



Homes
England

Date: 23 December 2021

Our Ref: RFI3696

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

██████████
By Email Only

Information Governance Team
Homes England
Windsor House – 6th Floor
50 Victoria Street
London
SW1H 0TL

Dear ██████████

RE: Request for Information – RFI3696

Thank you for your request for information which was processed in accordance with the Freedom of Information Act 2000 (FOIA).

You requested the following information:

Legal Services Framework.:

The details we require are:

- *Suppliers who applied for inclusion on each framework/contract and were successful & not successful at the PQQ & ITT stages*
- *Actual spend on this contract/framework (and any sub lots), from the start of the contract to the current date*
- *Start date & duration of framework/contract?*
- *Could you please provide a copy of the service/product specification given to all bidders for when this contract was last advertised?*
- *Is there an extension clause in the framework(s)/contract(s) and, if so, the duration of the extension?*
- *Has a decision been made yet on whether the framework(s)/contract(s) are being either extended or renewed?*
- *Who is the senior officer (outside of procurement) responsible for this contract?*

Response

We can confirm that we do hold some of the information you have requested. We will address each of your questions in turn.

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1. *Suppliers who applied for inclusion on each framework/contract and were successful & not successful at the PQQ & ITT stages*

Successful Applicants:

We are able to inform you that we do hold the information that you have requested. However, we rely on section 21, exemption where information is available to the applicant elsewhere.

The full text of the legislation can be found on the following link:

<https://www.legislation.gov.uk/ukpga/2000/36/section/21>

Advice and Assistance

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. As such, we can confirm that the list of suppliers who applied for a place on the framework and were successful at PQQ and ITT stages are available on the following link: [Services - 190258-2018 - TED Tenders Electronic Daily \(europa.eu\)](#)

Unsuccessful Applicants:

Section 41 – Information provided in confidence

Under section 41(1)(b) of the FOIA Homes England is not obliged to disclose information to the public if it would constitute a breach of confidence.

Unsuccessful applicants applied to Homes England for inclusion on the panel in confidence and with the expectation that their applications would not be publicly disclosed. To disclose the names of unsuccessful applicants would be likely to lead to the public being able to infer details of these companies' financial status and future business plans.

Although section 41 of the FOIA is an absolute exemption and there is no requirement to conduct a full public interest test, we can confirm that we have considered the public interest in disclosure as a breach of confidence may not be actionable if there is an overriding public interest in that disclosure. In regard to the unsuccessful applicant names we feel that there is no overriding public interest in favour of disclosure.

The full text of the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/41>

Section 43 - Commercial interests

Further and in the alternative, I consider that the information is exempt from disclosure under section 43(2) of the FOIA. This exempts information whose disclosure would, or would be likely to, prejudice the commercial interests of any legal person (an individual, a company, the public authority itself or any other legal entity). We consider that the publication of the names of unsuccessful applicants is likely to be injurious to their commercial interest as they will be perceived as not having met the standard for appointment to the framework. This may affect their ability to win other business particularly from public sector bodies. Moreover, Homes England's own commercial interests will be prejudiced because Homes England has just embarked on the re-procurement of its legal panel (an Early Engagement notice was published on Contracts Finder on 17 December 2021) and the publication of the identity of unsuccessful bidders at such a sensitive time would be highly likely to deter firms from bidding. This would undermine the ability of Homes England to procure legal services from the market competitively.

Section 43(2) is a qualified exemption. Homes England must consider whether the public interest in maintaining the exemption outweighs the public interest in its disclosure (i.e. there is a presumption in favour of disclosure). We have applied the public interest test and have concluded that the information should not be disclosed. We have had



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regard to the Commissioner's Decision FS50387747 in which it was stated that "The Commissioner does not consider that there is a legitimate public interest in disclosing the names of unsuccessful bidders. As contracts were not awarded to the unsuccessful bidders there is no legitimate interest in understanding how public money is being spent".

The full text of the legislation can be found on the following link:

<https://www.legislation.gov.uk/ukpga/2000/36/section/43>

2. Actual spend on this contract/framework (and any sub lots), from the start of the contract to the current date

The actual spend on this framework is approximately £28m. We do not have a breakdown of spend under each lot as the suppliers are spread across multiple lots.

3. Start date & duration of framework/contract?

The contract start date was 1 May 2018 for a duration of 4 years.

4. Could you please provide a copy of the service/product specification given to all bidders for when this contract was last advertised?

Please find attached as Annex A, a copy of the Memorandum of Information which was issued to the bidders when this contract was advertised. However, we rely on Section 40 (2) of the FOIA to withhold some information from disclosure.

Section 40 – Personal information

We have redacted information on the grounds that it constitutes third party personal data and therefore engages section 40(2) of the FOIA.

To disclose personal data, such as names, contact details, addresses, email addresses and personal opinions could lead to the identification of third parties and would breach one or more of the data protection principles.

Section 40 is an absolute exemption which means that we do not need to consider the public interest in disclosure. Once it is established that the information is personal data of a third party and release would breach one or more of the data protection principles, then the exemption is engaged.

The full text in the legislation can be found on the following link:

<https://www.legislation.gov.uk/ukpga/2000/36/section/40>

5. Is there an extension clause in the framework(s)/contract(s) and, if so, the duration of the extension?

There is no extension clause in the framework.

6. Has a decision been made yet on whether the framework(s)/contract(s) are being either extended or renewed?

Yes. An Early Engagement Notice was published on Contracts Finder on 17 December 2021. The link to the opportunity is here: [Homes England Legal Services Framework 2022-2026 - Contracts Finder](#)



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7. Who is the senior officer (outside of procurement) responsible for this contract?

We are able to inform you that we do hold the information that you have requested. However, we rely on Section 40 (2) of the FOIA to withhold the information from disclosure.

Section 40 – Personal information

We are withholding information on the grounds that it constitutes third party personal data and therefore engages section 40(2) of the FOIA.

To disclose personal data, such as names, contact details, addresses and email addresses could lead to the identification of third parties and would breach one or more of the data protection principles.

Section 40 is an absolute exemption which means that we do not need to consider the public interest in disclosure. Once it is established that the information is personal data of a third party and release would breach one or more of the data protection principles, then the exemption is engaged.

The full text in the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/40>

Advice and Assistance

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. As such we can advise that the Contracts Finder Early Engagement Notice (link as per the above) contains a statement that “Homes England is requesting interested parties show their interest via the email address legalservicestender@HomesEngland.gov.uk before 5pm 14 January 2022”.

Right to Appeal

If you are not happy with the information that has been provided or the way in which your request has been handled, you may request an internal review. You can request an internal review by writing to Homes England via the details below, quoting the reference number at the top of this letter.

