

Competition

Approve Strategy (Gate C)

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Executive Summary

The Energy Act 2004 obliges the NDA to promote effective competition. The NDA is also legally obliged to comply with the Public Contract Regulations 2006 and extant EU Procurement Directives, both of which require the NDA to place its contracts openly and transparently through an advertised competition process which affords equality of opportunity for all potential bidders. Contracts awarded must reflect the NDA's published mission statement:

"To deliver safe, sustainable and publicly acceptable solutions to the challenge of nuclear clean-up and waste management. This means never compromising on safety or security, taking full account of our social and environmental responsibilities, always seeking value for money for the tax payer and actively engaging with stakeholders".

The structural contracting model implemented by the NDA underpins the requirement for the SLC to be the "controlling mind" for the site. Hence competitions address the appointment of Parent Body Organisations (PBOs), who take temporary ownership of the SLCs for the term of the competed Parent Body Agreements (PBAs).

Each PBO competition will be framed against a bespoke specific Business Case, Contracting Strategy and Procurement Strategy developed for that competition, recognizing the differing nature of performance priorities for each site/group of sites. A consistent requirement will be the drive to secure optimal value for money performance in delivering the relevant SLC's site mission.

Each competition will be conducted and managed by a suitably qualified and experienced Competition Team formed specifically for the purposes of that competition. The Competition Team will engage expert external advisers as necessary to assist in specialist aspects of the competition process.

The Competition Team will ensure that PBO competitions are conducted in strict compliance with the NDA's legal obligations under the Public Contracts Regulations (PCR) 2006, and the relevant EU Procurement Directives. Typically, the selection of a PBO will be a complex matter, and the Competitive Dialogue procedure is most likely to serve the NDA's needs in its PBO competitions.

The conduct of any PBO competition will be subject to an appropriate governance and assurance regime, involving both NDA internal and external bodies. Key governance submissions will be made at each critical decision point and, where appropriate, will include 3rd party assurance reports to provide independent readiness assessments.



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Document Revision Record

Version	Stage	Record of Change	Author	Date

1 The Strategic Case (Stage 0) ‘Research’

1.1 Background

The NDA is a Non-Departmental Public Body (NDPB) charged with providing a strategic focus on the decommissioning and clean-up of those civil nuclear sites “Designated” under the Energy Act 2004. In discharging this mission, together with other secondary obligations, the NDA spends in the region of £2.8bn p.a. The majority of this money is spent by the Site Licence Companies (SLCs) which manage and operate the NDA’s sites under the terms of Management & Operations (M&O) contracts.

The original suite of Management and Operations contracts (M&O) came into effect in 2005 and served to implement the NDA’s initial generic strategic contracting model across the NDA estate. These contracts provided substantial flexibility for the NDA, particularly with those SLCs with mixed missions of ongoing production/operational work-streams and nuclear decommissioning/clean-up. The NDA’s competition programme is progressively replacing these initial generic contracts with site specific contracts which preserve generic approaches where appropriate but have been tailored to underpin delivery of the individual requirements of each site.

The NDA’s contracting arrangements must reflect its published mission statement:

“To deliver safe, sustainable and publicly acceptable solutions to the challenge of nuclear clean-up and waste management. This means never compromising on safety or security, taking full account of our social and environmental responsibilities, always seeking value for money for the tax payer and actively engaging with stakeholders”.

The Energy Act 2004 obliges the NDA to promote effective competition. The NDA is also legally obliged to comply with the Public Contract Regulations 2006 and extant EU Procurement Directives, both of which require the NDA to place its contracts openly and transparently through an advertised competition process which affords equality of opportunity for all potential bidders.

The structural contracting model implemented by the NDA underpins the enforceable regulatory and site licensing regime which, inter alia, controls changes to the SLC’s organisational structure, and affords Regulators powers to review the qualifications and experience of personnel in key SLC roles. Consistent with this regime, the SLC must continue to be the “controlling mind” for the site. Other implications are that the SLC must continue to be the employer of SLC staff, and must also procure and manage all sub-contracts. For these reasons, the SLC is established as an enduring entity which must continue to hold the Site Management and Operations contract. Hence the NDA’s competition programme addresses the appointment of Parent Body Organisations (PBOs), who take temporary ownership of the SLCs for the term of the competed Parent Body Agreements (PBAs).

2 Overview

The detailed implementation plan for any individual PBO competition will be significantly influenced by the specific Business Case, Contracting Strategy and Procurement Strategy developed for that competition, together with information gained through competition-specific market engagement. The responsible NDA Competition Team will develop such bespoke elements, securing approval as appropriate through the governance regime associated with that competition.

Individual PBO competitions will be conducted and managed by a suitably qualified and experienced Competition Team formed specifically for the purposes of the competition. This team will ensure that the competition process complies with applicable EU procurement requirements, Office of Government Commerce (OGC) guidance, and emerging best practice in public procurement. The Competition Team will engage expert external advisers as necessary to assist in specialist aspects of the competition process. The specific requirements for external support will be assessed on a case by case basis but will normally as a minimum involve the appointment of legal advisers, in which respect the Competition Team will work in close liaison with the NDA's legal team.

