



Procurement for an Operator for the Great Yarmouth Winter Gardens – Re-imagining the People’s Palace

Procurement Specific Questionnaire Guidance

GYBC REFERENCE: GYBC/ 2583-PPT-R

This document, the electronic Procurement Specific Questionnaire and the Draft Tender Documents have been uploaded to Great Yarmouth Borough Council’s e-Tendering system Intend which can be accessed on:

[East Suffolk Council Electronic Tendering Site - Home \(in-tendhost.co.uk\)](http://in-tendhost.co.uk)

Part 1 - General

1 Introduction

- 1.1 The Procurement Specific Questionnaire ("PSQ") is made available by Great Yarmouth Borough Council (the 'Authority') to Applicants wishing to express an interest in its procurement for an operator for the Great Yarmouth Winter Gardens (the "Project") in the Find a Tender Service ('FTS') Tender Notice.
- 1.2 The Authority invites economic operators to express interest in the following lots:
- (a) Lot 1 – Full operation of the Winter Gardens;
 - (b) Lot 2 – Provision of a food and beverage offering and events at the Winter Gardens.
- 1.3 This PSQ Guidance should be read in conjunction with the FTS Tender Notice and the Draft Tender Documents that together define the Authority's needs and requirements for the Project for both Lots 1 and 2, further details about the procurement, the legal suite, the Authority's chosen award criteria, indicative timetable and the basis on which the Authority intends to select organisations bidding for Lots 1 and 2 to be invited to submit Initial Tenders, participate in Negotiation and submit Final Tenders.
- 1.4 Words in this PSQ Guidance with an initial capital letter not defined in this PSQ Guidance shall have the meanings given in Appendix C (Glossary).

2 Purpose and PSQ Structure

- 2.1 The PSQ is to enable the Authority to assess whether Applicants who wish to be considered for participation in this procurement have the legal and financial capacity and technical ability to deliver the Authority requirements for the Project. The PSQ is available as a separate document on the Portal
- 2.2 This PSQ Guidance consists of:
- (a) Part 1 contains details about the conditions of participation and the general requirements;
 - (b) Part 2 sets out the Conditions of Participation Methodology that will be applied by the Authority to assess PSQ responses for each Lot and select those Applicants suitable to be invited to participate in negotiations;
 - (c) Appendix A: Project Specific Questions for each Lot
 - (d) Appendix B: PSQ checklist of items to be returned with completed PSQ;
 - (e) Appendix C: Glossary; and
 - (f) Appendix D: Exclusion Grounds.

3 Procurement Strategy

- 3.1 The Authority is conducting this procurement in accordance with the Procurement Act 2023 (as amended) ("the Act") using the Competitive Flexible Procedure ("CFP") as set out in Section 20 of the Act.
- 3.2 Further detail on the Authority's procurement strategy and how the Authority intends to run the Initial Tender Stage, the Negotiation Stage and the Final Tender Stage of the CFP is set out in Volume 1 of the draft ITPN contained with the Draft Tender Documents.

4 Lot Structure

- 4.1 The Council is seeking to appoint an operator or operators for the Winter Gardens and therefore invites interested economic operators to express interest in the following lots:
- (a) Lot 1 - Full operation of the Winter Gardens
 - (b) Lot 2 - Provision of a food and beverage offering and events operation and management at the Winter Gardens.
- 4.2 A full description of the requirements of both Lots is set out in Volume 2 (Project Brief) of the ITPN Documents and the Responsibilities Matrix.
- 4.3 Interested Applicants may express interest in Lot 1 or Lot 2. Applicants should note that they are required to provide Lot specific responses to the certain questions within the PSQ. These are set out in paragraph 25 below. There are different project specific questions for each Lot which are set out in Appendix A to this PSQ guidance document. Applicants should only answer the questions relevant to their Lot. The Authority will assess the PSQs submitted for each Lot.
- 4.4 Applicants should further note that following the assessment of Tenders received by the Authority in accordance with the ITPN, if the Authority identifies that the most advantageous tender it has received is for Lot 1, it will not award a lease/ contract (as applicable) for Lot 2.

5 Conditions of Participation Methodology and number of Applicants to be invited to participate in negotiations

- 5.1 The Conditions of Participation Methodology is set out in Part 2 of this PSQ Guidance.
- 5.2 Subject to there being a sufficient number of Applicants expressing interest and passing the Minimum Standards described in Part 2 of this PSQ Guidance under Lots 1 and 2, the Authority's intention is to invite a short-list of 3 (three) Applicants under Lot 1 and 3 (three) Applicants under Lot 2, to submit an Initial Tender and participate in negotiations.
- 5.3 If:
- (a) there are fewer than 3 (three) Applicants expressing interest in either Lot 1 or Lot 2; and/or
 - (b) fewer than 3 (three) Applicants successfully passing all the questions in the PSQ under either Lot 1 or Lot 2
- the Authority reserves the right (but shall not be obliged) to abandon this procurement. The Authority nevertheless reserves the right to continue with fewer than 3 (three) Applicants in either Lot 1 or Lot 2 provided the Authority is satisfied there are sufficient Tenderers to ensure genuine competition.
- 5.4 Applicants should refer to the Draft Tender Documents published with FTS Tender Notice which sets out the basis upon which the Authority will require shortlisted Applicants under both Lots to submit an Initial Tender, participate in negotiations and submit a Final Tender (as applicable).