Email: infogov@homesengland.gov.uk

The Information Governance Team
Homes England – 6th Floor
Windsor House
50 Victoria Street
London
SW1H 0TL

Your request for review must be made in writing, explain why you wish to appeal, and be received within 40 working days of the date of this response. Failure to meet this criteria may lead to your request being refused.

Upon receipt, your request for review will be passed to an independent party not involved in your original request. We aim to issue a response within 20 working days.

You may also complain to the Information Commissioner’s Office (ICO) however, the Information Commissioner does usually expect the internal review procedure to be exhausted in the first instance.



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The Information Commissioner's details can be found via the following link:

<https://ico.org.uk/>

Please note that the contents of your request and this response are also subject to the Freedom of Information Act 2000. Homes England may be required to disclose your request and our response accordingly.

Yours sincerely,

The Information Governance Team

For Homes England

OFFICIAL



Homes &
Communities
Agency

MEMORANDUM OF INFORMATION

LEGAL SERVICES FRAMEWORK

02 October 2017

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1 Introduction

This Memorandum of Information (MOI) and Selection Questionnaire (SQ) have been issued by the Authority in connection with a competitive procurement procedure. “Authority” means the Homes and Communities Agency (HCA), or anyone acting on behalf of the HCA that is seeking to invite suitable Suppliers to participate in this procurement process.

“You”/ “Your” or “Supplier” means the body completing the Pre-Qualification Questionnaire **i.e. the legal entity seeking to provide the required Service and responsible for the information provided.** The ‘Supplier’ is intended to cover any economic operator as defined by the Public Contract Regulations 2015.

The Homes and Communities Agency

The HCA is the single, national housing and regeneration delivery body for England. Our vision is to create opportunity for people to live in homes they can afford in places they want to live, by enabling local authorities and communities to deliver the ambition they have for their own areas.

We achieve this by:

- Understanding the needs and aspirations of people and communities through close working with local authorities on local investment planning;
- Enabling local delivery through the channelling of our expertise and investment; and
- Working effectively with the market, house builders, investors and other stakeholders.

We operate throughout England. However, responsibility for housing and regeneration activity in London lies with the Greater London Authority although some programmes have been delegated to the HCA to deliver.

This autumn, we will re-launch as Homes England and use our land, finance and expertise to play a more active role in the house building industry. For more information visit www.gov.uk/hca.

The HCA’s in-house legal team consists of nine professional staff divided to provide real estate, investment, public law and employment advice. Given the size, scope, nature, complexity and number of transactions this small internal resource is not sufficient to meet the legal requirements of the HCA. Therefore, in order to secure timely delivery of its projects and to perform these functions, a broad range of legal advice and services is required through external panels.

The HCA’s existing Framework Agreement for Legal Services expires on 30 April 2018 and we are therefore seeking to retender for a new Legal Services Framework Panel for a period of four years from 1 May 2018.

Legal Services Framework Agreement

The HCA intends to appoint one panel consisting of two lots. Neither lot will provide services to the regulator for social housing.

It is envisaged that between 5 – 7 firms will be appointed to provide Lot 1 services and 3 - 5 firms will be appointed to provide Lot 2 services.

Firms may apply for both Lots. However, when applying for more than one Lot, a separate SQ response will be required for each Lot application. Firms will only be appointed to one Lot.

2 Scope of Services

All Firms appointed to the panel must be capable of providing all mandatory services in addition to those identified in a Lot to enable the HCA to deliver its remit in accordance with the HCA's Financial Framework.

2.1 Mandatory Services

1. Real Estate: including Acquisitions, Disposals and Building Leases;
2. Housing including but not limited to Affordable/Social Housing;
3. Procurement and State Aid;
4. Planning, including CPO;
5. Development and Construction;
6. Contracts (goods, works and services);
7. Litigation

2.2 Lot 1 Services

1. Property: including Landlord and Tenant, plot sales, estate management, release of restrictions and consents;
2. Commercial law: including grant agreements;
3. Banking (Development Finance) and Restructuring (in the event of default);
4. Mortgage enforcement and possession claims;
5. Agricultural law;
6. Environment Law.

2.2 Lot 2 Services

1. Commercial Property: Property Finance, Major Infrastructure and Regeneration;
2. Commercial law including Banking, Venture Capital, Loan Finance, Restructuring (including in the event of distress) and Insolvency;
3. Company law: including SPVs and Joint Ventures;
4. Intellectual Property;
5. Financial Regulation and Taxation;
6. Public/Administrative Law;
7. Employment.

Firms that are unable to provide Lot 1 OR Lot 2 services in addition to ALL mandatory services will be deemed non-compliant and will be unable to progress further.

Neither Lot will provide support to the regulator for social housing.

3 Procurement Process and Timetable

The successful Suppliers will be appointed through a three stage process: response to the Selection (SQ), the Invitation to Tender (ITT) and an interview.

The SQ is the first stage of the tender process and has been designed to assess the suitability of a Supplier to deliver the Authority's contract requirement(s). If you are successful at this stage of the procurement process, you will be selected for the subsequent award stages.

This Memorandum of Information (MOI) is intended to be read in conjunction with the Contract Notice, the SQ and supporting Appendices. The MOI provides background context and information to inform potential Suppliers understanding of whether they have the ability, competence, financial standing to perform and capacity to deliver the Services.

The MOI and SQ are provided on the same basis to all Suppliers.

Responses to the SQ will be used in the first step to shortlist Suppliers. **When applying for more than one Lot, a separate SQ response for each Lot will be required.** Responses will be evaluated in accordance with the evaluation criteria set out in [Section 10](#).

The following number of Suppliers will then be invited to participate further in the procurement process at the ITT stage for each Lot:

Lot 1 and Mandatory Services	maximum 14 Firms
Lot 2 and Mandatory Services	maximum 14 Firms

Financial appraisals will be undertaken and references will be requested after the marking of the SQs if a Supplier is within the potential shortlist group, as above. Additionally, the next three Suppliers will also have appraisals and references taken to allow for unsatisfactory results. Should either financial appraisal or any reference be considered by the HCA to be unsatisfactory the Supplier will be disqualified and not placed on the shortlist.

ITTs will be issued to shortlisted Suppliers. Following issue of the ITT, scores from the SQ will not form any further part of the selection process.

Responses to the ITT will be in two parts, Quality and Financial. The ITT (Quality only) will be assessed first and Suppliers may be called for Interview. The HCA reserves the right not to undertake the Interview stage of the ITT.

The responses for each of the Lots will be marked simultaneously at both SQ and ITT (Quality only) stages.

Following assessment of the financial bids all Suppliers will be advised of the HCA's decision.

No information contained in the MOI/SQ or in any communication made between the HCA and any Supplier in connection with this procurement exercise, shall be relied upon as constituting a contract, agreement or representation that any contract shall be offered in accordance with this MOI/SQ. The HCA reserves the right to cancel the process at any time.

