

# Invitation to Tender (ITT)

## Land & Property Services

Ref: CT4218 and CT4219

**Lot 1 - Valuation & Compensation/Landowner  
Engagement/DCO Preparation/Land  
Acquisition/Reporting & Business Management  
Support Services**

**Lot 2 - Land Access for Surveys/Land  
Referencing/DCO Preparation/DCO and Land  
Assembly Programme Management/Reporting &  
Business Management Support Services**

**Version: V0.1**

Contract No: CT4218 & CT4219

Date: 30/07/2025

Classification: OFFICIAL-SENSITIVE COMMERCIAL

# Contents

<b>1.</b>	<b>General</b>	<b>1</b>
1.1	Introduction to the East West Railway Company Ltd (EWR Co.)	1
1.2	Document Structure	2
1.3	Preliminary Market Engagement	2
1.4	Glossary	2
<b>2.</b>	<b>The Procurement Process</b>	<b>6</b>
2.1	Introduction	6
2.2	The Procurement Process	6
2.3	Procurement Timetable	6
2.4	Tender Communications	7
2.5	Clarification questions	7
2.6	Status of verbal clarifications	8
2.7	Tender Addenda	8
2.8	Deadline	9
2.9	Clarification of Tenders	9
<b>3.</b>	<b>Tender Returns</b>	<b>10</b>
3.1	Submission Structure	10
3.2	Preparation of compliant tenders	10
3.3	Tender submission	11
<b>4.</b>	<b>Evaluation process</b>	<b>12</b>
4.1	Introduction	12
4.2	Compliance	12
4.3	Clarification by EWR Co.	13
4.4	Evaluation Process	14
4.5	Evaluation Process - Technical	14
4.6	Evaluation Process – Stage 3 - Commercial	16
4.7	Variants	17

---

<b><u>4.8</u></b>	<b><u>Limit on winning both Lots</u></b>	<b><u>17</u></b>
<b><u>4.9</u></b>	<b><u>Standstill period and award of Contract</u></b>	<b><u>18</u></b>
<b><u>5.</u></b>	<b><u>Notices to Suppliers</u></b>	<b><u>19</u></b>
<b><u>5.1</u></b>	<b><u>Introduction</u></b>	<b><u>19</u></b>
<b><u>5.2</u></b>	<b><u>Central Digital Platform</u></b>	<b><u>19</u></b>
<b><u>5.3</u></b>	<b><u>Transparency</u></b>	<b><u>19</u></b>
<b><u>5.4</u></b>	<b><u>Parent company guarantee or other securities</u></b>	<b><u>20</u></b>
<b><u>5.5</u></b>	<b><u>Status of the ITT</u></b>	<b><u>20</u></b>
<b><u>5.6</u></b>	<b><u>Amendments to the ITT</u></b>	<b><u>20</u></b>
<b><u>5.7</u></b>	<b><u>Freedom of Information</u></b>	<b><u>21</u></b>
<b><u>5.8</u></b>	<b><u>Requirements on Sub-contractors and Consortium</u></b>	<b><u>23</u></b>
<b><u>5.9</u></b>	<b><u>Equality, Diversity and Inclusion</u></b>	<b><u>23</u></b>
<b><u>5.10</u></b>	<b><u>Social Value</u></b>	<b><u>23</u></b>
<b><u>5.11</u></b>	<b><u>Sustainable Procurement</u></b>	<b><u>23</u></b>
<b><u>5.12</u></b>	<b><u>Important notices and disclaimers</u></b>	<b><u>23</u></b>
<b><u>5.13</u></b>	<b><u>Conditions governing submissions</u></b>	<b><u>24</u></b>
<b><u>5.14</u></b>	<b><u>Award commitment</u></b>	<b><u>25</u></b>
<b><u>5.15</u></b>	<b><u>Good Faith</u></b>	<b><u>27</u></b>
<b><u>5.16</u></b>	<b><u>Accuracy of Information</u></b>	<b><u>27</u></b>
<b><u>5.17</u></b>	<b><u>Intellectual Property Rights (IPR)</u></b>	<b><u>27</u></b>
<b><u>5.18</u></b>	<b><u>Changes in Circumstances</u></b>	<b><u>28</u></b>
<b><u>5.19</u></b>	<b><u>Conflict of Interest</u></b>	<b><u>29</u></b>
<b><u>5.20</u></b>	<b><u>Conflict Assessments</u></b>	<b><u>30</u></b>
<b><u>5.21</u></b>	<b><u>Ethical Walls Agreement</u></b>	<b><u>30</u></b>
<b><u>5.22</u></b>	<b><u>Bid Costs</u></b>	<b><u>30</u></b>
<b><u>5.23</u></b>	<b><u>Supplier withdrawal</u></b>	<b><u>31</u></b>
<b><u>5.24</u></b>	<b><u>Modifying your final tender</u></b>	<b><u>31</u></b>
<b><u>5.25</u></b>	<b><u>Selection of a Winning Supplier</u></b>	<b><u>31</u></b>
<b><u>5.26</u></b>	<b><u>Data Transparency Protocol &amp; General Data Protection Regulation (UK GDPR)</u></b>	<b><u>31</u></b>

---

<b><u>5.27</u></b>	<b><u>Canvassing</u></b>	<b><u>32</u></b>
<b><u>5.28</u></b>	<b><u>Anti-competitive Behaviour</u></b>	<b><u>32</u></b>
<b><u>5.29</u></b>	<b><u>Supplier Eligibility</u></b>	<b><u>32</u></b>
<b><u>5.30</u></b>	<b><u>Supplier Warranties</u></b>	<b><u>33</u></b>
<b><u>5.31</u></b>	<b><u>Third Parties</u></b>	<b><u>34</u></b>
<b><u>5.32</u></b>	<b><u>Non-collusion, Non-canvassing</u></b>	<b><u>34</u></b>
<b><u>5.33</u></b>	<b><u>Non-Collusion and Inducement</u></b>	<b><u>35</u></b>
<b><u>5.34</u></b>	<b><u>Copyright</u></b>	<b><u>35</u></b>
<b><u>5.35</u></b>	<b><u>Payment and Invoicing</u></b>	<b><u>35</u></b>
<b><u>5.36</u></b>	<b><u>East West Rail (EWR Co.) Employees</u></b>	<b><u>36</u></b>
<b><u>5.37</u></b>	<b><u>Tender Validity</u></b>	<b><u>36</u></b>
<b><u>5.38</u></b>	<b><u>Acceptance of Contract</u></b>	<b><u>36</u></b>
<b><u>5.39</u></b>	<b><u>Confidentiality</u></b>	<b><u>36</u></b>
<b><u>5.40</u></b>	<b><u>Publicity</u></b>	<b><u>37</u></b>
<b><u>5.41</u></b>	<b><u>Applicable Law</u></b>	<b><u>38</u></b>
<b><u>6.</u></b>	<b><u>Appendices Contents</u></b>	<b><u>39</u></b>
	<b><u>List of Documents</u></b>	<b><u>39</u></b>

# 1. General

## 1.1 Introduction to the East West Railway Company Ltd (EWR Co.)

- 1.1.1 East West Rail (EWR) is a once-in-a-generation opportunity to connect people and businesses in the communities between Oxford, Milton Keynes, Bedford and Cambridge with a sustainable public transport solution. The railway would open up new journeys, cut travel times, ease congestion on local roads and bring more jobs within reach of people living locally. The corridor, which runs from Oxford through Milton Keynes and Bedford to Cambridge, is also an economic artery that makes the UK a global leader in life sciences, technology and innovation, with the potential to create jobs, drive growth and attract investment for the entire country. The region has huge potential but is currently constrained by poor transport connectivity – restricting people’s opportunities and holding back progress. EWR – also termed the Project – would be key in addressing this constraint, unlocking the area’s potential and enabling sustainable growth.
- 1.1.2 This Invitation to Tender (ITT) is issued by East West Rail Company Limited (EWR Co), which is seeking to procure Land and Property services to support the scheme development phase through its statutory approval processes.
- 1.1.3 This Procurement is divided into two Lots. Suppliers will be able to bid for Lot 1, Lot 2, or both:

### **Lot 1**

**Valuation & Compensation/Landowner Engagement/Land Acquisition/DCO Preparation/Reporting & Business Management Support Services**

### **Lot 2**

**Land Access for Surveys/Land Referencing/DCO Preparation/DCO and Land Assembly Programme/Management Reporting & Business Management Support Services**

However, Suppliers will generally be limited to winning one Lot only, subject to further provisions set out in paragraph 4.8 of this ITT. If your organisation is invited to submit a tender for both Lots, please submit a full suite of documents listed at Appendix J for both Lots.

- 1.1.4 EWR Co aims to appoint suppliers who have the capabilities and capacity to support the delivery of its strategic objectives at pace and who will share EWR Co’s ethos and values.
- 1.1.5 This ITT and associated documents contain commercially sensitive information about the scope and phasing of the EWR programme and tenderers are reminded that all information received must be treated in confidence and not disclosed to any persons not directly associated with the tender. Tenderers are required to make their own internal arrangements for ensuring that this is the case.

## 1.2 Document Structure

- 1.2.1 This Procurement is being conducted in accordance with the Act using the Competitive Flexible Procedure. This document describes how the Procurement will be conducted, including details of the associated Procurement timetable, award criteria and how to respond to this opportunity. Suppliers are strongly encouraged to read this document before preparing their submission.
- 1.2.2 This document has been prepared to assist Suppliers in deciding whether to participate and/or submit a tender in this Procurement. **Please read this document carefully, as failure to comply with this document may result in exclusion from the Procurement and/or the rejection of any submission.**
- 1.2.3 This document should be read in conjunction with the Tender Notice and any other Procurement documents which have been made available at this stage of the Procurement.
- 1.2.4 EWR Co. reserves the right to issue updated versions of this document to Suppliers as and when the need arises, in order to reflect the corresponding stage of the Competitive Flexible Procedure, together with any changes to the Procurement or any other new information.
- 1.2.5 Suppliers should read the whole of this ITT, including the Appendices, to ensure that they understand the instructions for and conditions of tendering before responding.
- 1.2.6 Suppliers are responsible for ensuring that all members of their Bid Team are familiar with this ITT.