6 Bidding organisations and Consortia

- 6.1 The Authority wishes to maximise competition to secure best value for money for the Authority and is keen to ensure that the procurement is open to a wide market and that there is genuine

competition. An Applicant/Tenderer may express interest in and (if subsequently invited to tender) tender for the Legal Documents as a single entity or as part of a Consortium (in whatever form).

- 6.2 An Applicant/Tenderer may express interest in/tender for the Legal Documents in its own right or in a Consortium as a member at tier one. It may not however bid in competition with any Consortium member at tier one.
- 6.3 An Applicant/Tenderer may express interest in and (if subsequently invited) tender for the Legal Documents subject to the following conditions:
- (a) any Applicant may express interest in/tender as a single entity or as part of a Consortium;
 - (b) an Applicant may not express interest in/tender for the Legal Documents as a single entity and as part of a Consortium where that Applicant is a member in the Consortium at tier one;
 - (c) an Applicant may not be a member at tier one of more than one Consortium;
 - (d) an Applicant expressing interest in/tendering for the Legal Documents as a single entity or as part of a Consortium (in whatever form) and subject always to the requirements in paragraph 7 (Sub-Contractors) may also act as a Sub-Contractor to another Tenderer for the Legal Documents;
 - (e) an Applicant may only express interest/tender in accordance with the Authority's requirements on Sub-Contractor arrangements (paragraph 7), conflict of interest (paragraph 11), non-collusion (paragraph 12), and confidentiality (paragraph 13).
- 6.4 The Consortium will be required to provide the information required in the PSQ as part of a single composite PSQ response to the Authority in accordance with the detailed instructions for Consortia set out in this PSQ Guidance. The following information must be provided within the completed PSQ as part of Question 3 of the PSQ:
- (a) names of all Consortium members;
 - (b) confirmation that the lead member of the Consortium (the 'Lead Applicant') will be contractually responsible for delivery of the Project and the Legal Documents (if a separate legal entity is not being created but rather a Prime Contractor and Sub-Contractor arrangement is proposed); and
 - (c) if the Consortium is not proposing to form a legal entity, full details of proposed arrangements between the Lead Applicant and the other Consortium parties (within a separate appendix to the submitted PSQ).
 - (d) where the Consortium is proposing to create a separate legal entity, it should provide details of the actual or proposed percentage shareholding of the constituent members of the Consortium in a separate appendix to the submitted PSQ as part of its response to Question 3 of the PSQ.
- 6.5 Details of every member of a Consortium and any subcontractor that is being relied on to meet the Conditions of Participation in accordance with Section 22 of the Act (an "Associated Person") must be provided by completing Part 2 of the PSQ and a completed self-declaration. Where a sub-contractor is not being relied upon to meet the Conditions of Participation, it must

still be listed in Part 2B of the PSQ. Please also note the separate instructions within the PSQ Part 2 of this PSQ Guidance concerning the submission of financial standing information by members of the Consortium, in response to Question 3A (financial capacity) of the PSQ.

- 6.6 Applicants should note that the Authority may require the Consortium to assume a specific legal form if awarded the Legal Documents, to the extent that a specific legal form is deemed by the Authority as being necessary for the satisfactory performance of the Legal Documents or for the purpose of risk management. Consortium members will be required to assume joint and several liability.
- 6.7 The Authority recognises that arrangements in relation to a Consortium may be subject to future change. Applicants should therefore respond on the basis of the arrangements as currently envisaged. Applicants are reminded that the Authority must be immediately notified of any proposed changes, in relation to the Consortium so that a further assessment can be carried out by applying the Conditions of Participation to the new information provided. The members of the Consortium and the principal relationships between the team members, may be changed in relation to this procurement process only with the prior consent of the Authority, and subject to any replacement team member being satisfactorily pre-qualified by the Authority (in accordance with the requirements of the PSQ). The Authority reserves the right to take this into account when determining whether or not to continue with the assessment of an PSQ response, whether or not to deselect an Applicant and whether or not to enter into a contract with an Applicant where there has been a change or proposed change in the ownership of the Applicant, any guarantor, in a Consortium structure or other material change, for example, a change in a Significant Sub-Contractor.
- 6.8 If an Applicant is unsure how to classify and communicate its contracting arrangements in the PSQ or it has any other queries in relation to this paragraph 6 then it should raise a query in accordance with paragraph 17.1 before submitting its PSQ response.
- 6.9 Applicants should note that the Authority may disclose the names of each Applicant, which includes but is not limited to the names of each Consortium and its constituent members invited to submit Initial Tenders and participate in negotiations in the ITPN. By expressing interest in this procurement, Applicants are deemed to give consent to the disclosure of its name by the Authority in the ITPN and accordingly.

7 Sub-Contracting Arrangements

- 7.1 Applicants/Tenderers must be able to satisfy the Authority as to their ability to deliver the Legal Documents for which they are expressing an interest (and subsequently bidding) and to deliver the Project.
- 7.2 The Office of Fair Trading encourages contracting bodies to look out for any evidence of price fixing arrangements. This PSQ Guidance sets out below the Authority's requirements in this respect.
- 7.3 Whilst the Authority does not seek to interfere unnecessarily with commercial arrangements envisaged by an Applicant in setting up sub-contracts, it is aware that the following situations may arise that could result in a risk of breach to the conflict and non-collusion requirements at paragraphs 11 and 12 below. Applicants/Tenderers may be able to continue with such situations provided they are able to satisfy the Authority at all stages of the process that appropriate arrangements are in place to ensure that there is no risk of potential or actual collusion.