Under no circumstances shall the HCA incur any liability in respect of this SQ/MOI or any supporting documentation. The HCA will not reimburse the costs incurred by Suppliers in connection with the preparation and submission of their response to this SQ/MOI.

Direct or indirect canvassing of any Ministers, public sector employee or agent by any potential bidder concerning this requirement, or any attempt to procure information from any of the above concerning this SQ/MOI may result in disqualification of the Supplier from consideration for this requirement.

Set out below is the proposed procurement timetable. The dates below are provisional only and the HCA reserve the right to change these.

Procurement Stage	Indicative Date
Contract Notice published	1 October 2017
Deadline for SQ submissions	1 November 2017 (by 5pm)
Invitation to Tender issued	15 December 2017
Deadline for ITT responses	29 January 2018 (by 5pm)
Interviews	w/c 26 February 2018
Contract awarded	12 March 2018

3.1 Procurement Queries

The HCA's named point of contact for the procurement of this contract is **s. 40(2)**. All requests for further information in respect of the contract should be sent using the contact details below. No approach of any kind should be made to any other person within, or associated with, the HCA.

Suppliers should specify in their clarification questions if they wish the clarification to be considered as confidential between themselves and the HCA. The HCA will consider any such request and will either respond on a confidential basis or give the Supplier the right to withdraw the clarification question. If the Supplier does not elect to withdraw the question and the HCA considers any clarification question to be of material significance, both the question and the response will be communicated, in a suitably anonymous form, to all prospective Suppliers.

All responses received and any communication from Suppliers will be treated in confidence but will be subject to the above.

Please note all communications during the tender period will be via the ProContract website. All bidders that have registered their interest for the Procurement will receive a direct email notification from ProContract on any updates via the suppliers registered email address. **It is the Suppliers responsibility to check the ProContract website for any updates to the Procurement process. No claim on the grounds of lack of knowledge of the above mentioned item will be entertained.**

3.2 Submission of SQ

Please refer to the ProContract Portal Advert for the **Deadline for your submission.**

The completed SQ **MUST** be returned using the ProContract Portal, no hard or paper copies will be accepted. Suppliers **MUST** ensure that suitable provision is made to ensure that the submission is made on time.

4 Instructions and Information

4.1 General Information

Suppliers are invited to complete the SQ and submit, together with any requested supporting information, by the due date for return.

The Supplier should check the MOI/SQ documentation for obvious errors and missing information. Should any such errors or omissions be discovered you must inform the named point of contact for the procurement as noted in [Section 2.1 Procurement Queries](#) at once in writing. No alteration may be made to any of the documents attached thereto without the written authorisation of the HomesEngland. If any alterations are made, or if these instructions are not fully complied with, the SQ may be rejected.

Suppliers have been asked to include a single point of contact in their organisation for their response to the SQ (As detailed in Section 1.3 of the SQ). the HCA shall not be responsible for contacting the Supplier through any route other than the nominated contact. The Supplier must therefore undertake to notify any changes relating to the contact promptly or they will be unable to receive communications from the HCA.

Please ensure that all questions are completed in full, and in the format requested. Failure to do so may result in your submission being disqualified. If the question does not apply to you, please state clearly 'N/A'.

Where requirements as specified within the SQ are not currently held, Suppliers are required to identify how they intend to deliver the Services on award i.e. securing the qualifications on award and prior to the start of the contract.

Should you need to provide additional Appendices in response to the questions, these should be numbered clearly and listed as part of your declaration (Section 1.3 of SQ). A template for providing additional information is provided at the end of the SQ document.

Questions should be answered in English.

Information supplied will be checked for completeness and compliance with the instructions before responses are evaluated. Failure to provide the required information, make a satisfactory response to the question, or supply documentation referred to in responses, within the specified timescales, may mean that the SQ is not further evaluated.

Suppliers must be explicit and comprehensive in their response to this SQ as this will be the single source of information on which responses will be evaluated.

the HCA expressly reserves the right to require Suppliers to provide additional information supplementing or clarifying any of the information provided in response to the requests set out in the SQ.

When applying for more than one Lot, a separate SQ response for each Lot will be required.

4.2 Verification of Information Provided

Whilst reserving the right to request information at any time throughout the procurement process, the Authority may enable the Supplier to self-certify that there are no mandatory/discretionary grounds for excluding their organisation. When requesting evidence that the Supplier can meet the specified requirements (such as the questions in Sections 6 and 8.8 of the SQ relating to Technical and Professional Ability) the Authority will seek to obtain such evidence from shortlisted Suppliers only.

This information will normally be required to be provided within 7 days of informing Supplier(s) of intention to shortlist.

4.3 Sub-contracting arrangements

Where the Supplier proposes to use one or more sub-contractors to deliver some or all of the contract requirements, the **sub-contracting arrangements template** provided at the end of the SQ should be completed to provide details of the proposed bidding model, that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.

The Authority recognises that arrangements in relation to sub-contracting may be subject to future change, and may not be finalised until a later date. However, Suppliers should be aware that where information provided to the Authority indicates that sub-contractors are to play a significant role in delivering key contract requirements, any changes to those sub-contracting arrangements may affect the ability of the Supplier to proceed with the procurement process or to provide the supplies and/or services required. Suppliers should, therefore, notify the Authority immediately of any change in the proposed sub-contractor arrangements. The Authority reserves the right to deselect the Supplier prior to any award of contract, based on an assessment of the updated information.

4.4 Consortia arrangements

If the Supplier completing the SQ is doing so as part of a proposed consortium, the following information must be provided;

- Names of all consortium members;
- The lead member of the consortium who will be contractually responsible for delivery of the contract (if a separate legal entity is not being created); and
- If the consortium is not proposing to form a legal entity, full details of proposed arrangements within a separate Appendix.

Please note that the Authority may require the consortium to assume a specific legal form if awarded the contract, to the extent that a specific legal form is deemed by the Authority as being necessary for the satisfactory performance of the contract.

All members of the consortium will be required to provide the information required in **all** sections of the SQ as part of a single composite response to the Authority i.e. each member of the consortium is required to complete the form.

The Authority recognises that arrangements in relation to a consortium bid may be subject to future change. Suppliers should therefore respond on the basis of the arrangements as currently envisaged. Suppliers are reminded that the Authority must be immediately notified

of any changes, or proposed changes, in relation to the bidding model so that a further assessment can be carried out by applying the selection criteria to the new information provided. The Authority reserves the right to deselect the Supplier prior to any award of contract, based on an assessment of the updated information.

4.5 Confidentiality

When providing details of contracts in answering Sections 6 and 8.8 of the SQ (Technical and Professional Ability), the Supplier agrees to waive any contractual or other confidentiality rights and obligations associated with these contracts.