## 1.3 Preliminary Market Engagement

- 1.3.1 A market engagement questionnaire was published in January 2025 on Contracts Finder. The questionnaire issued is at Annex A and the responses received are at Annex B.

## 1.4 Glossary

- 1.4.1 Words and phrases with an initial capital used in this document shall have the meanings set out in Table 1.3 below.
- 1.4.2 All references to [Parts], Appendices, Annexes and paragraphs are references to [Parts], Appendices, Annexes and paragraphs of this ITT unless otherwise specified.
- 1.4.3 All references to a ‘section’ are to a section in the Act unless otherwise stated.
- 1.4.4 All references to dates and times within this document shall be interpreted in accordance with the United Kingdom time zones applicable at the date of the Procurement (i.e. GMT/BST).
- 1.4.5

Table 1 – ITT glossary of terms

Defined term	Definition
"Act"	means the Procurement Act 2023 and the Procurement Regulations 2024.
"Associated Suppliers"	means a Supplier who is associated with another Supplier if either (a) the Suppliers are submitting a tender together, or (b) EWR Co. is satisfied that the Suppliers will enter legally binding arrangements to the effect that the Supplier will sub-contract the performance of all or part of the Contract to the other, or the other Supplier will guarantee the performance of all or part of the Contract by the Supplier (as set out in section 22(9) of the Act).
"Authority"	means East West Railway Company Ltd (EWR Co.) a private limited company incorporated in 2017 to deliver a rail connection between Oxford and Cambridge.
"Central Digital Platform"	means the online system defined by regulation 5(2) of the Procurement Regulations 2024 (SI 2024 No. 692).  The Central Digital Platform is accessible at the following link: <a href="#">Central Digital Platform Link</a>  Information and guidance regarding the Central Digital Platform is available at the following link . <a href="#">Central Digital Platform Information and Guidance</a>
"Competitive Flexible Procedure"	means the competitive flexible procedure as defined by section 20 of the Act.
"Conditions of Participation"	means the criteria as described in the Procurement Specific Questionnaire applied by EWR Co. to identify the shortlist of Suppliers to invite to tender.
"Contracts"	means the contracts to be entered into by EWR Co. with the successful Suppliers in relation to Lot 1 and Lot 2.
"EIR"	means the Environmental Information Regulations 2004.
"Evaluation Criteria"	means the criteria and scoring methodology proposed to assess the Tenders, as set out in paragraph 4.5 'Evaluation Process' of this ITT.
"EWR Co."	means East West Railway Company Ltd, a private limited company incorporated in 2017 to deliver a rail connection between Oxford and Cambridge.
"FOIA"	means the Freedom of Information Act 2000.
"ITT"	means all documents and information issued a part of this document including any Schedules and subsequent clarifications.

Defined term	Definition
"Key Performance Indicators" or "KPIs"	means the key performance indicators (KPIs) set out in Appendix E.
"Lot 1"	means the lot as part of this Procurement relating to the Contract for Valuation & Compensation/Landowner Engagement/DCO Preparation/Land Acquisition/Reporting & Business Management Support Services as more particularly described in Appendix A (Statement of Requirements)
"Lot 2"	means the lot as part of this procurement relating to the Contract for Land Access for Surveys/Land Referencing/DCO Preparation/DCO and Land Assembly Programme Management/Reporting & Business Management Support Services as more particularly described in Appendix A (Statement of Requirements)
"NSIP"	a Nationally Significant Infrastructure Project, as defined within section 14 of the Planning Act 2008.
"Portal"	means the e-tendering portal, Jaggaer, used by EWR Co. for the purposes of this Procurement and which can be accessed here: <a href="#">East West Rail</a> .
"Price Per Quality Point" or "PQP"	Means the scoring methodology employed by EWR Co. in this Procurement that shall be used to identify the Most Advantageous Tender, as more particularly described in paragraph 4.5.
"Procurement"	means this Competitive Flexible Procedure procurement process to award the Contracts.
"Procurement Specific Questionnaire"	means the selection questionnaire issued to Suppliers at the selection stage that enabled EWR Co. to identify the shortlist of suppliers to invite to tender. References in this ITT to 'Procurement Specific Questionnaire' mean the selection stage or the response to the Procurement Specific Questionnaire submitted by Suppliers as the context requires.
"Procurement Timetable"	means the timetable for this Procurement as set out in Table 1 'Procurement Timetable' of this document, as may be amended from time to time in accordance with paragraph 2.3.
"Qualifications"	means any proposed change, amendment or other caveat to the terms and conditions of the Contract proposed by a Supplier other than any change, amendment or caveat which is expressly permitted under the terms of this ITT.



Defined term	Definition
"Supplier" or "Suppliers"	means a supplier or suppliers (as the case may be) that submits a Tender in response to this ITT.
"Services"	means the scope of services outlined within Appendix A (Statement of Requirements).
"Tender"	means the response to the Invitation to Tender (and any supporting documentation) to be submitted via the Portal by the Supplier in accordance with the requirements of this ITT.
"Tender Addenda"	means an addenda issued by EWR Co. during this Procurement in accordance with paragraph 2.7.
"Tender Notice"	means the tender notice with reference TBC published on 30 July 2025 on the Central Digital Platform.
"Threshold"	means a minimum pass mark for any question in the Invitation to Tender questions, as stipulated in the Evaluation Criteria.
"UK GDPR"	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (withdrawal) Act 2018 (and see section 205(4)) and Data Protection Act 2018).
"Variant Tenders"	means a Tender submitted by a Supplier setting out an alternative solution to the one specified and requested in the ITT.

## 2. The Procurement Process

### 2.1 Introduction

- 2.1.1 This Contract is being procured in accordance with the Act using the Competitive Flexible Procedure.
- 2.1.2 The tendering process seeks to determine the Most Advantageous Tender (MAT). EWR Co. will identify the MAT using the evaluation criteria and weightings listed in Paragraph 4.4 'Evaluation Process'.
- 2.1.3 EWR Co. is conducting this tendering process via the Portal [East West Rail \(jaggaer.com\)](http://jaggaer.com)
- 2.1.4 The scope of the Procurement is outlined within the specification, located within the Statement of Requirements for each Lot in Appendix A of this ITT. In short, the Supplier will be required to provide Land and Property Services to EWR Co..

### 2.2 The Procurement Process

- 2.2.1 The procurement process for the Land and Property supplier contract (Contracts) will be undertaken in accordance with the Procurement Act 2023 using a two-stage competitive flexible procedure.
- 2.2.2 EWR Co intends to award 2 (two) four-year contracts, with the option, at EWR Co's discretion, of up to two further years. (All financial commitment to be via the Task Order process).

### 2.3 Procurement Timetable

- 2.3.1 EWR Co. proposes to run the Procurement process in accordance with the timetable and following the stages set out in Table 1 (Procurement Timetable) below.
- 2.3.2 The Procurement Timetable is intended as a guide only. Suppliers shall note that due to the nature and complexity of the EWR Project, EWR Co.'s requirements may continue to evolve throughout this Procurement. EWR Co therefore reserves the following rights:
  - i. to delay any stage;
  - ii. to change any time period or deadline;
  - iii. to make other changes to the timetable and/or to introduce new or additional stages into the Procurement as it considers appropriate;
  - iv. to revise the tender documentation including this ITT including all Appendices and Annexes;
  - v. to require revised submissions; and
  - vi. to discuss issues with Suppliers as necessary.

### 2.3.3 EWR Co. will inform Suppliers of any such changes to the Procurement Timetable.

*Table 1 – Procurement Timetable*

Indicative Procurement Activity	Estimated dates
Publish Tender Notice & PSQ	04/08/2025
PSQ Deadline	01/09/2025 (Noon)
Issue ITT to Shortlisted Bidders	07/10/2025
Return of Ethical Walls Agreement	17/10/2025
Tenderer Clarification Period	08/10/2025 - 31/10/2025
Deadline for submission of tenders	06/11/2025 (Noon)
EWR Co Evaluation Period	07/11/2025 – 12/12/2025
Internal Governance	13/12/2025 – 07/05/2026
Contract Notice & Standstill Period	08/05/2026 – 22/05/2026
Contract Finalisation and Execution	25/05/2026 – 01/06/2026
Transition Period	01/06/2026 – 07/11/2026
Full Service Provision Commencement	08/11/2026

## 2.4 Tender Communications

- 2.4.1 All contact with EWR Co. must be made via the Portal messaging service. All communications must be submitted in English.
- 2.4.2 No direct contact should be made by Suppliers with EWR Co.'s employees or its advisers in connection with this Procurement outside the Portal messaging service, unless EWR Co. has provided express written consent via the Portal.

## 2.5 Clarification questions

- 2.5.1 Please read this ITT carefully as soon as possible after receipt. All requests for clarification about the requirements or the process of this Procurement shall be made in accordance with this paragraph.
- 2.5.2 EWR Co. will endeavour to answer all clarification questions received before the clarification submission deadline (identified in the Procurement Timetable). The clarification submission deadline is designed to permit EWR Co. to consider and respond to all questions and/or requests for clarification within sufficient time to enable Suppliers to take account of EWR Co.'s responses ahead of the Deadline.
- 2.5.3 EWR Co. reserves the right not to provide a response to any clarification question or request for clarification received after the clarification submission deadline.