7.4 The situations referred to in paragraph 7.3 that may potentially arise are:

- (a) an Applicant /Tenderer proposes to appoint another Applicant/Tenderer as a Sub-Contractor;
- (b) an Applicant/Tenderer is acting as a proposed Sub-Contractor to more than one Applicant/Tenderer (including as tier two participant in a Consortium); and
- (c) more than one Applicant/Tenderer proposes the same Sub-Contractor (although that proposed Sub-Contractor is not an Applicant/Tenderer in its own right),

provided always that in the case of paragraph 7.4(a) and 7.4(b) it must be evident from the face of the completed PSQ (and subsequently a Tender) that the proposed Sub-Contractor has agreed to be named as a Sub-Contractor notwithstanding that it is participating in the process as a main Applicant/Tenderer in its own right.

7.5 The Authority reserves the right to require the Applicant/Tenderer to identify an alternative Sub-Contractor. Where it does allow the proposed sub-contracting to continue, in each case the Applicant/Tenderer shall:

- (a) ensure that a party offering to act as Sub-Contractor to more than one Lead Applicant/main Tenderer should be open with each Lead Applicant/main Tenderer that such is the case;
- (b) use best endeavours to ensure that a party offering to act as Sub-Contractor should not treat any Lead Applicant/main Tenderer unfairly or unequally. That does not necessarily mean the same terms, conditions and prices should be offered to all Applicants/Tenderers because different factors or considerations may well apply. It does, however, mean that there must be sound and justifiable reasons why different terms, conditions or prices are offered to avoid accusations of any price fixing, cartel or other anti-competitive behaviour;
- (c) ensure care is taken by all parties to ensure that any information passing between the Lead Applicant/main Tenderer and the potential Sub-Contractor relates solely to the construction of the sub-contract arrangements and its impact on the main Tender. Any information provided by one party to the other must be provided on a strictly 'need to know' basis as set out above; and
- (d) ensure information relating to the sub-contract arrangements must only be passed from a potential Sub-Contractor 'up' to a Lead Applicant/main Tenderer and not from a Lead Applicant/main Tenderer 'down' to the proposed Sub-Contractor. This is to ensure that a potential Sub-Contractor has no access to information relating to a Lead Applicant/main Tenderer that it could either use for the purposes of its own Tender (where it is also bidding in its own right) or (where the Sub-Contractor is named by a number of Tenderers) use across a number of Tenders; and
- (e) if instructed to do so by the Authority ensure that its Sub-Contractor enters into an ethical wall agreement and/or information flow agreement.

7.6 Particular care will need to be taken to ensure that proposed Sub-Contractors are not present at Tender preparation meetings or meetings with the Authority where it may gain access to confidential and Tender sensitive information.

- 7.7 Particular care should also be taken in the completion of the 'Confirmations' of the PSQ where the Applicant is also acting as a Sub-Contractor to another Applicant.
- 7.8 If the Authority considers that there has been any co-operation or collusion which actually or potentially undermines or distorts competition or there is a risk of any co-operation or collusion which could potentially undermine or distort competition, it reserves the right to reject the compromised Tender and exclude the relevant Applicants/ Tenderers from the process. Applicants/Tenderers should seek clarification from the Authority if they are uncertain about this or any other potential conflict situation.
- 7.9 Any Significant Sub-Contractor must be listed in Part 2B of the PSQ.

8 Changes following submission of PSQ

- 8.1 Applicants must note that if any of the information supplied in response to the PSQ changes at any subsequent stage in the procurement process, the Applicant is required to notify the Authority immediately and to provide such details as the Authority shall request. In the case of a Consortium, including a Prime Contractor submission, it is the responsibility of the Lead Applicant to send any new or changed information to the Authority.
- 8.2 The Authority reserves the right to exclude an Applicant at any stage of the PSQ process if it fails to satisfy the Minimum Standards (or having satisfied the Minimum Standards, circumstances change and it no longer satisfies the Minimum Standards) for any criterion. In addition, the Authority reserves the right to exclude an Applicant during the further stages of the CFP if it no longer satisfies the Minimum Standards for any criterion. During the procurement process, Applicants will be required to confirm to the Authority:
- (a) the details of a proposed change in a Consortium structure or other material change, for example, a change in a Significant Sub-Contractor; and/or
 - (b) at each bid stage that there has been no material change to the information provided to the Authority at the PSQ stage.

9 Procurement Timetable and deadline for submission of a completed PSQ

- 9.1 The Authority intends to procure the Legal Documents in accordance with the indicative timetable in below.
- 9.2 The Authority reserves the right to change the timescales and/or to include new stages or to omit any stage of the procurement process as it considers appropriate. In compliance with the Act the Authority will inform Applicants/Tenderers of any changes.