The Authority reserves the right to contact the named customer contact in Sections 6 and 8.8 regarding the contracts included. The named customer contact does not owe the Authority any duty of care or have any legal liability, except for any deceitful or maliciously false statements of fact.

The Authority confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the Public Contract Regulations 2015.

4.6 Grounds for Mandatory Exclusion

The following guidance relates to the **SQ Section 2 - Grounds for mandatory exclusion**.

You may be excluded from the procurement process if there is evidence of convictions relating to specific criminal offences including, but not limited to, bribery, corruption, conspiracy, terrorism, fraud and money laundering, or if you have been the subject of a binding legal decision which found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate e.g. only minor amounts involved).

If you have answered 'yes' to question 2.3 on the non-payment of taxes or social security contributions, and have not paid or entered into a binding arrangement to pay the full amount, you may still avoid exclusion if only minor tax or social security contributions are unpaid or if you have not yet had time to fulfil your obligations since learning of the exact amount due. If your organisation is in that position please provide details using a separate Appendix. You may contact the Authority for advice.

Any Supplier that answers 'yes' to questions 2.1 Grounds for Mandatory Exclusion and 2.3 Non Payment of taxes must refer to [Section 3.9 Self-Cleaning](#).

4.7 Grounds for Discretionary Exclusion

The following guidance relates to the **SQ Section 3 - Grounds for Discretionary Exclusion**

- *Conflicts of interest*

In accordance with Question 3.1(e), the Authority may exclude the Supplier if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived

to compromise their impartiality and independence in the context of the procurement procedure.

Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Supplier to inform the Authority, detailing the conflict in a separate Appendix. Provided that it has been carried out in a transparent manner, routine pre-market engagement carried out by the Authority should not represent a conflict of interest for the Supplier.

- *Taking Account of Suppliers' Past Performance*

In accordance with question (g), the Authority may assess the past performance of a Supplier (through a Certificate of Performance provided by a Customer or other means of evidence). The Authority may take into account any failure to discharge obligations under the previous principal relevant contracts of the Supplier completing the SQ. The Authority may also assess whether specified minimum standards for reliability for such contracts are met.

In addition, the Authority may re-assess reliability based on past performance at key stages in the procurement process (i.e. supplier selection, tender evaluation, contract award stage etc.). Suppliers may also be asked to update the evidence they provide in this section to reflect more recent performance on new or existing contracts (or to confirm that nothing has changed).

Any Supplier that answers 'Yes' to questions 2.2 Grounds for Discretionary Exclusion must refer to [Section 3.8 Self-Cleaning](#).

4.8 Self-cleaning

Any Supplier that answers 'Yes' to questions 2.1 Grounds for Mandatory Exclusion, 2.2 Non-payment of taxes, 3.1 Grounds for discretionary exclusion, Section 4 Grounds for discretionary exclusion Part 2 should provide sufficient evidence, in a separate Appendix, that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively "self-cleans" the situation referred to in that question. The Supplier has to demonstrate it has taken such remedial action, to the satisfaction of the Authority in each case.

If such evidence is considered by the Authority (whose decision will be final) as sufficient, the economic operator concerned shall be allowed to continue in the procurement process.

In order for the evidence referred to above to be sufficient, the Supplier shall, as a minimum, prove that it has:

- Paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;
- Clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
- Taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the Supplier shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures

are considered by the Authority to be insufficient, the Supplier shall be given a statement of the reasons for that decision.

4.9 Technical and Professional Ability

The following guidance relates to the **SQ Section 6 - Technical and Professional Ability**.

Please provide details of up to three contracts, in any combination from either the public or private sector, that are relevant to the Authority's requirement. Contracts for supplies or services should have been performed during the past three years.

The named customer contact provided should be prepared to provide written evidence to the Authority to confirm the accuracy of the information provided below.

Consortia bids should provide relevant examples of where the consortium has delivered similar requirements; if this is not possible (e.g. the consortium is newly formed) then three separate examples should be provided between the principal member(s) of the proposed consortium (three examples are not required from each member).

Where the Supplier is a managing agent not intending to be the main provider of the Supplies or Services, the information requested should be provided in respect of the principal intended provider(s) or sub-contractor(s) who will deliver the Supplies and Services.

5 Contract Terms

A full copy of the Terms and Conditions of Contract will be provided to those who are invited to tender. For the purpose of SQ for short-listing attention is drawn to the following key contractual provisions:

- Subject to termination/suspension, the contract will be for a four year term commencing on 1 May 2018.
- Copyright and all other intellectual property rights resulting from an appointment and created pursuant to services provided shall vest in and belong to the HCA absolutely.
- The Supplier will be required to maintain a minimum of £25,000,000 Professional Indemnity Insurance cover (Lot 1) and £50,000,000 Professional Indemnity Insurance cover (Lot 2) in respect of each and every claim. However if a Supplier is appointed to work on a project that requires a higher level of Professional Indemnity Insurance cover, they may be required to increase their cover in relation to that specific project.
- The Supplier will need to provide a minimum £5m Public Liability and £5m Employers liability Insurance cover.
- The Contract in respect of a particular consultant may be terminated or suspended by the HCA at any time by written notice whether the consultant is in default or not.
- Recoverable expenses will not include the cost of travel or the time incurred to travel to the HCA's offices.

- Work may be allocated to firms within the Lots at the discretion of the HCA including by way of mini competition.
- The appointment to any of the HCA's legal panel does not provide any guarantee of volume or value of instructions.

6 Transparency

This procurement and award of this Contract is subject to the transparency arrangements being adopted by the UK Government. These arrangements include the publication of Tender documentation issued by the HCA and the Contract entered into with the Supplier. Suppliers should highlight any areas they consider commercially sensitive in order for the HCA to be able to honour our transparency obligations without undermining the Suppliers commercial interests.

The contract value associated with the successful Tender and the name of the Supplier may be published. As part of the Governments Transparency Agenda, the HCA regularly makes available details of expenditure in excess of £250.00 by Supplier.

7 Freedom of Information

Suppliers are advised that the HCA is subject to the Freedom of Information Act 2000 ("The Act"). If a Supplier considers that any of the information provided as part of this procurement procedure should not be disclosed because of its commercial sensitivity, confidential or otherwise, they must, when providing this information, clearly identify the specific information they do not wish to be disclosed and clearly specify the reasons for its sensitivity. the HCA shall take such statements into consideration in the event that it receives a request pursuant to the Act which relates to the information provided by the interested party. Please note, it is insufficient to include a statement of confidentiality encompassing all the information provided in the response.

8 Bribery and Corruption

the HCA takes a zero-tolerance approach to bribery and corruption and sets high standards of impartiality, integrity and objectivity in relation to the stewardship of public funds and the management of its activities. The principles contained within this policy apply to both internal and external audiences, including anyone wishing to undertake business or engage with HomesEngland. Please refer to our [Anti-bribery and Corruption Policy](#) for further information.