The Competition Team will ensure that all bidders and prospective bidders are afforded equality of opportunity, and that all competition information is provided to bidders on a common and consistent basis. The need to observe this principle diligently will be particularly acute in any cases where a competition involves participation by an incumbent PBO, whether bidding alone or as part of a consortium. In such circumstances, and in conjunction with the relevant NDA Site Facing Team, the Competition Team will develop and publish an appropriate protocol to address rules for the incumbent bidder.

PBO competitions must be conducted in strict compliance with the NDA's legal obligations under the Public Contracts Regulations (PCR) 2006, and the relevant EU Procurement Directives. Each competition must develop and address critical success factors individually tailored to the specific performance priorities of the competed PBO role and SLC. However, a consistent requirement will be the drive to secure optimal value for money performance in delivering the relevant SLC's site mission.

To comply with its PCR and EU Procurement obligations, the NDA must select from a range of available procurement procedures. Typically, the selection of a PBO will be a complex matter requiring comparative analysis of a range of technical and contractual solutions. The Competitive Dialogue procedure is most likely to serve the NDA's needs in its PBO competitions. For that reason, and because Competitive Dialogue is the preferred UK Government procedure for complex public sector procurements, the normal assumption will be that PBO competitions will adopt this procedure. Each Competition Team will assess the most appropriate procedure to use for any individual competition, and secure governance approval for its recommended approach before commencement of the competition.

Under the NDA's contracting model, the primary role of the PBO is to optimise the performance of the SLC through its ownership and governance influence. The intended outcome of any PBO competition is the identification and appointment of the bidder who has offered the most economically advantageous proposals to achieve this optimisation of the relevant SLC's performance. The contractual terms of the PBO's appointment will be set out in the PBA, under which (inter alia) the appointed PBO is granted ownership



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of the shares of the SLC for the duration of the PBA. Where appropriate, a Transition Agreement will be utilised as a mechanism to enable mobilisation of the appointed PBO prior to the signature of the PBA. The signatories to the PBA and Transition Agreement are the PBO, the SLC and the NDA.

The SLCs are responsible for the management and operation of the NDA's sites under the terms of the applicable M&O contracts/Site Licence Company Agreements, the signatories to which are the responsible SLC and the NDA.

Each competition will be conducted under PRINCE 2 project management methodologies, with a Senior Responsible Officer appointed and a Project Board established to undertake direct first level governance of the competition. Competitions will be subject to OGC Gateway review assurance processes.

It will be critical in any PBO competition to ensure that all bidders are treated fairly, and afforded demonstrable equality of opportunity, with no bidder gaining any real or perceived unfair competitive advantage over others. This will require particularly sensitive handling where an incumbent PBO is involved in the competition. The competition process must also ensure due protection of any confidential information disclosed by a bidder. This is an important principle not only for normal reasons of probity, but also as a means to secure the necessary level of trust and confidence amongst bidders to enable open and effective dialogue.

3 Competition Process

3.1 Introduction

The conduct of a PBO competition will typically involve the following key stages, greater detail on which is set out in the relevant, extant competition procedure documentation:

- Preparation of Outline Competition Report
- Publication of OJEU Prior Indicative Notice (PIN)
- Market Engagement
- Preparation of Finalised Competition Report
- Preparation of Project Initiation Document
- Publication of OJEU Contract Notice
- Industry Event
- Pre-Qualification stage
- Issue of Invitation to Participate in Dialogue
- The Dialogue Phase
- Issue of Invitation to Submit Final Tenders
- Final Tender Evaluation
- Appointment of Preferred Bidder
- Contract Finalisation
- Contract Award
- Debriefing
- Capture of Lessons Learned

4 Governance and Review

4.1 Governance Arrangements

The conduct of any PBO competition will typically be subject to formal governance by the following bodies

- The Project Board appointed for that competition;
- The Competition Programme Board;
- The NDA Board;
- DECC and HMT Ministers

Though not all governance bodies will be involved at every stage, typically the following key competition milestones will be subject to governance review:

- Outline Competition Report;
- Finalised Competition Report;
- Project Initiation Document;
- Invitation to Participate in Dialogue;
- Prequalification Report;
- Invitation to Submit Final Tenders;
- Tender Evaluation Report; and
- Contract Award Recommendation Report.

Key governance submissions will include 3rd party assurance reports. These assurance reports will provide governance bodies with an independent assessment of the fitness for purpose of draft baseline contract documents.

4.2 Additional Reviews

In addition to the formal governance arrangements, each competition project will be subject to OGC Gateway Reviews, and possibly also scrutiny by the Major Projects Authority. To provide further underpinning and demonstration of probity, the NDA's internal audit team will undertake audit reviews to confirm the Competition Team's adherence to approved procedures. Additionally there is the possibility of audit by Lloyds (related to ISO 9001-2000) and the NAO.