Table 1 – Indicative Procurement Timetable

Indicative Procurement Timetable	
Stage	Date
Participation Stage	
Tender Notice submitted for publication	2 April 2025
Clarification window opens	2 April 2025

Indicative Procurement Timetable	
Stage	Date
Clarification window closes	12:00 on 16 April 2025
Deadline for submission of PSQ Responses	12:00 on 30 April 2025
Assessment, scoring and ranking of PSQ Responses and shortlisting of Applicants for Lot 1 and 2	1 May 2025 – 14 May 2025
Notification to Applicants of outcome of the Participation Stage	14 May 2025
Tender and Negotiation Stage	
Issue Invitation to Submit Initial Tenders and Participate in Negotiations (ITPN) to Shortlisted Applicants (“Tenderers”) under Lot 1 and Lot 2	14 May 2025
Clarification window opens	14 May 2025
Clarification window closes	12:00 on 2 June 2025
Deadline for submission of Initial Tenders	12:00 on 12 June 2025
Assessment of Initial Tenders	13 June 2025 to 2 July 2025
Notify Tenderers of outcome of assessment of Initial Tenders and invite Tenderers to participate in Negotiations.	3 July 2025
Negotiation meetings with Tenderers	14 July 2025 to 1 August 2025
Close of Negotiation Stage and call for Final Tenders	1 August 2025
Clarification window opens	1 August 2025
Clarification window closes	12:00 on 26 August 2025
Deadline for submission of Final Tenders	12:00 on 5 September 2025
Assessment of Final Tenders	8 September 2025 to 3 October 2025
Internal approvals process completed	6 October 2025 to 31 October 2025
Award Stage	
Provision of Assessment Summaries	3 November 2025
Contract Award Notice issued	3 November 2025
Standstill Period commences	3 November 2025

Indicative Procurement Timetable	
Stage	Date
Standstill Period ends	Midnight at the end of 13 November 2025
Earliest date for completion of lease documentation	14 November 2025
Contract Details Notice issued	No later than 30 days after the date the lease documentation is entered into

- 9.3 The deadline for submission of completed PSQs is **12:00 on 30 April 2025**. The Authority will not consider any PSQs that are submitted after this time ('PSQ Submission Deadline'). The deadline for submitting queries in relation to the PSQ is **12:00 on 16 April 2025**.

10 The PSQ, Conditions of Participation and General Requirements

- 10.1 Insofar as an expression of interest by an interested Applicant (or subsequently the submission of proposals) is made in response to the FTS Tender Notice, the completed PSQ and any invitation to participate in negotiations, forms (or is deemed to form) a contractual relationship between the Authority and that Applicant governing the relationship of the parties during this procurement process until an award is made (if any), the terms and conditions of such contract shall be as expressly set out in the FTS Tender Notice, the PSQ, this PSQ Guidance or the Draft Tender Documents together with the Act. The Act, the FTS Tender Notice, SQ, this PSQ Guidance and the Draft Tender Documents form the entire agreement between the parties relating to the procurement process and the submission of expressions of interest and/or detailed proposals and there shall not be implied into any such contract any further terms, obligations or restrictions on the Authority.
- 10.2 Please be aware that the Authority can only make its assessment from the information you supply. It is therefore essential that you answer all questions in the PSQ in the relevant response box as indicated and that all information requested is submitted in full. If a question is not applicable, it should be stated in the relevant box and an explanation included as to why it is not applicable. For example, it is recognised in Consortium/Prime Contractor applications that each Consortium member/Significant Sub-Contractor may not be able to give all of the information requested because it does not have the relevant experience. In this case, it should be specified in the response which of the relevant organisations is providing that information. A common reason why respondents to PSQs fail to progress through the PSQ process is due to incomplete information, inappropriate references, unsubstantiated statements or information presented in a manner not reasonably obvious to the assessors.
- 10.3 If additional information is to be appended to the completed PSQ, it must be clearly referenced within the relevant response box. Such additional information should be cross-referenced to the particular question to which it relates. Please put your organisation's name on each additional sheet and provide a summary list of all attachments accompanying the completed PSQ (see Appendix B: Checklist for return of PSQ). The Authority reserves the right to disregard any supporting information which it considers has been submitted to circumvent the page limits specified in the Project Specific Questions in Part 3A of the PSQ.
- 10.4 Applicants outside England and Wales are advised that a number of the questions refer to standards and legislation relevant to this jurisdiction. In each of these cases, the Applicant is

invited to submit its home country's equivalent standard or legislation as necessary and provide a commentary on the comparability with that requested.

10.5 Please do not:

- (a) include any general or promotional literature or cross-reference to any web-based material or provide any information other than that requested as the Authority will not consider it as part of the PSQ assessment process;
- (b) make any alterations to the PSQ or the questions asked or to the structure of the PSQ i.e. the sequence of questions must be maintained. For the avoidance of doubt, a submitted PSQ may not be evaluated if it is in any form other than that required;
- (c) provide any information other than that required as a means to providing an answer since the Authority may not consider it as part of its assessment of the submitted PSQ; or
- (d) exceed the page limits specified in the PSQ for the Project Specific Questions (as defined below) as the Authority will assess only up to and including the page limit. Any text above the page limit for a question may at the Authority's discretion be disregarded and not taken into account as part of the assessment.

10.6 Completed PSQs must be submitted via the Portal no later than the PSQ Submission Deadline set out in paragraph 9.3 above. Any PSQ received after this time will be rejected from this procurement and will not be considered.