9 Health and Safety

This section of the Suitability Assessment mirrors the PAS91:2013 qualification questionnaire.

As part of the procurement process, the HCA needs to be satisfied that you have systems in place for managing health and safety within your business. Suppliers are required to either answer one of three exemption questions (8.7(a)-(i) to 8.7(a)-(iii)) or complete the health and safety questionnaire – questions 8.7(b) to 8.7(c).

Question 8.7(a)-(ii) refers to the SSIP (Safety Schemes in Procurement). If Suppliers intend to rely on SSIP membership this must either already be in place, or be likely to be in place when Tenders are to be returned to the Authority. Therefore, it is recommended that applications should already be submitted when Suppliers submit their SQ. Further information on SSIP and details of assessment scheme members can be found on <http://www.ssip.org.uk/>.

If a Supplier is already registered and compliant with a SSIP approved scheme, then the requirements for your SQ response will be reduced. The validity of SSIP membership will be checked and verified.

10 SQ Evaluation Criteria and Scoring

<ul style="list-style-type: none"> All Suppliers are required to complete the SQ. Criteria for Evaluation are Pass or Fail. Scoring from the SQ will not be taken forward to Invitation to Tender Stage 		<p>Scoring methodology: Pass – all information/documentation provided Fail – major information requirements missing If any part is left incomplete the section will be marked as Fail</p>	
Section	Title	Assessment	Evaluation Guidance
Part 1: Supplier Information			
1.1	Supplier Details	Pass/Fail	Pass – all information/documentation provided Fail – major information requirements missing If any part is left incomplete the section may be marked as Fail. If the question is not applicable, please mark your response as “N/A” and provide a brief explanation.
1.2	Bidding Model	Pass/Fail	Pass – all information/documentation provided Fail – major information requirements missing If the Supplier completing this SQ is doing so as part of a proposed consortium, the following information must be provided; <ul style="list-style-type: none"> names of all consortium members; the lead member of the consortium who will be contractually responsible for delivery of the contract (if a separate legal entity is not being created); and if the consortium is not proposing to form a legal entity, full details of proposed arrangements within a separate Appendix. <p>All members of the consortium will be required to provide the information required in all sections of the SQ i.e. each member of the consortium is required to complete the form.</p> If any part is left incomplete the section may be marked as Fail. If the question is not applicable, please mark your response as “N/A” and provide a brief explanation.

1.3	Contact Details and Declaration	Pass/Fail	<p>Pass – all information/documentation provided Fail – major information requirements missing</p> <p>Suppliers have been asked to include a single point of contact in their organisation for their response to Section 1.3 of the SQ. The HCA <u>shall not</u> be responsible for contacting the Supplier through any route other than the nominated contact. The Supplier must therefore undertake to notify any changes relating to the contact promptly or they will be unable to receive communications from the HCA.</p> <p>If any part is left incomplete the section may be marked as Fail. If the question is not applicable, please mark your response as “N/A” and provide a brief explanation.</p>
Part 2: Grounds for Exclusion			
2	Grounds for Mandatory Exclusion	Pass/Fail	<p>The HCA may treat as ineligible and may not select an economic operator in accordance with the Regulations, if the economic operator or its directors or any other person who has powers of representation, decision or control of the economic operator has been convicted of any of the defined offences. See Annex 1 for further details.</p> <p>Pass – all questions answered ‘no’ or any ‘yes’ responses accompanied with further details in a separate Appendix. Reasoning provided is to the satisfaction of the HCA.</p> <p>Fail – failure to answer any questions or any question answered ‘yes’ without further details provided in a separate Appendix, or reasoning is not to the HCA’s satisfaction.</p>
3	Grounds for Discretionary Exclusion	Pass/Fail	<p>The HCA may treat as ineligible and may not select an economic operator in accordance with the Regulations, if the economic operator or its directors or any other person who has powers of representation, decision or control of the economic operator has been convicted of any of the defined offences. See Annex 2 for further details.</p> <p>Pass – all questions answered ‘no’ or any ‘yes’ responses accompanied with further details in a separate Appendix. Reasoning provided is to the satisfaction of the HCA.</p> <p>Fail – failure to answer any questions or any question answered ‘yes’ without further details provided in a separate Appendix, or reasoning is not to the HCA’s satisfaction.</p>

Part 3: Selection Questions			
4.1	Demonstration of Economic and Financial Standing	Pass/Fail	<p>Pass – all information/documentation including acceptable alternatives or equivalents provided</p> <p>Fail – major information requirements missing; or alternative information is incomplete, not suitable or out of date; or requests for alternative information including management accounts are unanswered</p> <p>In reaching our conclusion on an Suppliers economic financial standing (pass or fail), the financial information presented will be assessed by the HCA’s in-house, professionally qualified financial due diligence team. This consideration will include whether the alternative information is acceptable. Past experience suggests the following alternative suitable full non-audited accounts for the most recent two years, a statement of the turnover, income and expenditure account, balance sheet, and cash flow for the most recent year of trading for this organisation (including explanation why audited or unaudited accounts are not available), a statement of the income and cash flow forecast for the current year and a bank letter outlining the current cash and credit position (again with explanation), or management accounts or similar showing forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts (again with explanation).</p> <p>Where the latest financial statements have yet to be filed within their due date, the HCA may request draft financial statements and/or management accounts from the supplier to enable a more up to date review.</p>
4.2	Level of Economic and Financial Standing	Pass/Fail	<p>Both average turnover for the last two years (or equivalent value) is equal to or more than 2,000,000 GBP and the current ratio (current assets/current liabilities) is greater than 1.</p> <p>Fail – Either average turnover for the last two years (or equivalent value) is less than 2,000,000 GBP or current ratio (current assets/current liabilities) is equal to or less than 1.</p>

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4.3	Self-certification	Pass/Fail	<p>Pass – the opinion of the auditors within the financial statements identifies no going concern issues and the level and nature of outstanding CCJs (either disclosed or obtainable from public registers) that can be funded from existing case reserves and an absence of administration or liquidation arrangements.</p> <p>Fail – the opinion of the auditors within the financial statements identifies concerns over going concern; or the level and nature of outstanding CCJs (either disclosed or obtainable from public registers) indicates a risk over inability to fund CCJs from existing cash reserves; or the supplier is currently the subject to any kind of administration or liquidation arrangements</p>
5.1- 5.3	Group Information and Financial Guarantee	Pass/Fail	<p>Pass – all information/documentation provided. Where relevant Parent Company confirmed as willing to provide guarantee if necessary; details of where a guarantee may be obtained from elsewhere provided and reasoning is to the satisfaction of the HCA.</p> <p>Fail – major information requirements missing. Parent Company confirmed as not willing to provide a guarantee. No details provided as to where a guarantee may be obtained from elsewhere or reasoning provided is not to the satisfaction of the HCA.</p>
6	Technical and Professional Ability	Pass/Fail	<p>Pass – Questions 6.1 and 6.2 complete or Question 6.3 complete in full with information which relates to the subject matter of the contract and Question 6.4 all mandatory areas of law and the areas of law for the lot applied for are covered by your firm.</p> <p>Fail – Questions 6.1 and 6.2 incomplete or Question 6.3 incomplete or Question 6.4 not all mandatory areas of law and areas of law for the lot applied for are covered by your firm.</p>
7	Requirement under Modern Slavery Act 2015	Pass/Fail	<p>Pass – where the Act applies compliant annual reporting requirements have been established and evidenced; or where the Act does not apply this is reasonable</p> <p>Fail - where the Act applies compliant annual reporting requirements has not been established or evidenced</p>