- 2.5.4 Clarification questions must be submitted via the messaging service on the Portal.
- 2.5.5 EWR Co. is under no obligation to respond to clarification questions received after the clarification submission deadline.
- 2.5.6 All questions and/or requests for clarification received by EWR Co., together with EWR Co.'s responses to the same, will be circulated to all Suppliers unless EWR Co., in its sole discretion, considers that disclosure to all Suppliers would prejudice the commercial interests of the Supplier making the request.
- 2.5.7 Suppliers should indicate if a query is of a commercially sensitive nature by stating in the title of the query as “Reserved Information”, and/or “Confidential” and/or “Commercially Sensitive” – where disclosure of such a query and the answer to it would or would be likely to prejudice its commercial interests. However, if EWR Co., at its sole discretion, considers either (a) that the query is not of a confidential nature, or (b) that the response to the query would be relevant to all Suppliers, EWR Co. will:
- i. Invite the Supplier submitting the clarification question either to declassify the query and to allow the query along with EWR Co.'s response to be circulated to all Suppliers; or
  - ii. Request the Supplier, if it still considers the query to be of a confidential nature, to withdraw the query.
- 2.5.8 EWR Co. reserves the right not to respond to a request for clarification or to circulate such a request where it considers that the answer to that request would or would be likely to prejudice its commercial interests.
- 2.5.9 No response to a clarification question will be incorporated into the Contract unless the relevant response expressly states otherwise.

## 2.6 Status of verbal clarifications

- 2.6.1 Suppliers shall not place any reliance on any verbal exchanges at any meetings. Suppliers shall only place reliance on matters confirmed in writing by EWR Co. on the Portal or issued as a Tender Addendum to amend this ITT.
- 2.6.2 Following any meetings with Suppliers (if held), EWR Co. may at its own discretion, collate and broadcast to all Suppliers via the Portal any clarification required arising from those meetings that is not Supplier or Tender sensitive and which has a general application to all Suppliers.
- 2.6.3 If Suppliers believe an issue requires formal clarification, or confirmation, they are required to submit a clarification question via the Portal as set out in paragraph 2.5 above.

## 2.7 Tender Addenda

- 2.7.1 Given the complexity of the EWR Project, EWR Co. may need to issue updates to the ITT (Tender Addenda) during the procurement process. Any such Tender Addenda will

---

instruct Suppliers to take account of updated/further information in their Tender as appropriate. Any Tender Addenda will be issued to all Suppliers.

- 2.7.2 EWR Co. reserves the right to issue Tender Addenda after the Deadline. Any such Tender Addenda may require Suppliers to submit confirmation of their Tender(s) or to submit a revised Tender (as applicable and in accordance with any instructions contained in any such Tender Addenda).

## **2.8 Deadline**

- 2.8.1 Tenders must be submitted no later than the deadline identified in Table [1] above.
- 2.8.2 Tenders must be submitted via the Portal in accordance with the instructions in this ITT.
- 2.8.3 EWR Co. reserves the right to reject a Tender (or not to accept and not to evaluate any part or parts of a Tender) received after the Deadline.

## **2.9 Clarification of Tenders**

- 2.9.1 EWR Co. reserves the right to require Suppliers to clarify information contained in their Tenders.

## **3. Tender Returns**

### **3.1 Submission Structure**

- 3.1.1 Suppliers must ensure that their Tenders cover all the information required by this ITT. A check list of documents to be returned, including any specific format or layout requirements, is set out in Appendix L.
- 3.1.2 If a Supplier does not comply with the requirements contained in this paragraph 3 (Tender Returns), EWR Co. may disqualify the Supplier and reject its Tender.
- 3.1.3 It is the responsibility of each Supplier to ensure that it has all the information it needs to prepare its Tender in accordance with the ITT.
- 3.1.4 Suppliers should not assume that EWR Co. has any prior knowledge of the Supplier, its activities or its reputation. EWR Co. will only take into account information which is included in the Tender.
- 3.1.5 Where any paragraph of this ITT indicates a page limit, any response will be reviewed to that page limit and any additional information beyond that page limit will not be considered.
- 3.1.6 Suppliers should not include any extraneous information in the Tender which has not been specifically requested in the ITT, such as sales or marketing literature.

### **3.2 Preparation of compliant tenders**

- 3.2.1 A Tender or any other document requested by EWR Co. may be rejected if it is not submitted in a manner consistent with the provisions set out in this ITT.
- 3.2.2 All communications between Suppliers and EWR Co. must be in English.
- 3.2.3 Tenders and all accompanying documents and responses must be in English. If an original source document is not in English, the Supplier is required to submit a certified English translation of the document and the English translation will be the only version of any such document used for evaluation purposes. Only documents written in English will form part of the Contract.
- 3.2.4 Tenders shall be self-contained documents which do not cross-refer to documents which have not been submitted as part of the Tender [or rely on content set out in responses within the Tender to other questions]. EWR Co. shall only consider documents submitted as part of the Tender and shall not consider any material which is not included within the Tender.
- 3.2.5 Pricing and any financial data provided must be submitted in or converted into pounds sterling. Where submitted documents include financial data in a foreign currency, a sterling equivalent must be provided. Tender pricing must be provided excluding Value Added Tax (VAT).

## **3.3 Tender submission**

- 3.3.1 Tenders must be submitted via the Portal.
- 3.3.2 Tenders must be submitted no later than the Deadline. Tenders may be submitted at any time before the Deadline.
- 3.3.3 EWR Co. may at its absolute discretion extend the Deadline. Any extension to the Deadline will apply to all Suppliers.

## 4. Evaluation process

### 4.1 Introduction

- 4.1.1 EWR Co. will evaluate Tenders by applying the evaluation methodology described in this paragraph 4.
- 4.1.2 This evaluation methodology will be applied to identify the Most Advantageous Tender (MAT).
- 4.1.3 Tenders will be evaluated by EWR Co. Technical and EWR Co. Commercial staff, supported by other experts as follows:
  - i. Each question will be scored as indicated;
  - ii. Pass/fail criteria will apply as indicated;
  - iii. Indicated weightings will be applied to scored responses.

### 4.2 Compliance

- 4.2.1 Each Tender will be checked initially for completeness and compliance with this ITT. EWR Co. may seek clarification from a Supplier to help determine if a Tender is compliant.
- 4.2.2 Where a Tender is not complete or is inconsistent, EWR Co. may decide at its absolute discretion either:
  - i. To seek specific clarification from the Supplier; or
  - ii. Not to seek any clarification and to evaluate the Tender on the basis of its original content only.
- 4.2.3 In addition, Suppliers are required to confirm that there has not been a change in their circumstances between the time of submission of the Procurement Specific Questionnaire and the time of submission of the Tender. EWR Co. reserves the right to reconsider matters covered by the Procurement Specific Questionnaire if there have been material and/or detrimental changes to the Supplier's circumstances at any time during the procurement and prior to award of the Contract. Suppliers are referred to paragraph 5.18 below regarding changes in circumstances.
- 4.2.4 After the deadline for submission of Tenders, EWR Co. will consider, in respect of each Supplier that submitted a Tender, whether the Supplier or any related persons within its corporate group, associated persons relied on to meet the conditions of participation, or proposed sub-contractors or Associated Suppliers, are excluded or excludable Suppliers and will consider whether to disregard the Tender submitted in accordance with its obligations under the Act. If the Supplier is an excluded or excludable Supplier only by virtue of an associated person, proposed sub-contractor or Associated Suppliers, EWR Co. will notify the Supplier of its intention to disregard its Tender and provide the Supplier with reasonable opportunity to replace the associated person or sub-contractor. If as a



consequence of this process EWR Co. disregards a Tender from an excluded or excludable Supplier, or is aware of an associated person or sub-contractor having been replaced, it will give notice of this fact within 30 days of its decision to the Procurement Review Unit (PRU).

- 4.2.5 EWR Co. will conduct an assessment of all Tenders in order to identify the Supplier which has submitted the Most Advantageous Tender in accordance with the evaluation methodology and award criteria set out in the Tender Notice and described in this ITT. In carrying out this assessment, EWR Co. will disregard any Tender from a Supplier that does not satisfy the Conditions of Participation. EWR Co. may also disregard a Tender:
- i. from a Supplier that is not a United Kingdom Supplier or a treaty state Supplier or that intends to sub-contract the performance of all or part of the Contract to a Supplier that is not a United Kingdom Supplier or a treaty state Supplier; or
  - ii. if the tender breaches a procedural requirement set out in the Tender Notice, this ITT or associated tender documents; or
  - iii. if the Tender offers a price that EWR Co. considers to be abnormally low for the performance of the Contract. Where EWR Co. considers that a price offered by a Supplier in its Tender is abnormally low, EWR Co. will notify the Supplier and give the Supplier reasonable opportunity to demonstrate that it will be able to perform the Contract for the price offered. EWR Co. will only disregard the Tender if the Supplier cannot satisfactorily demonstrate to EWR Co. (acting in its sole discretion) that the Supplier will be able to satisfactorily perform the Contract for the price offered.

## 4.3 Clarification by EWR Co.

- 4.3.1 EWR Co. reserves the right to clarify Tenders with Suppliers.
- 4.3.2 Suppliers shall respond to any clarification question issued at whatever point during the Procurement process within the time specified by EWR Co., which may be extended by EWR Co. where it considers appropriate and reasonable to do so.
- 4.3.3 Suppliers shall note that EWR Co. may not necessarily seek clarification of Tenders. It is the responsibility of the Supplier to ensure that the content of its Tender is unambiguous, consistent and complete.
- 4.3.4 Where information or documentation submitted by a Supplier is or appears to be incomplete or erroneous, or where specific documents referred to in a Tender are missing, EWR Co. may request a Supplier to complete, supplement or clarify its Tender within an appropriate time limit, provided that EWR Co. is satisfied that such requests have been made in full compliance with the Act.
- 4.3.5 Suppliers may not provide additional information within their responses to a clarification question raised by EWR Co., even if that information is in the public domain, unless such information is specifically requested by EWR Co. in the clarification question. Responses to clarification questions that contain additional information that has not been requested

may be redacted before being evaluated or rejected at EWR Co.'s sole discretion. EWR Co. reserves the right, but is under no obligation, to take account of clarification responses in evaluating the relevant Supplier's Tender.