10.7 Set out below are the instructions for submitting completed PSQs:

- (a) Applicants must be registered on the Authority's e-tendering system at the following web address: [East Suffolk Council Electronic Tendering Site - Home \(intendhost.co.uk\)](http://EastSuffolkCouncilElectronicTenderingSite-Home.intendhost.co.uk)
- (b) Please do not register your company more than once. You must be registered on this website to respond, if you are already registered you will not need to register again, simply use your existing username and password. Please note that there is a password reminder link on the homepage.
- (c) Email alerts and actions will be sent to the email addresses you provide.
- (d) To submit documents, follow the instructions within the system.
- (e) Applicants should be aware that the upload of submissions to the system can take a considerable amount of time and therefore Applicants should allow sufficient time prior to the PSQ Submission Deadline detailed in paragraph 9.3 above to complete this activity.

10.8 Please ensure:

- (a) you read all parts of the PSQ, this PSQ Guidance and the Draft Tender Documents (which are available for downloading from the Portal) and ensure you are capable of fulfilling all of the requirements before submitting a completed PSQ;
- (b) you complete the PSQ and supporting information in English;

- (c) you submit your responses via the Portal.
- (d) all attachments include the name of the Applicant, the relevant question number and title of the question. All files uploaded to the Portal must contain the Applicant's name as part of the file name and clearly indicate the contents of their file, and only contain alphanumeric characters in order to be compatible with the system;
- (e) your response to the PSQ is received prior to the PSQ Submission Deadline otherwise it will not be considered and will be rejected;
- (f) any documents that you upload to the "Portal" are compatible with Microsoft Word/Microsoft Excel and/or Adobe Reader and use Arial, font size 11;
- (g) all your answers and information provided is clear, concise and provided in a logical manner and at the appropriate points within the document. Cross-referencing and reliance on attachments (other than where specifically requested) should be avoided; and
- (h) you complete the checklist at Appendix B to ensure that all required information has been provided. Applicants must also list in the designated column of the checklist the specific file name of any relevant attachment accompanying the submitted PSQ.

11 Conflict of interest

- 11.1 The Authority is concerned to avoid conflicts of interest and any undue influence which may arise as a result of such conflicts. In particular, a conflict of interest may arise where:
- (a) an Applicant/Lead Applicant and/or Consortium member/Sub-Contractor has been involved in advising the Authority on matters relating to the Contract or in the preparation of documents or information relating to the Legal Documents; and
 - (b) a director, company secretary, or a staff member from an Applicant, Lead Applicant and/or Consortium member/Sub-Contractor is related to one of the Authority's officers or is a member or related to a member of the Authority. Such a relationship may not create a conflict of interest if it is declared as part of the completed PSQ and can therefore be managed by the Authority in an open and transparent way.
- 11.2 The Authority will take all reasonable steps to ensure that a conflict of interest does not put an Applicant at an unfair advantage or disadvantage. Applicants may be required by the Authority to take reasonable steps pursuant to Section 82(2) of the Act.
- 11.3 Applicants should note that where a conflict of interest within the meaning of Section 81 of the Act;
- (a) puts an Applicant at an unfair advantage in relation the award of the Legal Documents; and
 - (b) either:
 - i. the advantage cannot be avoided, or
 - ii. the Applicant will not take steps that the Authority considers are necessary in order to ensure it is not put at an unfair advantage

then the Authority will treat the Applicant as an Excluded Supplier for the purpose of assessing their tender and will exclude the supplier from participating in, or progressing as part of the procurement.

- 11.4 Applicants are therefore advised to review carefully the prior or current involvement of the Applicant, Consortium members and Sub-Contractors with the Authority and to contact the Authority (as relevant) prior to submission of the PSQ to discuss any actual or potential conflicts they have identified and set out the measures they have taken (if any) to demonstrate their reliability despite the existence of a conflict of interest. The Authority will evaluate this evidence before making a decision on whether or not to exclude the Applicant from the procurement process.

12 Non-collusion

- 12.1 Any Applicant or any person employed by the Applicant, whether or not to the Applicant's knowledge, who, in connection with this procurement and/or the potential Legal Documents:

- (a) offers any inducement, fee or reward to any member or officer of the Authority or any person acting as an advisor for the Authority in connection with the procurement and/or the potential Legal Documents; and/or
- (b) does anything which would constitute a breach of the Bribery Act 2010; and/or
- (c) canvasses any of the persons associated with the Legal Documents or / and this procurement process in connection with the procurement and/or the potential Legal Documents; and/or
- (d) contacts any officer of the Authority prior to the Legal Documents being awarded about any aspect of the Legal Documents in a manner not permitted by this PSQ Guidance (including without limitation a contact for the purposes of discussing the possible transfer to the employment of the Applicant of such officer for the purpose of the procurement and/or the potential Legal Documents),

shall be disqualified (without prejudice to any other civil remedies available to the Authority and without prejudice to any criminal liability which such conduct by an Applicant may attract).

- 12.2 Any Applicant which, in connection with this procurement and/or the potential Legal Documents colludes with another Applicant with a view to disrupting the fairness and competitiveness of the procurement process will be disqualified (without prejudice to any other civil remedies available to the Authority and without prejudice to any criminal liability that such conduct by an Applicant may attract).