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8.1	Insurance	Pass/Fail	<p>Pass – minimum requirements for insurance are in place, or an assurance is provided to confirm that the insurance will be in place by the contract commencement date</p> <p>Fail – minimum requirements for insurance are not in place, and no assurance is provided to confirm that the insurance will be in place by the contract commencement date</p> <p>Minimum insurance requirements are:</p> <ul style="list-style-type: none"> • Employers Liability: five million pounds (5,000,000 GBP); • Public Liability: five million pounds (5,000,0000 GBP); • Professional Indemnity: twenty five million pounds (25,000,000 GBP) (Lot 1) • Professional Indemnity: fifty million pounds (50,000,000 GBP) (Lot 2)
8.2(a) – (c)	Skills and Apprentices	N/A	Not Applicable
8.3	Steel	N/A	Not Applicable
8.4	Suppliers’ Past Performance	N/A	Not Applicable
8.5(a) – (g)	Equal opportunity, diversity and capability	Pass/Fail	<p>Pass – Questions 8.5(a),(b) and (g) answered ‘yes’, ‘no’ to Questions 8.5(c) and (d) and sufficient explanation in response to Question 8.5(f); or Questions 8.5(a),(b) and (g) answered ‘yes’, ‘yes’ to either Questions 8.5(c) or (d) which have sufficient explanation and reasoning, and sufficient explanation in response to Quesiton8.5(f)</p> <p>Fail – failure to answer any question 8.5 (a) to (q); or ‘yes’ to either Questions 8.5(c) or (d) which have insufficient explanation and reasoning; or insufficient explanation in response to Question 8.5(f)</p>
8.6	Environmental Management	N/A	Not Applicable

Health and Safety - if exemption claimed

8.7(a)	Previous prequalification, SSIP or equivalent registration	Pass/Fail	<p>Pass – Question 8.7(a)-(i) answered ‘yes’ and sufficient details have been provided to satisfy the HCA that this can be relied on; or Question 8.7(a)-(ii) answered ‘yes’ and the registration is current or information has been provided on a similar scheme which is to the satisfaction of the HCA; or you are in the process of registration to a SSIP scheme and date of registration is proposed to be achieved prior to contract commencement as indicated in Section 2 Procurement Process and Timetable; or Question 8.7(a)-(iii) answered ‘yes’ and the registration is current.</p> <p>Fail – Failure to answer Question 8.7(a) in combination with a failure to answer Questions 8.7(b) and 8.7(c); or Questions 8.7(a)-(i) to 8.7(a)-(iii) answered ‘yes’ but the certification is out of date or information on similar schemes is not sufficient to meet the satisfaction of the HCA; or the proposed date of registration does not meet with project timescales for contract commencement as indicated in Section 2’ Procurement Process and Timetable; or Questions 8.7(a)-(i) to 8.7(a)-(iii) answered ‘no’ in combination with a failure to answer Questions 8.7(b) and 8.7(c);</p>
Health and Safety - if no exemption claimed			
8.7(b) – 8.7(c)	Detailed Health and Safety Questions	Pass/Fail	<p>Pass – Answered ‘yes’ to all questions and appropriate evidence provided to the satisfaction of the HCA.</p> <p>Fail – Answered ‘no’ to one or more question or answered ‘yes’ to all question but one or more questions were not supported by appropriate evidence and or the evidence provided is not to the satisfaction of the HCA.</p>
8.8	Asbestos	N/A	Not Applicable

Sections 8.9 and 8.10: Additional Technical and Professional Questions

Questions 8.9.1 to 8.10.3 will be marked using the following criteria:

- 5 – Excellent explanation and examples provided.
- 4 – Comprehensive explanation and examples provided.
- 3 – Adequate explanation and examples provided.
- 2 – Minimal explanation and some examples provided.
- 1 - Does not meet the requirement. Minimal explanation and no examples provided.
- 0 - Does not meet the requirement. Insufficient Response.

Each question is weighted, the following worked example (for Lot 1) shows how the weighted score will be calculated:

Question	Weighting	Weighting Factor	Firm A		Firm B		Firm C	
			Out of 5	Weighted	Out of 5	Weighted	Out of 5	Weighted
8.9.1.1	5%	1	5	5	3	3	5	5
8.9.1.2	20%	4	5	20	2	8	4	16
8.9.1.3	20%	4	5	20	3	12	3	12
8.9.2.1	20%	4	5	20	2	8	2	8
8.9.2.2	5%	1	5	1	3	3	5	5
8.9.3.1	6%	1.2	5	6	3	3.6	4	4.8
8.9.3.2	6%	1.2	5	6	2	2.4	3	3.6
8.9.3.3	6%	1.2	5	6	3	3.6	2	2.4
8.9.3.4	6%	1.2	5	6	3	3.6	5	6
8.9.3.5	6%	1.2	5	6	3	3.6	4	4.8
				100		50.8		67.6

For the avoidance of doubt firms interested in Lot 1 should respond to questions in Section 8.9. Firms interested Lot 2 should respond to questions in Section 8.10. Firms interested in both Lots need to submit separate responses for each Lot.

Lot 1

Section 8.9: Additional Technical and Professional Questions (Lot 1 including Mandatory Services)			
Section	Title	Assessment	Evaluation Guidance
8.9.1 Sector Awareness			
8.9.1.1	Understanding the objects and governance of Homes England <i>Maximum of 1 side of A4</i>	Score out of 5 (5%)	<ul style="list-style-type: none"> • This section judges the Firm’s professional competence, knowledge and awareness in respect of Homes England, its operations and the broader development and investment sectors. • Understanding of how legislation governs the actions/activities of Homes England • Other non-statutory governance affecting Homes England • Factors that affect Homes England as a public body
8.9.1.2	Experience in working with Public Sector clients (or equivalents) <i>Maximum of 2 sides of A4</i>	Score out of 5 (20%)	<ul style="list-style-type: none"> • This section judges the Firm’s professional competence, knowledge and awareness in respect of the wider Public Sector • Key clients and key/major projects including breadth of experience and currency of examples • Relevance to services being sought
8.9.1.3	Knowledge of Homes England’s programmes and experience relating to land (including from a developer’s perspective), housing (social housing) and investment (what we do and how we do it) <i>Maximum of 2 sides of A4</i>	Score out of 5 (20%)	<ul style="list-style-type: none"> • This section judges the Firm’s professional competence, knowledge and awareness in respect of Programmes • Breadth of experience • Currency of examples • Relevance to services being sought

Lot 1

Section 8.9 is not applicable to Lot 2 applications.