## 4.4 Evaluation Process

### Introduction

- 4.4.1 The evaluation process will be conducted in accordance with the Procurement Act 2023 and Procurement Regulations 2024.
- 4.4.2 All Tenders that are compliant will be assessed using the same methodology. EWR Co. will carry out its evaluation according to the criteria and weightings as detailed within this paragraph 4.
- 4.4.3 The evaluation criteria have been developed to assist EWR Co. in deciding which Suppliers to award the Contracts to on the basis that their response represents the Most Advantageous Tender (MAT). The evaluation criteria are for use by those Suppliers that have been invited to tender for the proposed Contracts, their professional advisers and other parties essential to preparing responses to the ITT and for no other purpose.
- 4.4.4 The Most Advantageous Tender (MAT) will be determined by applying the Price per Quality Point methodology set out in Paragraph 4.5.
- 4.4.5 Submitted Tenders will be evaluated by EWR Co. technical and EWR Co. commercial staff, supported by other subject matter experts where required, as follows:
  - i. Each question will be scored according to the scoring criteria as indicated in Table 4;
  - ii. Minimum thresholds to pass applicable questions will be applied as stated in this ITT;
  - iii. Indicated weightings will be applied to responses.

## 4.5 Evaluation Process - Technical

- 4.5.1 The technical evaluation will account for 100% of the weighting and the evaluation process will consist of the following stages:

### **Evaluation Stage 1 – Completeness and Compliance (not scored)**

- 4.5.2 Responses will be formally logged upon receipt and any Tender response not submitted on the Portal by the deadline indicated in the Procurement Timetable will be rejected and not considered for evaluation. Each Tender shall be reviewed to ensure that it is complete to enable the Tender to be evaluated in accordance with the evaluation methodology and confirmation of acceptance of terms and conditions (Appendix D - Form of Tender). EWR Co. will be under no obligation to request clarification or further information (subject to any requirements of the Act).

## **All Tenders that are compliant with paragraph 4.5.2 above shall progress to Evaluation Stage 2 (Mandatory Requirements) detailed below.**

### **Evaluation Stage 2 – Technical Questions (scored)**

- 4.5.3 Technical questions (Appendix B) TQ1 – TQ7 and SV1 will be scored in accordance with Table 4 – Evaluation Scoring Criteria. The actual score awarded for each question will be calculated by multiplying the number of marks awarded for a question by the relevant weighting shown in Table 5 (for example, if a response is awarded 60% (Good) and the weighting for that question is 25%, they receive 15 marks).
- 4.5.4 Tenderers must achieve a minimum score per technical question of 40% (Satisfactory). Tenderers who fail to achieve the minimum score on two or more technical questions will not proceed to Stage 3.

### **Evaluation Scoring Criteria**

- 4.5.5 Each question, in Appendix B (Technical Response – Stage 2), will be scored in accordance with the scale in the table below.

Table 4: Evaluation Scoring Criteria to be applied to responses

Score	Description
100%	Excellent - The response fully addresses all requirements with comprehensive, compelling, and well-substantiated evidence. It demonstrates an exceptional understanding and provides very high confidence that the proposed solution will exceed EWR Co.'s expectations.
80%	Very Good - The response addresses all requirements in detail and is supported by strong, relevant evidence. It demonstrates a clear understanding and provides high confidence that the solution will fully meet EWR Co.'s requirements.
60%	Good - The response meets all requirements and includes appropriate, relevant evidence to support its claims. It shows a sound understanding and provides good confidence that the solution will meet EWR Co.'s requirements.
40%	Satisfactory - The response meets all requirements and is complete. Evidence may be limited or generic, but it provides moderate confidence that the solution will meet EWR Co.'s basic expectations.
20%	Less than Satisfactory - The response is complete but fails to meet some requirements. Evidence is insufficient, unclear, or weak, resulting in low confidence that the solution will fully meet EWR Co.'s needs.
0%	Poor - The response is incomplete, non-compliant, or fails to address the requirements. It lacks credible or relevant evidence and provides no confidence that the solution will meet EWR Co.'s expectations.

## 4.6 Evaluation Process – Stage 3 - Commercial

- 4.6.1 The total marks scored from Stage 2 Technical Evaluation will be used to determine the Price per Quality Point of the tender to two decimal points.
- 4.6.2 Tenderers are requested to complete the Commercial Response Template (Appendix C) which asks for day rates (which will be included in the contract), pricing against set scenarios including resource utilisation and early payment discounts (which will be included in the contract). The total value of the day rate calculation and the scenarios minus early payment discounts will provide the total bid price.
- 4.6.3 The Assessed Evaluation Price submitted by each supplier will be divided by the total Technical score to arrive at the Price per Quality Point:
- Dividing the total bid price by the quality score to give an output price per quality point

Assessed Evaluation Price

---

Technical Score

The number arrived at is the PQP. The bid with the lowest PQP is the Most Advantageous Tender (MAT).

- 4.6.4 In the event of a tie in the PQP scores, the bid with the lowest total bid price shall be the successful tender.

## Overview of Total Evaluation Scores

Table 5 – Evaluation Overview

Technical Criteria	Weighting %	Max Weighted Score
Methodology Approach – TQ1	15%	15%
Scenarios – TQ2	15%	15%
Methodology Application – TQ3	15%	15%
Organisation Capability – Key People & Leadership – TQ4	10%	10%

Technical Criteria	Weighting %	Max Weighted Score
People Management - TQ5	10%	10%
Collaborative Working - TQ6	10%	10%
Client Experience - TQ7	10%	10%
H&S and Wellbeing – TQ8	5%	5%
Social Value and Sustainability - SV1	10%	10%
<b>Technical Total</b>	<b>100%</b>	<b>100%</b>
<b>Commercial Evaluation</b>		<b>Price per Quality Point</b>

## 4.7 Variants

In accordance with the Tender Notice, EWR Co. shall not accept Variants. EWR Co. will not evaluate any Variants.

## 4.8 Limit on winning both Lots

4.8.1 Subject to the remainder of this paragraph 4.8, EWR Co. will not, as a general rule, award both Lots to the same Supplier.

4.8.2 Subject to paragraph 4.8.3 below, where one Supplier achieves the lowest Price per Quality Score in both Lots, EWR Co. will award the Lots on the following basis:

- i. Firstly, EWR Co. shall consider the number of compliant Tenders received in respect of each Lot. If, in respect of one Lot, EWR Co. receives only one compliant Tender, that Lot shall be awarded to the Supplier that submitted the only compliant Tender. The other Lot (with more than one compliant Tender) shall be awarded to the Supplier that is ranked second, according to the lowest Price per Quality Point, for that Lot.
- ii. Secondly, if both Lots receive more than one compliant Tender, EWR Co. shall calculate, for each Lot, the differential between the first and second ranked Suppliers, based on Price per Quality Point. The Lot with the larger differential between first and second ranked Suppliers according to Price per Quality Point

shall be awarded to the first ranked Supplier and the Lot with the smaller differential will be awarded to the second ranked Supplier, according to the lowest Price per Quality Point, for that Lot.

- 4.8.3 In the event that only one Supplier submits a compliant Tender for both Lots, and no other compliant Tenders are received for either Lot, EWR Co. reserves the right to award both Lots to the Supplier that submitted both compliant Tenders. If this paragraph 4.8.3 applies, EWR Co. reserves the right to require the Supplier to submit further information or documentation, including updated PSQ Form(s) on the basis that the Supplier will perform both Lots so that EWR Co. can make a revised assessment of the PSQ submission based on the updated information. The Supplier may only be awarded both Lots if the updated PSQ information meets the requirements set out in the PSQ on the basis of winning both Lots.

## **4.9 Standstill period and award of Contract**

- 4.9.1 In accordance with Section 50 of the Act, before entering into a public contract EWR Co. will publish a contract award notice and provide an assessment summary to each Supplier that submitted an assessed Tender in accordance with the Act.
- 4.9.2 The Contract will not be entered into until a mandatory standstill period of at least 8 working days has elapsed from the date of the contract award notice.
- 4.9.3 EWR Co. will also publish a contract details notice via the Find a Tender Service in accordance with the requirements of Section 53 of the Act.

## **5. Notices to Suppliers**

### **5.1 Introduction**

- 5.1.1 This ITT sets out the rules for and conditions of tendering in order to assist Suppliers in preparing complete and compliant Tenders. Suppliers that breach any of the conditions of tendering contained in this ITT may be rejected.
- 5.1.2 Suppliers are strongly advised to make sure that all those involved in the preparation of their Tenders have a copy of the ITT as well as the Appendices.
- 5.1.3 In this ITT, where any reference is made to obtaining EWR Co.'s consent, any such consent shall be at EWR Co.'s sole and absolute discretion.
- 5.1.4 In this ITT, where it is stated that EWR Co. "may" take a particular action or "reserves its right" in relation to a particular action or to give consent, EWR Co. may take the relevant action, exercise the relevant right or give the relevant consent (or not, as the case may be) at its sole and absolute discretion to the extent permitted by law, but EWR Co. is under no obligation to do anything. Where EWR Co. intends to take particular considerations into account when exercising its discretion, this is explained in the relevant part of the ITT.

### **5.2 Central Digital Platform**

Suppliers that wish to participate in this Procurement are responsible for ensuring that the Central Digital Platform contains complete, accurate and up-to-date information about their organisation and any Associated Suppliers which are relevant for the purposes of this Procurement. Suppliers must notify EWR Co. immediately if they are unable to register or access the Central Digital Platform and/or provide accurate and up-to-date information via the Central Digital Platform.