13 Confidentiality

- 13.1 Subject to the exceptions referred to in this paragraph 13, the information in this PSQ Guidance and the Draft Tender Documents ('Information') is made available by the Authority on condition and understanding that:

- (a) Applicants 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
- (b) Applicants shall not use the Information for any purpose other than for the purposes of making, or deciding whether to make, an expression of interest.

- (c) Applicants shall not discuss Information nor any aspect of this procurement process in the media nor make any media or publicity statement or comment in relation to it without the express consent of the Authority in writing.
 - (d) Applicants shall treat all Information relating to their PSQ as confidential and where the Information needs to be copied to parties supporting the Applicant or Consortium member then the Applicant shall require such parties ('disclosees') to also treat the Information as confidential. The Applicant will remain responsible for any breach by its disclosees. The Applicant may disclose, distribute or pass Information to another person associated with its PSQ (including but not limited to, for example, a Consortium member, the Applicant's insurers or advisers) if either:
 - i. this is done for the sole purpose of enabling a completed PSQ to be made and the person receiving the Information undertakes in writing jointly for the benefit of both the Applicant and the Authority to keep the Information confidential on the same terms as set out in this paragraph 13; and
 - ii. the Applicant obtains the prior written consent of the Authority in relation to such disclosure, distribution or passing of Information (the Authority's consent may be on such conditions as it sees fit (including as to entry into legally binding confidentiality undertakings)).
- 13.2 The Authority may disclose detailed information relating to the Applicant and/or the submitted PSQ to the Authority's members, officers, employees, agents or advisers.
- 13.3 The Authority reserves the right to disseminate information that is relevant to the Legal Documents and/or the procurement to all Applicants, even if the information has only been requested by one Applicant, subject to the duty to protect any Applicant's commercial confidence in its PSQ response. The Authority will act reasonably as regards the protection of commercially sensitive information relating to a PSQ. Commercially sensitive information will be kept confidential and only disclosed within the Authority and to the Authority's advisers who reasonably require access to such commercially sensitive information in connection with this procurement process and the Legal Documents.

14 Publicity

- 14.1 Applicants shall not undertake (or permit to be undertaken) at any time, whether at this PSQ stage, any other stage of the procurement process, or after any contract award, any publicity activity with any section of the media in relation to the Legal Documents other than with the prior written agreement of the Authority. Such agreement shall extend to the content of any publicity. In this paragraph 14 the word 'media' includes (but without limitation) radio, television, newspapers, trade and specialist press, the internet and email accessible by the public at large and the representatives of such media.

15 Copyright

- 15.1 The copyright in this PSQ Guidance and all Draft Tender Documents is vested in the Authority. The PSQ Guidance and all Draft Tender Documents shall not, either in whole or part, be reproduced, copied, distributed, stored in any medium or otherwise made available to any other party in any circumstances, for any other purpose than that for which it is intended, without the prior written consent of the Authority. This PSQ Guidance and any document issued to supplement it, is and shall remain the property of the Authority and must be returned and all copies destroyed and/or deleted upon demand.

16 FOIA and disclosure of Information

- 16.1 The Authority is subject to the requirements of the Freedom of Information Act 2000 ('FOIA') and the Environmental Information Regulations 2004 ('EIR'), the subordinate legislation made under the FOIA/EIR and any guidance and/or codes of practice issued (from time to time) in relation to such legislation. Applicants should be aware of the Authority's obligations and responsibilities under the FOIA and EIR to disclose, on written request, recorded information held by the Authority. Information provided by Applicants in connection with the Legal Documents and the procurement, or with any contract that may be awarded as a result of this procurement, may therefore have to be disclosed by the Authority in response to such a request, unless the Authority decides that one of the statutory exemptions under the FOIA and/or the EIR applies.
- 16.2 Applicants should also note that in accordance with the Local Audit and Accountability Act 2014, the Authority may be obliged to disclose all books, deeds, contracts, bills, vouchers and receipts which relate to payments relating to the Contract which appear in the audited accounts. This might include information which the Applicant considers is commercially sensitive information.
- 16.3 Applicants may provide information to the Authority in connection with this procurement, or with any contract that may be awarded as a result of this procurement, which is commercially sensitive and confidential in nature and which Applicants may wish to be held in confidence. Applicants must clearly indicate by highlighting specific text, figures and diagrams, etc., which parts of their PSQ submission are to be considered commercially sensitive and confidential and why they are considered to be so, along with the time period for which they will remain confidential in nature. The use of blanket protective markings such as 'commercial in confidence' will not be acceptable. In addition, marking any material as commercially sensitive and confidential or equivalent should not be taken to mean that the Authority accepts any duty of confidentiality by virtue of such marking. It should be noted that even where Applicants have indicated that information is confidential the Authority may be required to disclose it under the FOIA and/or the EIR if a request is received.
- 16.4 In certain circumstances, and in accordance with the Code of Practice issued under section 45 of the FOIA or the EIR, the Authority may consider it appropriate to ask Applicants for their views as to the release of any information before a decision on how to respond to a request is made. In dealing with requests for information under the FOIA, the Authority must comply with a strict timetable and the Authority would, therefore, expect a timely response to any consultation within two Business Days.
- 16.5 The decision as to which information will be disclosed is reserved to the Authority, notwithstanding any consultation with any Applicant(s).

