grounds for exclusion of the Tenderer pursuant to Regulation 57 of the Procurement Regulations apply to them (or where they apply the Tenderer can demonstrate it has taken measures to demonstrate its reliability), and (ii) that they satisfy the Selection Criteria as set out in paragraph 3.2 of the RFT.</p> <p>Selection Criteria set out in the RFT:</p> <p>Part A: paragraph 3.2.A – Economic and Financial Criteria;</p> <p>Note: Tenderers have already self-certified compliance with these criteria by signing and returning the ESPD.</p> <p>Part B: paragraph 3.2.B – Any Professional and Technical Criteria must be met as required in the RFT at this point.</p> <p>Note: Tenderers have already self-certified compliance with these criteria by signing and returning the ESPD.</p>
3	Evaluation of Tenders – paragraph 3.3	Tenders meeting the Selection Criteria are evaluated in accordance with the Award Criteria set out in RFT paragraph 3.3.
4	Identification of Highest Ranked Tenderer	<p>The highest-ranked Tenderer identified, having self-certified its compliance with the Selection Criteria, must then be required to demonstrate that they meet the Selection Criteria and that no grounds for exclusion of the Tenderer pursuant to Regulation 57 of the Procurement Regulations apply by providing the formal Declaration at Appendix 5. A letter must issue notifying the Tenderer of its ranking and calling for the production of the evidentiary documentation required.</p> <p>If the Tenderer fails to demonstrate within the stated time period that it meets the Selection Criteria and/or that no grounds for exclusion of the Tenderer pursuant to Regulation 57 of the Procurement Regulations apply, the Tenderer must be eliminated immediately and notified of the decision to disqualify. The same process is then repeated for the next highest ranked Tenderer and so forth.</p>
5	Issue of Standstill Notices	Once a preferred Tenderer is identified, Standstill Notices are to issue in accordance with the Remedies Regulations to the preferred Tenderer and to all unsuccessful Tenderers.
6	Contract	Must not be executed before expiry of the Standstill Period.

3.2 Selection Criteria

This stage of the competition assesses the ability or capacity of the Tenderers to provide the Services.

Note: Contracting Authorities are not obliged to set out Selection Criteria in competitions. However, any Selection Criteria that are required by the Contracting Authority must be 'proportionate' to the subject matter of the Services Contract. The Contracting Authority should consider the nature and scope of the Services set out in the Requirements and Specifications (Appendix 1), and then determine the minimum standards or characteristics required to comply with Appendix 1.

If the Contracting Authority applies the technical and/or financial Selection Criteria, then it must choose minimum levels of ability/capacity which are 'related to and proportionate to the subject matter of the contract' (see Regulation 58(2) of the Procurement Regulations).

The RFT states that Tenderers will either pass or fail the criteria. The Contracting Authority cannot make a qualitative decision in circumstances where the Selection Criteria are pass or fail.

Contracting Authorities must ensure that the Selection Criteria as specified in the RFT do not conflict with those as set out at Part III.2.2 and Part III.2.3 of the Contract Notice. Other than where the Selection Criteria are straightforward, and relatively short in text, in order to prevent duplication or conflict, Contracting Authorities may wish to omit the Selection Criteria from the Contract Notice and instead incorporate them in the RFT only. In this event the Contracting Authority could insert the following text into Part III.2.2 and Part III.2.3 of the contract notice – 'As specified in the accompanying Request for Tenders (RFT)'.

Tenderers are entitled to rely on the capacity of other entities, irrespective of their legal relationship. Tenderers must submit an undertaking in respect of the Selection Criteria, when required to do so by the Contracting Authority, from those entities that they will place the necessary resources at the disposal of the Tenderer.

3.2.A Economic and Financial Standing

This paragraph sets out the Contracting Authority's minimum requirements in relation to the Economic and Financial Standing of the Tenderers (in accordance with Regulation 58(7) of the Procurement Regulations). Tenderers are also required to provide such evidentiary proof as required by the Contracting Authority. The Contracting Authority must specify what evidentiary documentation is required and should follow the instructions in the 'FREE TEXT AREA' marked in red.

3.2.B Technical and Professional Ability

This section requires the Contracting Authority to set out its minimum requirements in relation to Tenderers' Technical and Professional ability, in accordance with Regulation 58 of the Procurement Regulations (and as set out in the Requirements and Specifications (Appendix 1)). The Contracting Authority must specify what evidentiary documentation is required and should follow the instructions in the 'FREE TEXT AREA' marked in red.