### **5.3 Transparency**

- 5.3.1 Suppliers should note that, in accordance with general transparency obligations and procurement law obligations under the Act, EWR Co. routinely publishes details of its procurement processes and awarded contracts. This includes, but is not limited to, the contract value, the identity of the successful Supplier, compliance with payment obligations and contract performance. Compliance with these obligations may involve EWR Co. taking steps without consultation with Suppliers. Where required under the Act, a copy of the Contract will be published (subject to making any reasonable and proportionate redactions permitted under the Act).
- 5.3.2 All central government departments and their executive agencies and non-departmental public bodies are subject to controls and reporting within government. In particular, they report to various government bodies including but not limited to the Cabinet Office and HM Treasury for all expenditure. EWR Co. reserves its absolute right to share within government any of the documentation/information submitted by Suppliers during this

Procurement (including any information that a Supplier considers to be confidential and/or commercially sensitive).

- 5.3.3 Where required, EWR Co. will disclose on a confidential basis any information it receives from Suppliers during the Procurement to any third party engaged by EWR Co. for the specific purpose of assessing or assisting EWR Co. in assessing the Supplier's Tender. In providing such information the Supplier consents to such disclosure.

## **5.4 Parent company guarantee or other securities**

- 5.4.1 EWR Co. reserves the right to require a parent company guarantee or alternative equivalent form of security should the Supplier be successful in this Procurement.
- 5.4.2 Where the Supplier's parent company is incorporated outside the United Kingdom, EWR Co. will require a legal opinion from an independent firm of lawyers practising in that jurisdiction (at the Supplier's own cost and expense) as to the capacity/authority of the parent company to enter into the parent company guarantee and the enforceability of the terms of the parent company guarantee in the relevant overseas jurisdiction.
- 5.4.3 Notwithstanding the above, EWR Co. may specify minimum contractual financial security requirements as appropriate having regard to the financial assessment undertaken during this Procurement. Where EWR Co. specifies any financial security requirements, acceptance of the requirements shall be considered a mandatory condition and failure to accept the same may result in the Supplier's exclusion from the Procurement.

## **5.5 Status of the ITT**

- 5.5.1 Subject to paragraph 5.6, the ITT sets out EWR Co.'s current requirements in respect of the Contract.
- 5.5.2 Unless otherwise provided in this ITT, the ITT supersedes any information previously supplied by EWR Co. to Suppliers [notably in the PSQ].

## **5.6 Amendments to the ITT**

- 5.6.1 EWR Co. reserves the right to issue amendments or modifications to the ITT (including any Tender Addenda) during the Tender period and during any subsequent stage of the Procurement. These will be published on the Portal and notification issued to all Suppliers simultaneously. Suppliers will be assumed to take account of any such modifications and amendments.
- 5.6.2 Should any additions or deletions to the ITT be considered necessary by EWR Co. prior to the Deadline, such additions and/or deletions will be published on the Portal and from the date of publication will be deemed to be part of this ITT.
- 5.6.3 Suppliers are solely responsible for reviewing the Portal regularly and keeping themselves up-to-date with any updates made, addenda issued or clarifications provided by EWR Co.



- 5.6.4 EWR Co. is considering the application of the Transfer of Undertakings (Protection of Employment) Regulations to the contract and will provide a further update to potential Applicants in due course and, in any case, prior to or at ITT launch. Pursuant to such further update, EWR Co. may update the ITT documentation (including any appendices).

## 5.7 Freedom of Information

- 5.7.1 In relation to this ITT, Suppliers shall provide all assistance reasonably requested by EWR Co. to ensure that EWR Co. complies with the Freedom of Information Act 2000 (FOIA) and/or the Environmental Information Regulations 2004 (EIR) and all related subordinate legislation.
- 5.7.2 EWR Co. are obliged by law under FOIA/EIR to supply the public with information relating to all areas of its work and are under a duty to operate with openness and transparency unless an exemption applies.
- 5.7.3 EWR Co. shall be responsible for determining whether information is exempt information under the FOIA/EIR and for determining what information will be disclosed in accordance with the legislation.
- 5.7.4 An individual may request:
- i. To be informed whether EWR Co. holds information of the description requested; and
  - ii. If so, to have that information communicated to the requestor.
- 5.7.5 Without prejudice to EWR Co.'s rights and obligations under the FOIA/EIR, Suppliers should be aware that the rules about disclosure apply regardless of where the information held by or on behalf of EWR Co. originated from, and as such the following types of information (without limitation to the generality of the foregoing) may be subject to disclosure:
- i. Information in any Tender submitted to EWR Co.;
  - ii. Information in any Contract to which EWR Co. is a party (including information generated under a Contract or in the course of its performance);
  - iii. Information about costs, including invoices submitted to EWR Co.;
  - iv. Correspondence and other papers generated in any dealing with the private sector whether before or after the Contract award.
- 5.7.6 You should note that this ITT, once published by EWR Co., may be made available to the public on request and:
- i. Suppliers must in their responses to this ITT and in any subsequent discussions, notify EWR Co. of any information which the relevant Supplier considers to be eligible for exemption from disclosure under the FOIA/EIR. Such information must be referred to as "Reserved Information", and/or "Confidential" and/or

“Commercially Sensitive” and identified in the Supplier's response. Information not identified as “Reserved Information”, and/or “Confidential” and/or “Commercially Sensitive” may be made available by EWR Co. on request. Even information identified as “Reserved Information”, and/or “Confidential” and/or “Commercially Sensitive” may have to be disclosed (see points 5.7.7 and 5.7.8 below);

- ii. All decisions relating to the exemption and disclosure of information will be made at the sole discretion of EWR Co. It should be noted that EWR Co. may disclose your justifications for exemption and any additional information relating to that which is classified as “Reserved Information”, and/or “Confidential” and/or “Commercially Sensitive”;
- iii. Although EWR Co. is not under any obligation to consult you in relation to requests for information made under FOIA/EIR, EWR Co. will endeavour to inform you of requests wherever it is reasonably practicable to do so;
- iv. Any Contract with EWR Co. will require you to supply additional information, and/or provide other assistance, pursuant to any FOIA/EIR request received by EWR Co.;
- v. EWR Co.'s decision on applying an exemption and, therefore, refusing a request for information by a member of the public may be challenged by way of appeal to the Information Commissioner. The Information Commissioner has the statutory power to direct that the information be disclosed.

#### 5.7.7 Additional information and guidance:

- i. The exemption that applies to information that would prejudice commercial interests if disclosed is a ‘qualified’ exemption under the FOIA/EIR. This means that EWR Co. is required to consider whether, in all the circumstances prevailing at the time a request is received, the public interest in disclosure outweighs the commercial interest in upholding the exemption;
- ii. Information which is exempt under the rules governing commercial matters will not normally be withheld for more than seven years after completion of the Contract;
- iii. Information relating to the overall value, performance or completion of a Contract will not be accepted as “Reserved Information”, and/or “Confidential” and/or “Commercially Sensitive”, although EWR Co. may choose to withhold such information in appropriate cases, as its sole discretion;
- iv. Information relating to unit prices or more detailed pricing information may be specified by you as “Reserved Information”, and/or “Confidential” and/or “Commercially Sensitive”.

- 5.7.8 For further information and guidance, please see the Lord Chancellor’s Code of Practice issued under section 45 of the FOIA (see [www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice](http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice)).

## 5.8 Requirements of Sub-contractors and Consortia

If requested to do so by EWR Co., a Supplier may be required to enter into a legal arrangement with other members of a consortium or with any parties which are relied on in order to satisfy the conditions of participation relating to this Procurement (in accordance with section 72 of the Act). Acceptance of this request shall be considered a mandatory requirement and failure to accept the same may result in the Supplier’s exclusion from the Procurement.

## 5.9 Equality, Diversity and Inclusion

EWR Co. is committed to proactively encouraging diverse suppliers to participate in its procurement process for goods, services and works. It will provide a level playing field of opportunities for all organisations including Small and Medium Enterprises (SME’s) and Black, Asian and Minority Ethnic businesses and other diverse suppliers. In compliance with legislation, EWR Co.’s procurement process will comply with the relevant principles set out in the Act.

## 5.10 Social Value

The Social Value Act came into force on 31 January 2013 and applies to all public sector organisations who are “contracting authorities” for the purpose of the Act. EWR Co. will actively promote compliance with the Act within its supply chain including the award of this Contract.

## 5.11 Sustainable Procurement

- 5.11.1 EWR Co. will proactively conduct its procurement process in compliance with legislation. EWR Co. will adopt the principles of ‘recycle, reduce, reuse and buy recycled’. EWR Co. is committed to applying these principles in its procurement of goods, services and works, where the required criteria for performance and cost effectiveness can be met. EWR Co. will actively promote ‘Sustainable Procurement’ throughout its supply chain.
- 5.11.2 EWR Co. expects its suppliers to develop and implement policies to promote these principles.

## 5.12 Important notices and disclaimers

- 5.12.1 Any disclaimers or limitations in this ITT (whether appearing under the heading of disclaimer or otherwise) shall apply to and be for the benefit of EWR Co., its advisers and/or representatives acting on behalf of EWR Co. and shall continue to apply to and be enforceable by EWR Co. without limit in time.

- 5.12.2 This ITT and all other information, statements, opinions, conclusions, data and communications, whether written or oral and however transmitted or otherwise made available to Suppliers, which is or are made available to Suppliers during the procurement process (together, the 'information') is being provided to Suppliers for information only and for the sole purpose of assisting them to submit Tenders.
- 5.12.3 The information does not purport to be comprehensive or to contain all of the information that a Supplier may require to submit a Tender. Any Supplier considering submitting a Tender in response to this ITT shall conduct its own due diligence and seek its own professional, financial, legal and other advice as appropriate.
- 5.12.4 The information made available by EWR Co. does not comprehensively include any legislation which is applicable in relation to this ITT and/or the Contract. In producing their Tenders, Suppliers shall satisfy themselves as to the requirements of legislation.
- 5.12.5 Words such as "anticipates", "expects", "projects", "intends", "plans", "believes", "will" and terms with similar meaning indicate the present expectation held by EWR Co. of future events, which are subject to a number of factors and uncertainties that could cause EWR Co. requirements to differ from those described in this ITT. If EWR Co. requirements change at any time during this Procurement, Suppliers will be notified as soon as is reasonably practicable.
- 5.12.6 Neither EWR Co. nor any of its advisers, representatives or agents acting on EWR Co.'s behalf:
- i. Accept any liability arising out of or in connection with the information including without limitation for any error or misstatement in, or omission from, the information and, so far as permitted by law, in respect of any negligence or misrepresentation; and/or
  - ii. Give any representation, warranty or undertaking, express or implied, with respect to the information, including, without limitation, with respect to the fairness, accuracy, adequacy or completeness of any of the information; and/or
  - iii. Shall be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising out of or in connection with any reliance on the information.