17 Questions about the procurement

- 17.1 Applicants may submit questions and requests for clarification or further information during the procurement process. If you have any questions about the PSQ, this PSQ Guidance or the procurement please submit them via the Portal to arrive **no later than 12:00 on 16 April 2025**. The Authority may not respond to questions received after this date. The Authority will seek to respond to queries as soon as possible but in any event within five (5) Business Days.
- 17.2 An Applicant's queries submitted via the Portal will be secure and cannot be seen by any other Applicants. However, Applicants should note that requests for information or requests for clarification/questions posed by Applicants or anything similar is deemed to be of relevance to

all Applicants. The request/question and response will be provided in a suitably anonymised form via the Portal to all Applicants before the closing date for submission of PSQs.

- 17.3 When submitting a question or request for clarification or further information, Applicants should clearly indicate which (if any) part of their question they view as commercially confidential to them and applicable only to the Applicant submitting the question.
- 17.4 Any such question or request which an Applicant considers is commercially confidential must be clearly marked 'Confidential – not to be circulated to other Applicants' and the Applicant must set out the reason(s) for the request for non-disclosure to other Applicants, which the Authority will then consider.
- 17.5 Any statement requesting that the question or request or the response to the question or request is to be kept confidential should be well constructed, thought out and meaningful and not simply a broad statement that covers matters clearly in the public domain or not commercially sensitive.
- 17.6 If the Authority considers that in the interests of open and fair competition, it is unable to respond to the question or request for clarification or further information on a confidential basis, it will inform the Applicant who has submitted it. During the pre-PSQ submission phase, the Applicant must thereafter respond within twenty-four (24) hours to indicate that either the query be withdrawn or treated as not confidential. The Authority will deem that the question or request for clarification or further information is withdrawn if the Authority is not contacted in three (3) Business Days.
- 17.7 The Applicant must endeavour, so far as is practicable, to respond to all questions and clarifications within the timeframe set by the Authority and, in any event, within three (3) Business Days.
- 17.8 The Authority shall endeavour to provide Applicants with any additional information to which the Authority has access, but the Authority shall not be obliged to comply with any such request and does not accept liability or responsibility for failure to provide any such information.

18 Applicants contact point

- 18.1 Applicants must keep their contact details up to date to ensure that they are able to receive communications from the Authority.
- 18.2 The Authority is not responsible for inaccurate or incomplete contact information input into the Portal by Applicants. It is the responsibility of an Applicant to ensure that the contact information they have entered for their organisation on the Portal is accurate and kept up to date. Important notification messages relevant to this procurement may not be received by an Applicant should the contact information be inaccurate. If at any stage an Applicant needs to update the contact information held for their organisation this can be achieved by submitting it via the Portal. The Authority is under no obligation to respond/follow up on 'out of the office' responses received from an Applicant and so Applicants will need to make appropriate arrangements to deal with any absences.
- 18.3 An Applicant will be provided with the reasons they have been unsuccessful at the Conditions of Participation stage of the procurement (if applicable), which will be in writing only. The Authority has no obligation to offer de-brief meetings and reserves the right to deny any such request.

19 General conditions and important notices

19.1 The Authority reserves the right to:

- (a) require an Applicant to clarify any part of its PSQ response in writing and/or provide additional information (the Authority reserves the right to reject or disqualify an Applicant which fails to respond to any such request adequately or by the deadline set by the Authority);
- (b) amend the terms, conditions and/or requirements of the PSQ/Conditions of Participation Methodology/procurement process or timetable;
- (c) abandon or recommence this procurement at any stage;
- (d) decide not to award a Legal Documents.

19.2 The Authority shall disqualify any Applicant if it is an Excluded Supplier and may exclude any Applicant if it is an Excludable Supplier under Section 27 and 57 of the Act in accordance with paragraph 27, 29 and 29 of Part 2 (Conditions of Participation Methodology) of this PSQ Guidance .

19.3 The Authority reserves the right at its sole discretion to disqualify or reject an Applicant where:

- (a) the Applicant fails to comply with the requirements and conditions of the Authority set out in this PSQ Guidance;
- (b) the Applicant (or, where relevant, the Lead Applicant (and Consortium members/Significant Sub-Contractor(s)) is guilty of a serious misrepresentation in relation to its application and/or the procurement process;
- (c) there is a change in identity, control, financial standing or other factor impacting on the selection and/or assessment process affecting the Applicant (or, where relevant, the Lead Applicant and Consortium members/Significant Sub-Contractor(s));
- (d) any of the Discretionary Exclusion Grounds for exclusion under Schedule 7 of the Act apply in accordance with paragraphs 27, 29 and 29 of Part 2 (Conditions of Participation Methodology) of this PSQ Guidance ;
- (e) the Applicant fails to provide a satisfactory response to any questions in the PSQ or inadequately or incorrectly completes any question; or
- (f) the Applicant fails to submit its completed PSQ before the PSQ Submission Deadline.

20 Authority's clarification

20.1 The Authority reserves the right (but is not obliged) to clarify any issues arising from PSQ responses with Applicants during the assessment process.