Section 8.9: Additional Technical and Professional Questions (Lot 1 including Mandatory Services)			
Section	Title	Assessment	Evaluation Guidance
8.9.2 Capability to deliver required Legal Services (identified in Section 2 of the MOI)			
8.9.2.1	Deliver the required areas of law <i>Maximum of 3 sides of A4</i>	Score out of 5 (20%)	<ul style="list-style-type: none"> Address all required areas of law including relevant examples (minimum of 1) Highlight specialisms where appropriate and key members of staff
8.9.2.2	Meet the needs of the Homes England's Delivery Structures <i>Maximum of 2 sides of A4</i>	Score out of 5 (5%)	<ul style="list-style-type: none"> Demonstrate knowledge of Homes England's delivery structure Demonstrate how the firm meets the structure of the Agency. Include examples of how services have been provided to clients with broad range of geographic operations and locations. <p>Note: Service standards to Homes England's teams are not required for this section and will be tested at ITT stage.</p>

See Over

Lot 1

Section 8.9 is not applicable to Lot 2 applications.

Section 8.9: Additional Technical and Professional Questions (Lot 1 including Mandatory Services)			
Section	Title	Assessment	Evaluation Guidance
8.9.3 Summary of Expertise (See footnote ¹)			
Using the form at Appendix 1 to the SQ please provide a brief working example of each of the following areas of law, which demonstrates where your Firm's expertise has been utilised.			
8.9.3.1	Procurement <i>Maximum of 1 side of A4</i>	Score out of 5 (6%)	<ul style="list-style-type: none"> • Currency of the example; • Complexity of the project; • Relevance to the services being requested
8.9.3.2	State Aid <i>Maximum of 1 side of A4</i>	Score out of 5 (6%)	<ul style="list-style-type: none"> • Currency of the example; • Complexity of the project; • Relevance to the services being requested
8.9.3.3	Real Estate: Building Leases <i>Maximum of 1 side of A4</i>	Score out of 5 (6%)	<ul style="list-style-type: none"> • Currency of the example; • Complexity of the project; • Relevance to the services being requested
8.9.3.4	Real Estate: Plot Sales and Restrictive Covenants <i>Maximum of 1 side of A4</i>	Score out of 5 (6%)	<ul style="list-style-type: none"> • Currency of the example; • Complexity of the project; • Relevance to the services being requested
8.9.3.5	Banking (Development Finance) and Restructuring (in the event of default); <i>Maximum of 1 side of A4</i>	Score out of 5 (6%)	<ul style="list-style-type: none"> • Currency of the example; • Complexity of the project; • Relevance to the services being requested

¹ A score of 1 (Does not meet the requirement. Minimal explanation and no examples provided) or 0 (Does not meet the requirement. Insufficient Response) on any of the questions in this section will result in an overall fail and exclusion from the process.

For responses to questions 8.9.3.1 to 8.9.3.5, the same examples can be used as for section 6.1. to the SQ.

For the avoidance of doubt firms interested in Lot 2 should respond to questions in Section 8.10. Firms interested Lot 1 should respond to questions in Section 8.9. Firms interested in both Lots need to submit separate responses for each Lot.

Lot 2

Section 8.10: Additional Technical and Professional Questions (Lot 2 including Mandatory Services).			
Section	Title	Assessment	Evaluation Guidance
8.10.1 Sector Awareness			
8.10.1.1	Understanding the objects and governance of Homes England <i>Maximum of 1 side of A4</i>	Score out of 5 (5%)	<ul style="list-style-type: none"> • This section judges the Firm’s professional competence, knowledge and awareness in respect of Homes England, its operations and the broader development and investment sectors. • Understanding of how legislation governs the actions/activities of Homes England • Other non-statutory governance affecting Homes England • Factors that affect Homes England as a public body
8.10.1.2	Experience in working with Public Sector clients (or equivalents) <i>Maximum of 2 sides of A4</i>	Score out of 5 (20%)	<ul style="list-style-type: none"> • This section judges the Firm’s professional competence, knowledge and awareness in respect of the wider Public Sector • Key clients and key/major projects including breadth of experience and currency of examples • Relevance to services being sought
8.10.1.3	Knowledge of Homes England’s programmes and experience relating to land (including from a developer’s perspective), housing (social housing) and investment (what we do and how we do it) <i>Maximum of 2 sides of A4</i>	Score out of 5 (20%)	<ul style="list-style-type: none"> • This section judges the Firm’s professional competence, knowledge and awareness in respect of Programmes • Breadth of experience • Currency of examples • Relevance to services being sought

Lot 2

Section 8.10 is not applicable to Lot 1 applications.

Section 8.10: Additional Technical and Professional Questions (Lot 2 and Mandatory Services)			
Section	Title	Assessment	Evaluation Guidance
8.10.2 Capability to deliver required Legal Services (identified in Section 2 of the MOI)			
8.10.2.1	Deliver the required areas of law <i>Maximum of 3 sides of A4</i>	Score out of 5 (15%)	<ul style="list-style-type: none"> • Address all required areas of law including relevant examples (minimum of 1) • Highlight specialisms where appropriate and key members of staff
8.10.2.2	Meet the needs of the Homes England's Delivery Structures <i>Maximum of 2 sides of A4</i>	Score out of 5 (5%)	<ul style="list-style-type: none"> • Demonstrate knowledge of Homes England's delivery structure • Demonstrate how the firm meets the structure of the Agency. Include examples of how services have been provided to clients with broad range of geographic operations and locations. <p>Note: Service standards to Homes England's teams are not required for this section and will be tested at ITT stage.</p>

See Over

Lot 2

Section 8.10 is not applicable to Lot 1 applications.