## 5.13 Conditions governing submissions

- 5.13.1 Tenders are submitted on the basis that Suppliers consent to EWR Co., including such third parties commissioned by EWR Co., carrying out all necessary actions to verify the information that has been provided in Tenders.
- 5.13.2 None of the Information shall constitute a Contract or part of a Contract in any way, and none of the Information is or should be relied on as a promise or representation as to EWR Co.'s ultimate decisions in relation to the EWR Co. programme or that EWR Co. will enter into a Contract with any Supplier.

- 5.13.3 EWR Co. does not bind itself to enter into any Contract or Contracts arising out of the procedures envisaged by this ITT and no contractual rights, express or implied, arise out of this ITT or the procedures set out in it.
- 5.13.4 EWR Co. does not accept any responsibility for any pre-contract representations made by or on its behalf, or for any estimates made by Suppliers of resources to be employed in meeting EWR Co.'s requirements, or for any other assumption which Suppliers may have drawn or will draw from any pre-contract negotiations.
- 5.13.5 In submitting Tenders, Suppliers undertake that they are willing, if so required, to enter into detailed negotiations in relation to their proposals, including meetings with EWR Co.
- 5.13.6 EWR Co. reserves the right not to pursue, or to discontinue, negotiations with any Supplier at any stage following the submission of Tenders in response to this ITT where it considers that such Supplier will not be able to satisfy its requirements or with a view to arriving at a shortlist of the highest scoring/ranking Suppliers or to appointing the top ranked Supplier as preferred or lead Supplier.
- 5.13.7 EWR Co. reserves the right, with or without notice but always acting reasonably, to amend or add to this ITT in any way and to extend or vary the Contract, procurement timetable or procurement process in relation to any or all of its stages.

## 5.14 Award commitment

- 5.14.1 A response to this ITT does not guarantee that a Supplier will be awarded a Contract and nothing in this ITT should be interpreted as a commitment by EWR Co. to award this Contract to any Supplier.
- 5.14.2 The issue of this ITT does not commit EWR Co. at any time to award the Contract to any party or any person.
- 5.14.3 EWR Co. reserves the right, at any time and without cost to EWR Co., to the extent permitted by law:
- i. To abandon, terminate or suspend, for any reason, any part of or the whole of this Procurement and/or to withdraw this ITT at any time or to re-invite responses on the same or any alternative basis; and/or
  - ii. To waive any requirements of this Procurement; and/or
  - iii. To vary any requirements and/or procedures relating to the Procurement;
  - iv. Not to award the whole or part of the Contract as a result of this Procurement;
  - v. To reject all or any proposals and to terminate discussions with all or any Suppliers at any time; and/or
  - vi. To omit scope at any time including, for the avoidance of doubt, during the course of the Procurement.

- 5.14.4 EWR Co. is not committed to any course of action as a result of issuing this ITT or negotiating with Suppliers in respect of it or any other communication between EWR Co. and any other party. In particular, Suppliers should note that EWR Co. in its absolute discretion:
- i. reserves the right not to accept any Tender;
  - ii. does not commit to accepting the lowest priced Tender or combination of Tenders;
  - iii. reserves the right to withdraw any preferred Supplier status where the top ranked Supplier causes delays, does not or in EWR Co.'s opinion is not likely to meet any conditions stipulated in its preferred bidder notification or is otherwise not engaging in the final procurement process leading to award; and/or
  - iv. reserves the right to appoint a Supplier as “reserve” preferred Supplier in case of negotiation breakdown with the top ranked Supplier and accordingly to suspend discussions with the top ranked Supplier.
- 5.14.5 EWR Co. may refrain from considering, or may reject, any Tender if it is not in accordance with all of the requirements and conditions set out in this ITT or any of the provisions of this ITT as a whole. EWR Co. may reject a Supplier at any stage of the process if it comes to light that the Supplier has breached any of the requirements and conditions set out in this ITT or any of the provisions of this ITT as a whole.
- 5.14.6 Without limiting any other right in this ITT or generally, EWR Co. reserves the right to reject or disqualify any Supplier who;
- i. Provides information or confirmations which later prove to be untrue or incorrect; and/or
  - ii. Does not submit a Tender in accordance with the requirements of this ITT or as directed by EWR Co. during the procurement process; and/or
  - iii. In EWR Co.'s opinion, has become ineligible pursuant to the Act or does not have the ability, resources or economic or financial standing to perform the Contract in accordance with EWR Co.'s requirements; and/or
  - iv. Undergoes a change in identity, control, financial standing, or other adverse change affecting the Supplier which in the reasonable opinion of EWR Co. means the Supplier has become ineligible pursuant to the Act and/or puts the Supplier in breach of the PSQ requirements and/or would have an adverse impact on the procurement process and/or the ability of the Supplier to perform the Contract; and/or
  - v. Fails to put forward proposals to manage any actual or potential conflict of interest arising, including any conflict between interests of EWR Co. and the Supplier, any subcontractor of the Supplier or any of their respective professional advisers; and/or

- vi. Fails to put forward proposals to manage any actual or potential conflict of interest arising as a result of being appointed; and/or
- vii. Breaches the publicity or confidentiality requirements set out in this ITT.

5.14.7 EWR Co. reserves the right to require the submission by a Supplier of any additional or supplemental information or clarification as EWR Co. may, in its absolute discretion, consider appropriate. Suppliers should not rely on EWR Co. exercising this right.

5.14.8 The submission of a Tender in response to this ITT shall be deemed to imply the Supplier's acceptance of terms and conditions in this ITT without qualification.

## 5.15 Good Faith

5.15.1 In submitting a response to this ITT, each Supplier undertakes to provide its submission in good faith, and that each Supplier will not at any time communicate to any person (other than EWR Co., its advisors, or third parties directly concerned with the preparation or submission of its response) the content, pricing or terms (or approximate terms) of the Suppliers' responses or of any arrangements or agreements to be entered into in relation to their responses.

5.15.2 In submitting a response to this ITT, each Supplier undertakes that the principles described in this paragraph have been, or will be, brought to the attention of all Consortium members, sub-Contractors, and Associated Suppliers which are or will be providing services or materials connected to the Supplier's response.

## 5.16 Accuracy of Information

5.16.1 In submitting a response to this ITT, each Supplier undertakes that:

- i. All information contained in any response at any time provided to EWR Co. in relation to the Contract is true, accurate and not misleading and that all opinions stated in any part of a response are honestly held and that there are reasonable grounds for holding such opinions; and
- ii. Any matter that arises that renders any of such information untrue, inaccurate or misleading will be brought to the attention of EWR Co. immediately.

5.16.2 EWR Co. shall have the right to disqualify a Supplier from the procurement process at any stage if it becomes aware of any omission or misrepresentation in a response to any question or in the event that there are material changes to a position/information set out in any Tender response or other response made following a request by EWR Co. For the avoidance of doubt, EWR Co. may check that there have not been any material changes to the information provided or the positions outlined in a tender response at any stage and, and in the event of any change, EWR Co. reserves the right to disqualify Suppliers based on an assessment of the updated information.

## 5.17 Intellectual Property Rights (IPR)

- 5.17.1 All intellectual property rights in this ITT and in the information contained and referred to in it shall remain the property of EWR Co. and/or third parties, and Suppliers shall not obtain any right, title or interest therein.

## 5.18 Changes in Circumstances

- 5.18.1 Suppliers are reminded of the provisions contained in the Procurement Specific Questionnaire in relation to the assessment of Suppliers and changes following the submission of responses to the Procurement Specific Questionnaire.
- 5.18.2 Suppliers (including, for this purpose, each participant in any Consortium) are required to inform EWR Co. promptly and in any case no later than fourteen (14) days, after the occurrence of:
- i. Any change to a Supplier's corporate structure from that set out in its response to the Procurement Specific Questionnaire and/or this ITT. This includes the grant of any options to acquire shares, any agreement relating to exercise of rights attaching to such shares, and any material amendments to a shareholder's agreement, articles of association or similar constitutional documents;
  - ii. Any change to the legal status of the Supplier, membership of any Consortium, and the principal relationships between the members of a Consortium and any proposed parties or shareholdings;
  - iii. Any changes to any other information provided to EWR Co. as part of this Procurement; or
  - iv. Any other change to the Supplier's circumstances, or the basis of its response to this ITT, which may be expected to influence EWR Co.'s decision on its suitability for qualification for receipt of this ITT or to be selected as the preferred Supplier.
- 5.18.3 EWR Co. reserves the right and may in certain cases be required to disqualify any Supplier that has been selected to receive this ITT where the composition of the Supplier's bid vehicle or Consortium has changed. In particular, that right to reject will arise where EWR Co. is of the opinion that, following the notified changes, a Supplier does not have, or is unlikely to have by the date of commencement of the Contract, the requisite financial standing, technical capacity or competence, or is otherwise unsuitable to perform the Contract. Therefore, Suppliers are advised to discuss any proposed changes of this nature with EWR Co. before they are put into effect.
- 5.18.4 For the avoidance of doubt, Suppliers participating as part of a Consortium risk being disqualified if any Supplier or Associated Supplier which had its information submitted and assessed at the Procurement Specific Questionnaire stage withdraw from that Consortium, unless:
- i. those entities that remain part of the Consortium would have met the PSQ requirements in any event and would have been invited to Tender without the withdrawing party; and/or



- ii. the withdrawing parties are replaced such that the reconstituted Consortium would have met the PSQ requirements and would have been invited to Tender.