3.3 Award Criteria

The Contracting Authority may award the contract to the highest scoring Tenderer who has passed the Selection Criteria and has demonstrated that no grounds for exclusion of the Tenderer pursuant to Regulation 57 of the Procurement Regulations apply.

The Contracting Authority must follow the instructions in the 'FREE TEXT AREA' marked in red, should adopt the following format to express its Award Criteria and must give very careful consideration to the Award Criteria:

- | | |
|---|--------------|
| (1) [<u>First award criterion</u>] | overall mark |
| a. [first sub-award criterion] | mark |
| b. [second sub-award criterion, if any] | mark |
| c. [third sub-award criterion, if any] | mark |

(Second and subsequent award criteria (if any) should be set out in the same manner)

When drafting the criteria, the Contracting Authority must have regard to the subject matter of the competition and the general principles of EU law.

Selection Criteria are not acceptable Award Criteria.

Regulation 67 of the Procurement Regulations contains a non-exhaustive list of Award Criteria. The criteria must be 'linked to the subject matter of the contract'. The general principles of EU law apply. Contracting Authorities are reminded that when framing Award Criteria and when testing the Services to be provided against the Award Criteria, Contracting Authorities must apply the following general principles of EU law:

- Non-discrimination,
- Transparency,
- Proportionality,
- Equal treatment and
- Mutual recognition.

The Award Criteria and sub-criteria must be clearly set out and the marks to be awarded for each of the Award Criteria and sub-criteria must be specified.

Where particular social and ethical considerations apply, these must be set out in the Requirements and Specifications (Appendix 1).

Contracting Authorities must ensure that the Award Criteria, as specified in the RFT, do not conflict with those as set out at Part IV.2 of the Contract Notice. In order to avoid duplication or conflict, Contracting Authorities may wish to insert the Award Criteria in the RFT only. In this event, the Contracting Authority should insert the following text into Part IV.2 of the Contract Notice: 'As specified in accompanying Request for Tenders (RFT)'.

The award of contract (if any) to the highest-ranked Tenderer (as determined by paragraph 3.3), will be conditional upon:

- The highest-ranked Tenderer identified submitting the documentation required under paragraph 3.3.2(a) within the time period specified by the Contracting Authority (see Table A); and
- The documentation at paragraph 3.3.2(a) of the RFT demonstrating that each entity concerned meets the Selection Criteria (specified at paragraph 3.2 of the RFT) and the compliance requirements (specified at paragraph 3.1 of the RFT).

Note: There is an obligation on Contracting Authorities to give sufficient information in the Standstill Notice (see paragraph 3.5) to enable an unsuccessful Tenderer to decide whether there are grounds for seeking a review of the Contracting Authority's decision. The Standstill Notice must:

- Inform them of the decision reached,
- Set out a summary of the reasons for rejection of the Tender,
- Specify the exact date upon which the Standstill Period expires; and
- In the case of a concerned Tenderer who has submitted an admissible Tender, the summary must include the characteristics and relative advantages of the tender selected and the name of the successful Tenderer.

To satisfy these requirements it is essential that the Award Criteria for the competition have been clearly stated and the assessment process for the purpose of ranking of Tenderers is transparent.

3.4 Presentation of Proposals

This paragraph provides that Tenderers (at their own cost) may be required to make a presentation to the Contracting Authority of the proposal as set out in their Tender. It is clearly set out in the RFT that performance at presentations is NOT evaluated. Presentations can be useful to assist the Contracting Authority in understanding the solution proposed by Tenderers and may result in a Contracting Authority raising clarifications.

3.5 Standstill Period

Contracting Authorities must observe a standstill period before execution/signing of a contract (“Standstill Period”). The Remedies Regulations set out the relevant rules regarding the obligatory duration of a Standstill Period, the content of a standstill notice (“Standstill Notice”) and sanctions applicable for failure to comply.

The RFT states that a Standstill Period of 14 days will apply where the notification to unsuccessful concerned tenderers/candidates is sent electronically (i.e., via e-mail or fax). The Standstill Period commences the date after the notification is sent. It is always open to a Contracting Authority to have a longer Standstill Period.

During the Standstill Period the Services Contract cannot be executed/signed with the preferred Tenderer, nor should any part-performance of the contractual obligations be permitted. The objective of the Standstill Period is to allow for effective pre-contractual remedy.