Section 8.9: Additional Technical and Professional Questions (Lot 1 including Mandatory Services)			
Section	Title	Assessment	Evaluation Guidance
8.10.2 Summary of Expertise (See footnote ²)			
Using the form provided in the SQ please provide a brief working example of each of the following areas of law, which demonstrates where your Firm's expertise has been utilised.			
8.10.2.1	Procurement <i>Maximum of 1 side of A4</i>	Score out of 5 (5%)	<ul style="list-style-type: none"> • Currency of the example; • Complexity of the project; • Relevance to the services being requested
8.10.2.2	State Aid Expertise <i>Maximum of 1 side of A4</i>	Score out of 5 (5%)	<ul style="list-style-type: none"> • Currency of the example; • Complexity of the project; • Relevance to the services being requested
8.10.2.3	General Real Estate Expertise <i>Maximum of 1 side of A4</i>	Score out of 5 (5%)	<ul style="list-style-type: none"> • Currency of the example; • Complexity of the project; • Relevance to the services being requested
8.10.2.4	Real Estate: Property Finance and SDLT <i>Maximum of 1 side of A4</i>	Score out of 5 (5%)	<ul style="list-style-type: none"> • Currency of the example; • Complexity of the project; • Relevance to the services being requested
8.10.2.5	Commercial Law: Insolvency and Distress <i>Maximum of 1 side of A4</i>	Score out of 5 (5%)	<ul style="list-style-type: none"> • Currency of the example; • Complexity of the project; • Relevance to the services being requested

² A score of 1 (Does not meet the requirement. Minimal explanation and no examples provided) or 0 (Does not meet the requirement. Insufficient Response) on any of the questions in this section will result in an overall fail and exclusion from the process.

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8.10.2.6	Banking, Venture Capital, Loan Finance and Restructuring Commercial Law <i>Maximum of 1 side of A4</i>	Score out of 5 (5%)	<ul style="list-style-type: none">• Currency of the example;• Complexity of the project;• Relevance to the services being requested
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For responses to questions 8.10.2.1 to 8.10.2.6, the same examples can be used as for section 6.1. to the SQ.

Annex 1: Mandatory Exclusion Grounds

Public Contract Regulations 2015 R57(1), (2) and (3)

Public Contract Directives 2014/24/EU Article 57(1)

Participation in a criminal organisation

Participation offence as defined by section 45 of the Serious Crime Act 2015

Conspiracy within the meaning of

- section 1 or 1A of the Criminal Law Act 1977 or
- article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983

where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime;

Corruption

Corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;

The common law offence of bribery;

Bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010, or section 113 of the Representation of the People Act 1983;

Fraud

Any of the following offences, where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the convention on the protection of the financial interests of the European Communities:

- the common law offence of cheating the Revenue;
- the common law offence of conspiracy to defraud;
- fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978;
- fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006;
- fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994;
- an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;
- destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969;
- fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006;
- the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act;

Terrorist offences or offences linked to terrorist activities

Any offence:

- listed in section 41 of the Counter Terrorism Act 2008;
- listed in schedule 2 to that Act where the court has determined that there is a terrorist connection;
- under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by the previous two points;

Money laundering or terrorist financing

Money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002. An offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996

Child labour and other forms of trafficking human beings

An offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004;

An offence under section 59A of the Sexual Offences Act 2003

An offence under section 71 of the Coroners and Justice Act 2009;

An offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994

An offence under section 2 or section 4 of the Modern Slavery Act 2015

Non-payment of tax and social security contributions

Breach of obligations relating to the payment of taxes or social security contributions that has been established by a judicial or administrative decision.

Where any tax returns submitted on or after 1 October 2012 have been found to be incorrect as a result of:

- HMRC successfully challenging the potential supplier under the General Anti – Abuse Rule (GAAR) or the “Halifax” abuse principle; or
- a tax authority in a jurisdiction in which the potential supplier is established successfully challenging it under any tax rules or legislation that have an effect equivalent or similar to the GAAR or “Halifax” abuse principle;
- a failure to notify, or failure of an avoidance scheme which the supplier is or was involved in, under the Disclosure of Tax Avoidance Scheme rules (DOTAS) or any equivalent or similar regime in a jurisdiction in which the supplier is established

Other offences

Any other offence within the meaning of Article 57(1) of the Directive as defined by the law of any jurisdiction outside England, Wales and Northern Ireland.

Any other offence within the meaning of Article 57(1) of the Directive created after 26th February 2015 in England, Wales or Northern Ireland

Annex 2: Discretionary exclusions

Obligations in the field of environment, social and labour law.

Where an organisation has violated applicable obligations in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Directive (see copy below) as amended from time to time; including the following:

- Where the organisation or any of its Directors or Executive Officers has been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years.
- In the last three years, where the organisation has had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds of alleged unlawful discrimination.
- In the last three years, where any finding of unlawful discrimination has been made against the organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or incomparable proceedings in any jurisdiction other than the UK).
- Where the organisation has been in breach of section 15 of the Immigration, Asylum, and Nationality Act 2006;
- Where the organisation has a conviction under section 21 of the Immigration, Asylum, and Nationality Act 2006;
- Where the organisation has been in breach of the National Minimum Wage Act 1998.

Bankruptcy, insolvency

Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation's assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;

Grave professional misconduct

Guilty of grave professional misconduct

Distortion of competition

Entered into agreements with other economic operators aimed at distorting competition

Conflict of interest

Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure

Been involved in the preparation of the procurement procedure.

Prior performance issues

Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession

contract, which led to early termination of that prior contract, damages or other comparable sanctions.

Misrepresentation and undue influence

The organisation has influenced the decision-making process of the contracting authority to obtain confidential information that may confer upon the organisation undue advantages in the procurement procedure, or to negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

Additional exclusion grounds

Breach of obligations relating to the payment of taxes or social security contributions.

ANNEX X Extract from Public Procurement Directive 2014/24/EU

LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN ARTICLE 18(2) —

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- ILO Convention 98 on the Right to Organise and Collective Bargaining;
- ILO Convention 29 on Forced Labour;
- ILO Convention 105 on the Abolition of Forced Labour;
- ILO Convention 138 on Minimum Age;
- ILO Convention 111 on Discrimination (Employment and Occupation);
- ILO Convention 100 on Equal Remuneration;
- ILO Convention 182 on Worst Forms of Child Labour;
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention)
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

Consequences of misrepresentation

A serious misrepresentation which induces a contracting authority to enter into a contract may have the following consequences for the signatory that made the misrepresentation:-

- The potential supplier may be excluded from bidding for contracts for three years, under regulation 57(8)(h)(i) of the PCR 2015;
- The contracting authority may sue the supplier for damages and may rescind the contract under the Misrepresentation Act 1967.
- If fraud, or fraudulent intent, can be proved, the potential supplier or the responsible officers of the potential supplier may be prosecuted and convicted of the offence of fraud

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by false representation under s.2 of the Fraud Act 2006, which can carry a sentence of up to 10 years or a fine (or both).

- If there is a conviction, then the company must be excluded from procurement for five years under reg. 57(1) of the PCR (subject to self-cleaning).

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Homes &
Communities
Agency

Homes and Communities Agency

[insert HCA Office address
from which the Contract
will be managed]

The Homes and Communities Agency is committed to providing accessible information where possible and we will consider providing information in alternative formats such as large print, audio and Braille upon request.