5.18.5 Following the receipt of a notification from a Supplier in accordance with the requirements of paragraph 5.18.2 above, EWR Co. reserves the right either to consent to the Supplier's continuing participation in this Procurement, or to exclude the Supplier from further participation in this Procurement. Where EWR Co. gives consent, EWR Co. reserves the right to grant such consent subject to conditions.

## 5.19 Conflict of Interest

5.19.1 EWR Co. is mindful to avoid conflicts of interest during this Procurement. Accordingly, EWR Co. intends to take appropriate measures to prevent, identify and remedy any actual, potential or perceived conflicts of interest (within the meaning of the Act) arising in the conduct of this Procurement.

5.19.2 Tenderers shall read and agree to the principles of EWR Co.'s conflicts of interest policy by submitting the Conflict of Interest Declaration (Appendix H).

5.19.3 For the purpose of this ITT, a reference to conflict of interest includes:

- i. Any situation where there is an actual, potential or perceived conflict, either commercial or professional, between the interests or duties of EWR Co. and any person or organisation engaged (or in the process of being engaged) by EWR Co.. Engagement may be either direct (e.g. supplier or consultant) or indirect (e.g. subconsultant or supplier within the same group);
- ii. Any situation in which a conflict of interest may be reasonably perceived to exist; by EWR Co. or a and/or
- iii. 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. In this context, relevant staff members means staff members of EWR Co.

5.19.4 In particular, but without limitation, Suppliers should note that EWR Co. is likely to regard a conflict of interest arising where:

- i. A Supplier has been or is directly involved in advising EWR Co. on matters relating to the EWR Project or in the preparation of documents or information relating to the EWR Project, this Procurement and/or the Contract;
- ii. A director, company secretary, or staff member from a Supplier is related to one of the officers or board members of EWR Co., and/or HM Treasury and/or the Department for Transport;
- iii. A staff member, consultant, or contractor currently employed or engaged by the Supplier has been previously engaged by EWR Co. in relation to the EWR Project

or in the preparation of documents or information relating to the EWR Project, this Procurement and/or the Contract; and/or

- iv. Any other circumstances where a person or organisation may be in a position, or be perceived to be in a position, where they could misuse confidential information of EWR Co. in relation to the EWR Project, this Procurement and/or the Contract to give an unfair advantage to a Supplier in this Procurement.

- 5.19.5 The above circumstances will not lead to automatic disqualification on the grounds of a conflict of interest, although EWR Co. reserves the right to reject a Supplier from this Procurement where there is an actual, potential or perceived conflict of interest involving the Supplier which cannot be effectively remedied by other, less intrusive, measures.
- 5.19.6 If any conflict of interest or potential conflict of interest between a Supplier, its advisers, EWR Co. advisers or any combination thereof becomes apparent to a Supplier, that Supplier shall inform EWR Co. immediately. In such circumstances, EWR Co. shall, at its absolute discretion, decide on the appropriate course of action.
- 5.19.7 If EWR Co. becomes aware of any conflict of interest that has not been declared by the relevant Supplier to EWR Co., that Supplier may be disqualified from the Procurement process.

## 5.20 Conflict Assessments

EWR Co. confirms that, prior to the issue of the Tender Notice in this Procurement, a conflict assessment has been prepared in accordance with the Act.

## 5.21 Ethical Walls Agreement

- 5.21.1 As a condition of participating in this Procurement, Suppliers will be required to sign and return a copy of the ethical walls agreement contained in Appendix J by the deadline stipulated in the procurement timetable. Any Supplier that fails to comply with this requirement may be disqualified from the procurement at the discretion of EWR Co..
- 5.21.2 In accordance with the terms of the ethical walls agreement, Suppliers must notify EWR Co. immediately in writing where an unfair advantage or a perceived, potential or actual conflict of interest exists between the Supplier (in this context this includes but is not limited to any consortium member, subcontractor and/or advisers of the same) and EWR Co. and/or its advisers. Any Supplier that fails to comply with this requirement may be disqualified from the Procurement at the discretion of EWR Co. These conditions are without prejudice to the obligations within the ethical walls agreement.

## 5.22 Bid Costs

- 5.22.1 EWR Co. accepts no liability to pay for any preparatory work undertaken in connection with this ITT or any other communication between EWR Co. and any other party and all costs, expenses and liabilities incurred by Suppliers in connection with the tender and due diligence process for this Contract.

- 5.22.2 Suppliers are fully and solely responsible for and liable for all costs associated with and arising out of or in connection with responding to the Contract Notice, [the Procurement Specific Questionnaire] and this ITT or any subsequent phase of this Procurement process. For the avoidance of doubt, this includes costs and fees incurred by Suppliers in instructing lawyers, designers, accountants and other advisers, participation in any negotiations, preparation of Tenders and submission of any clarifications and/or response to any subsequent Tender stage and participation in negotiation up to Contract close.
- 5.22.3 Under no circumstances will EWR Co. be liable for any costs or expenses (whether direct or indirect) incurred by or on behalf of the Supplier or any party associated with this procurement process, any delay or any abandonment or termination of it.
- 5.22.4 By returning its Tender, the Supplier confirms its understanding and acceptance of the fact that it should have no claim whatsoever against EWR Co. in respect of bid costs.

## **5.23 Supplier withdrawal**

- 5.23.1 Suppliers may withdraw from the Procurement at any time before the Tender submission deadline set out in the Procurement Timetable by providing written notification to EWR Co. via the Portal.
- 5.23.2 In the event that a Supplier withdraws from the procurement prior to the Tender submission deadline, EWR Co. reserves the right (but shall not be obliged) to invite the next highest ranked Supplier that submitted a valid response to the PSQ but which attained a score that was not sufficiently high to be shortlisted, to be re-instated in the Procurement and invited to submit a Tender.

## **5.24 Modifying your final tender**

Suppliers may modify their submitted Tender prior to the submission deadline. EWR Co. will not open Tenders until after the submission deadline set out in the Procurement Timetable.

## **5.25 Selection of a Winning Supplier**

- 5.25.1 Before awarding the Contract to the winning Supplier, EWR Co. reserves the right to check and confirm:
- i. The winning Supplier's financial standing (including each member of any consortium and of any key sub-contractor) and/or;
  - ii. All or part of the winning Supplier's Tender, each in the context of any changes that may have occurred since the submission of Tenders.

## **5.26 Data Transparency Protocol & General Data Protection Regulation (UK GDPR)**

- 5.26.1 The UK government has announced its commitment to greater data transparency. Accordingly, EWR Co. reserves the right to publish its tender documents, Contracts and data from invoices received. In so doing, EWR Co. may at its absolute discretion take account of the exemptions that would be available under FOIA, EIR and UK GDPR.

## 5.27 Canvassing

- 5.27.1 Any Supplier that, in connection with the ITT:
- i. Offers any inducement, fee or reward to any employee of EWR Co. or any persons acting as an advisor for EWR Co. or in connection with the procurement process; or
  - ii. Does anything which would constitute a breach of the Prevention of Corruption Acts 1889 to 1916 and/or Bribery Act 2010; or
  - iii. Contacts any employee of EWR Co. about any aspect of the Procurement process, except through the agreed communication channel(s) authorised in this document

will be disqualified from any further involvement in this process, without prejudice to any other civil remedies available to EWR Co. and without prejudice to any criminal liability which such conduct by a Supplier may attract.

## 5.28 Anti-competitive Behaviour

- 5.28.1 Suppliers are reminded of their obligations under applicable competition laws. EWR Co. may require evidence from Suppliers that their arrangements are not anti-competitive and EWR Co. reserves the right to require any Supplier to comply with any reasonable measures which may be needed to verify that no anti-competitive arrangements are in place.
- 5.28.2 Any evidence of anti-competitive behaviour may result in a Supplier being disqualified from the Procurement. EWR Co. also reserves the right to refer any suspected breaches of applicable competition laws to the relevant authorities including, but not limited to, the Competition and Markets Authority and the Serious Fraud Office.
- 5.28.3 Suppliers should note that anti-competitive behaviour may result in the Supplier being excluded from bidding for contracts under Schedule 7, paragraph 7 of the Act. Where a relevant decision has been made by the Competition and Markets Authority under the Competition Act 1998, the Supplier may also be excluded from bidding for contracts under Schedule 6, paragraph 41 of the Act and may be added to the debarment list and/or be liable for civil and/or criminal penalties.

## 5.29 Supplier Eligibility

- 5.29.1 Suppliers are reminded that the eligibility requirements in this document, Tender Notice and all other associated tender documents apply to the Procurement at all times.

- 5.29.2 EWR Co. reserves the right to require any Supplier to provide such further information as EWR Co. may require (and for the avoidance of doubt, EWR Co. may make multiple requests) as to any issue addressed in the ITT or PSQ, including, but not limited to, the economic and financial standing of the Supplier at any stage of the Procurement and prior to the notification of the award decision and/or the award of the Contract.
- 5.29.3 EWR Co. must be promptly notified in writing via the Portal of any changes in the information that the Supplier has provided in its response to this Procurement (including but not limited to arrangements in relation to any Associated Suppliers) at any point before the entry into the Contract so that EWR Co. may assess whether the Supplier continues to satisfy the relevant Conditions of Participation and should continue to qualify for participation in the Procurement. For the avoidance of doubt, EWR Co. reserves the right to take such action as it deems appropriate in the light of its assessment of the updated information, including (but not limited to) excluding the Supplier concerned from the Procurement.