3.6 Return of Signed Contracts

These paragraphs provide that the successful Tenderer is to sign and return the Services Contract and the Confidentiality Agreement, both in duplicate, within a specified number of days after the expiry of the Standstill Period as specified in the Standstill Notice, or as otherwise notified in writing by the Contracting Authority to the successful Tenderer – this will allow latitude to the Contracting Authority if there are delays in issue of the contract, for whatever reason. No contract will come into being unless and until the Services Contract has been signed by the Contracting Authority.

If the signed Services Contract and the Confidentiality Agreement have not been received from the successful Tenderer, the Contracting Authority reserves the right to award the Services Contract to the next highest-ranked Tenderer.

Appendix 1 - Requirements and Specifications

Contracting Authorities should follow the instructions in the FREE TEXT AREA and are advised to be cognisant of the following issues when completing Appendix 1:

1.	Express the Contracting Authority's requirements (including any sector specific or operational requirements) in a clear, concise and comprehensive manner. In doing so, Contracting Authorities must pay particular attention to clearly delineating and describing their specifications and requirements where they are relevant to the Selection and Award Criteria.
2.	Do not insert text which conflicts or repeats any requirements or matters that are dealt with elsewhere in the RFT, particularly in Part 2 of the RFT, the 'Instructions to Tenderers'.
3.	Ensure that sufficient information is provided in this Appendix to permit the market to determine the extent of the Contracting Authority requirements for completion of the Tender. Information on the work of the Contracting Authority and historical data/context can be inserted in this Appendix.
4.	Ensure that the words 'can', 'may', 'shall', 'not', 'must' and 'should' are used correctly in completing this Appendix so as to reflect the Contracting Authority's intention clearly.
5.	The Contracting Authority may use as many sub-appendices (e.g. Appendix 1A – Drawings, Appendix 1B – Design Requirements, Appendix 1C – Required Delivery Schedule, etc.) as required within Appendix 1.
6.	Ensure that the contents of the RFT do not conflict with the contents of the Contract Notice.

Appendix 2 – Pricing Schedule

Contracting Authorities should follow the instructions in the FREE TEXT AREA' and refer to paragraph 2.10 above.

Appendix 3 – Tenderers' Statement

This statement constitutes acceptance of the RFT conditions, the Services Contract terms and conditions and the Confidentiality Agreement.

The statement ensures that all Tenderers are tendering on an equal basis. It is not intended that Contracting Authorities 'negotiate' on the Services Contract terms and conditions.

Appendix 4 - European Single Procurement Document

The Procurement Regulations introduced the ESPD to reduce the evidence to be provided by Tenderers at the selection stage of the competition (previously called the "pre-qualification" stage) and to standardise the different formats used across EU Member States for providing the information required at this stage.

The ESPD is effectively a "self-declaration" by a Tenderer that: (i) it does not fall within any of the situations which would exclude it from participating in a public procurement competition (the "exclusion grounds"); and (ii) it meets the Selection Criteria for the competition specified in paragraph

3.2 of the RFT – i.e., it has the necessary economic and financial standing and technical and professional ability to meet the Contracting Authority’s requirements.

If a Tenderer does fall within any of the exclusion grounds (e.g., if it has been convicted of certain criminal offences) it also has the opportunity to explain in the ESPD what action it has taken to rectify the situation (this is referred to as “self-cleaning”). In this case, if the “self-cleaning” measures are considered by the Contracting Authority to be sufficient to demonstrate the reliability of the Tenderer, the Tenderer may still be permitted to participate in the competition.

A completed ESPD is required for the main Tenderer but also for any subcontractors or other consortium members. Instructions on which parts of the ESPD must be completed by each party are set out in paragraph 3.1 of the RFT.

Tenderers may also reuse an ESPD which has already been used in a previous procurement competition as long as the information remains correct and up to date and the Tenderer can confirm that it meets the Selection Criteria for the current competition.

Appendix 5 – Declaration as to Personal Circumstances of Tenderer

This Appendix is generally only required at preferred Tenderer stage. This Appendix sets out the formal Declaration required regarding the Personal Circumstances of Tenderers.

The provisions of Regulation 57 of the Procurement Regulations apply to above-threshold procurements only.

Appendix 6 – Services Contract

Contracting Authorities must ensure that the Services Contract is inserted into this Appendix (following the instructions noted) and that:

- The “Agreement” page has been completed as far as possible, for example by inserting Client contact details;
- All fields have been completed as required; and
- Contracting Authorities should use the Guidance Notes for the completion of the Services Contract when completing the Services Contract.

Appendix 7 – Confidentiality Agreement

See paragraph 2.9 above.