## 5.30 Supplier Warranties

- 5.30.1 In responding to this invitation, the Supplier warrants, represents and undertakes to EWR Co. that:
- i. it understands and has complied with the conditions set out in this ITT;
  - ii. all information, representations and other matters of fact communicated (whether in writing or otherwise) to EWR Co. by the Supplier, its staff or agents in connection with or arising out of the Procurement are true, complete and accurate in all respects, both as at the date communicated and as at the date of the submission of the response to this document;
  - iii. it has made its own investigations and undertaken its own research and due diligence, and has satisfied itself in respect of all matters (whether actual or contingent) relating to the invitation and has not submitted its response in reliance on any information, representation or assumption which may have been made by or on behalf of EWR Co. (with the exception of any information which is expressly warranted by EWR Co.); and
  - iv. it has full power and authority to respond to this document and to perform the obligations in relation to the contract and will, if requested, promptly produce evidence of such to EWR Co.
- 5.30.2 Suppliers should note that the potential consequences of providing incomplete, inaccurate or misleading information include that:
- i. EWR Co. may exclude the Supplier from participating in this Procurement;
  - ii. the Supplier may be excluded from bidding for contracts under Schedule 7, Paragraph 13 of the Act;

- iii. EWR Co. may rescind any resulting contract under the Misrepresentation Act 1967 and may sue the Supplier for damages; and
- iv. if fraud or fraudulent intent can be proved, the Supplier may be prosecuted and convicted of the offence of fraud by false representation under section 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 Supplier may be excluded from bidding for contracts under Schedule 6, Paragraph 15 of the Act and may be added to the debarment list.

## 5.31 Third Parties

Nothing in these terms is intended to confer any rights on any third party under the Contracts (Rights of Third Parties) Act 1999. This does not affect any right or remedy of any person which exists or is available apart from that Act.

## 5.32 Non-collusion, Non-canvassing

- 5.32.1 Any attempt by a Supplier or their advisers to influence the Procurement in any way may result in the exclusion of the Supplier, without prejudice to any other civil or legal remedies available to EWR Co. and without prejudice to any criminal liability that such conduct by a Supplier may attract.
- 5.32.2 Specifically, Suppliers must not directly or indirectly at any time:
- i. devise or amend the content of their submissions in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, subcontractor, consortium member insurance provider or provider of finance;
  - ii. enter into any agreement or arrangement with any other person as to the form or content of any other submission or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other submission;
  - iii. enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a response in this Procurement;
  - iv. canvass any employees, members or agents of EWR Co. in relation to this Procurement;
  - v. attempt to obtain information from any of the employees, members or agents of EWR Co. or their advisors concerning another Supplier or submission; and/or
  - vi. carry out any other co-operation or collusion with another Supplier or any other person which EWR Co. considers capable of undermining fair competition.

- 5.32.3 Suppliers are required to complete and return Appendix D (Form of Tender) noting that EWR Co. will be entitled to rely on the information provided in the certificate.

## 5.33 Non-Collusion and Inducement

5.33.1 Any Supplier which:

- i. Fixes or adjusts its Tender by agreement or in accordance with any arrangement with any other person; or
- ii. Communicates to any person other than EWR Co. the details of its Tender; or
- iii. Enters into any agreement or arrangement with any other person that it will cease to participate in this Procurement, or that it will continue to participate but will submit a Tender on an agreed basis;
- iv. Causes or induces EWR Co. to enter any such agreement or to inform the Supplier of the amount or approximate amount of any rival Tender for the Contract;
- v. Offers or agrees to pay or give or does pay or give any sum of money, other inducement or consideration, directly or indirectly, to any person in respect of its Tender or the Contract (excluding details communicated to its advisers and payments made in relation to the valid remuneration of its advisers);
- vi. Communicates to any person other than EWR Co. the amount or approximate amount of the proposed Tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Tender (for example, for insurance or a guarantee));

will be disqualified from any further involvement in this Procurement, without prejudice to any other civil remedy that may be available to EWR Co. and any criminal liability that may be incurred.

## 5.34 Copyright

5.34.1 The copyright in this ITT is vested in EWR Co.

5.34.2 Suppliers shall not reproduce any of the ITT in any material form (including photocopying or storing it in any medium by electronic means) without the written permission of EWR Co., other than for use strictly for the purpose of preparing their Tender in relation to the Procurement process. This ITT and any document at any time issued as supplemental to it are and shall remain the property of EWR Co. and may be used by a Supplier solely for the purpose of this Procurement and must be returned upon demand.

## 5.35 Payment and Invoicing

Payments will be made in accordance with the terms of the Contract (Appendix E) and the Statement of Requirements (Appendix A).

## 5.36 East West Rail (EWR Co.) Employees

No employee of EWR Co. has the permission of EWR Co. to give any undertaking, guarantee or warranty or make any representation (express or implied) in relation to this ITT or any other matter relating to the Contract.

## 5.37 Tender Validity

Tenders shall remain valid for 180 days from the deadline for Tender submissions as set out in the Procurement Timetable. Once the Contract has been awarded to the successful Supplier the successful Supplier's Tender shall be valid throughout the Contract period.

## 5.38 Acceptance of Contract

The Supplier in submitting the Tender undertakes, in the event of their Tender being accepted by EWR Co. and EWR Co. confirming in writing such acceptance to the Supplier, to enter into the Contract on the basis of the Contract terms provided by EWR Co. to the Supplier together with the ITT.

## 5.39 Confidentiality

5.39.1 The Information in the ITT is made available by EWR Co. on the condition and understanding that:

- i. Suppliers shall not copy, reproduce, distribute or pass the Information to any other person at any time or allow any of these things to happen; and
- ii. Suppliers shall not use the information in the ITT for any purpose other than for the purposes of submitting, or deciding whether to submit, a Tender.

5.39.2 Suppliers shall treat all information relating to their Tender as confidential and where such information needs to be copied to parties supporting the Supplier, then the Supplier shall require such parties also to treat the information as confidential. The Supplier will remain responsible for any breach by its discloser. Suppliers may disclose, distribute or pass information to another person associated with their Tender (including but not limited to, for example, a Party to a Tenderer, the Tenderer's insurers or the Tenderer's advisers) if either:

- i. this is done for the sole purpose of enabling a Tender to be made and the person receiving the information undertakes in writing, jointly for the benefit of both the Supplier and EWR Co., to keep the Information confidential on the same terms as set out in this ITT; and
- ii. the Supplier obtains the prior written consent of EWR Co. in relation to such disclosure, distribution or passing of information.

5.39.3 EWR Co. may disclose detailed information relating to Tenders to EWR Co.'s members, directors, officers, employees, agents, project stakeholders and advisors, and EWR Co.



may make the Tender and Contract documents available for private inspection by EWR Co.'s members, directors, officers, employees, agents, project stakeholders and advisors.

- 5.39.4 EWR Co. also reserves the right to disseminate information that is relevant to the Contract and/or the EWR Project to all Suppliers, even if the information has only been requested by one Supplier, subject to the duty to protect any Supplier's commercial confidence in its Tender. EWR Co. will act reasonably as regards the protection of commercially sensitive Information relating to Suppliers, and such commercially sensitive information will be kept confidential and only disclosed within EWR Co., any project stakeholder and to EWR Co.'s advisers who reasonably require access to such commercially sensitive information in connection with this Procurement, the Contract and/or the EWR Project.

## 5.40 Publicity

- 5.40.1 Suppliers should not undertake (or permit to be undertaken) at any time, whether at this stage or after award, any publicity activity with any section of the media in relation to the EWR Project or the Contract other than with the prior written agreement of EWR Co.
- 5.40.2 Suppliers must obtain the express written approval from EWR Co. via the Portal before any disclosures are made to the press or in in any other public domain relating to this ITT process or any subsequent Contract. Suppliers are not permitted to:
- i. Make a public statement or communicate in any form with the media in connection with this Procurement without first obtaining the prior written consent of EWR Co.; and/or
  - ii. Use any trade marks, logos or any other intellectual property rights associated with EWR Co. or the EWR Co. programme; and/or
  - iii. Represent that the Supplier is directly or indirectly associated in any way with EWR Co. or the EWR Co. programme; and/or
  - iv. Engage in any form of ambush marketing or marketing which creates, implies or refers to an association between the Supplier and EWR Co. and/or the EWR Co. programme; and/or
  - v. Do anything or refrain from doing anything which would have an adverse effect on or embarrass EWR Co. or the EWR Co. programme.
- 5.40.3 If Suppliers are in any doubt regarding the publicity restrictions, then they must seek further guidance from EWR Co. through the Portal.
- 5.40.4 Suppliers must notify EWR Co., via the Portal, of any enquiries received from the media regarding this Procurement.
- 5.40.5 Specifically but without limiting paragraphs 5.40.1 and/or 5.40.1, Suppliers should not without the prior written consent of EWR Co. refer to the EWR Project, this Procurement and/or their Tender:

- i. on social media (for example, on Twitter);
- ii. in their marketing materials (for example, brochures and annual reports); and/or
- iii. in any speeches, presentations, seminars or academic papers.

## **5.41 Applicable Law**

5.41.1 The laws of England and Wales are applicable to this Procurement.

5.41.2 Suppliers must agree to submit to the exclusive jurisdiction of the Courts of England and Wales in relation to any dispute arising out of or in connection with this Procurement.

## 6. Appendices Contents

### List of Documents

APPENDIX A	STATEMENT OF REQUIREMENTS (SOR)
APPENDIX B	TECHNICAL RESPONSE
APPENDIX C	COMMERCIAL RESPONSE
APPENDIX D	FORM OF TENDER
APPENDIX E	FORM OF CONTRACT (NEC4 (PSC))
APPENDIX F	CONTRACT TERMS ACCEPTANCE SCHEDULE
APPENDIX G	KEY PERSONNEL
APPENDIX H	CONFLICT OF INTEREST
APPENDIX I	FOIA EXEMPTION REQUEST
APPENDIX J	ETHICAL WALLS AGREEMENT
APPENDIX K	CV TEMPLATE
APPENDIX L	DOCUMENTS TO BE RETURNED

#### **ANNEX A – Market Engagement Questionnaire**

See ITT Document ANNEX A

#### **ANNEX B – EWR Co Organisation Chart**

See ITT Document ANNEX B