20.2 Clarifications may be sought from Applicants (at the Authority's sole discretion) in the following circumstances:

- (a) obvious mistakes – where it is apparent what the Applicant's intentions were, but a mistake has been made in the PSQ response;

- (b) administrative mistakes – for example, referring to a document ‘attached’ to the PSQ response or which should have been uploaded via the Portal, which has been omitted;
 - (c) ‘typos’ – for example where percentages in a column add up to 10%, but 100% has been written (the extra ‘0’ added by mistake);
 - (d) glaring omissions – for example, the working of a calculation has been shown, but the answer left blank; and
 - (e) inconsistencies and confused document structure – for example, when there is conflicting information in the document. For example, inclusion of a statement that there will not be any sub-contracting by the Applicant and a list of sub-contractors is included.
- 20.3 If an Applicant’s answer is unclear, then the Authority may look at other Applicants’ responses to the same question and consider whether the question itself is ambiguous. In the latter case, it may be appropriate to clarify the question and circulate an unambiguous version of the same question to all Applicants so that they all have the same second chance to answer the question. Please note there is no obligation on the Authority to attempt to clarify answers to questions should it not feel it is appropriate.
- 20.4 Examples of where clarification is not appropriate (as it would give the Applicant an opportunity to provide additional information not included in time with the PSQ response) are:
- (a) ‘brief answers’ - such as, where the Applicant has understood the question and answered it clearly, but briefly; or
 - (b) ‘omissions’ – where an Applicant has not provided a response to any question or section.
- 20.5 Applicants should be aware that the Authority is under no obligation to seek clarification and it is the responsibility of the Applicant to ensure that their responses are unambiguous and complete and to seek clarification if necessary of the Authority’s requirements.

21 Accuracy of the information supplied

- 21.1 The information contained within and supplied with the PSQ, this PSQ Guidance and the Draft Tender Documents has been prepared by the Authority in good faith but does not purport to be comprehensive, complete and exhaustive or to have been independently verified nor to contain all of the information that a prospective Applicant may require.
- 21.2 Applicants should not rely on the information supplied and should carry out their own due diligence checks and verify the accuracy of the information provided by the Authority. No information is warranted by the Authority or its advisers nor shall any information be deemed a promise or representation as to the future. Applicants shall further be deemed to have carried out all necessary research, investigations and due diligence and all necessary enquiries in order to have satisfied themselves as to the nature, extent, volume and requirements of the Legal Documents and any other matter which may affect their responses to the PSQ.
- 21.3 The Authority does not and its directors, officers, members, partners, employees, staff, agents or advisors do not:

- (a) make any representation or warranty (express or implied) as to, or accept any liability or responsibility in relation to, the adequacy, accuracy, reasonableness or completeness of the information provided or any part of it (including but not limited to loss or damage arising as a result of reliance by the Applicant on the information). Applicants should make their own investigations and their own independent assessment of the resources required for the commercial risk associated with the Legal Documents and should seek their own professional technical, financial and legal advice;
 - (b) accept any responsibility for the information contained in the PSQ, this PSQ Guidance or the Draft Tender Documents or for its accuracy or completeness, or at any other stage of the procurement process leading up to the execution of the Legal Documents, nor shall any of them be liable for any loss, damage or expense (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication. Only the express terms of any written contract relating to the subject matter of this procurement, as and when it is executed shall have any contractual effect in connection with the matters to which it relates;
 - (c) accept liability for any costs incurred by any Applicant responding to the PSQ, whether incurred by them directly or their advisers or Sub-Contractors. This applies whether or not an Applicant is successful and whether the procurement reaches a conclusion, however many stages it involves or if it is abandoned or recommenced.
- 21.4 Applicants considering entering into a contractual relationship with the Authority should make their own enquiries and investigations of the Authority's requirements beforehand.
- 21.5 The Authority makes no representations or warranties regarding the Applicant's financial status or stability, technical competence or ability in any way to carry out the Legal Documents.
- 22 Costs and expenses**
- 22.1 All Applicants are solely responsible for their costs and expenses incurred in connection with the preparation and submission of their PSQ including responding to all clarifications, all negotiation meetings and all future stages of the selection, negotiation, assessment and award process. Under no circumstances will the Authority, or any of its advisers, be liable for any costs or expenses borne by the Applicant or its associated relevant organisations or any of its advisers in this process whether the Applicant is successful or otherwise and whether or not the Authority awards a contract or abandons the procurement.
- 23 Not used**

Part 2 – Conditions of Participation Methodology

24 Overall Assessment

- 24.1 The questions in the PSQ are designed to enable the Authority to make an assessment as to the suitability of an Applicant to be invited to submit an Initial Tender for Lot 1 or 2 (as applicable) and participate in negotiation.
- 24.2 The Authority will assess a submitted PSQ in two (2) stages:
- (a) Stage 1 - A compliance check will be undertaken to ensure the submitted PSQ is complete and has been completed and submitted in accordance with the instructions in this PSQ Guidance. Applicants may be rejected at this stage if the submitted PSQ is not compliant or the Authority may at its own discretion seek to clarify the submitted PSQ, if appropriate to do so;
 - (b) Stage 2 – A compliant PSQ response will then be assessed on a pass/fail or qualitative basis (as applicable) against the Minimum Standards described for the following sections of the SPQ Guidance as further described in the paragraphs set out in Table 1:

Table 1:

PSQ Section	Heading	Basis of Assessment	Paragraph
Preliminary Questions	Preliminary Questions	Pass/Fail	27
Part 1	Confirmation of Core Supplier Information	Pass/Fail	28
Part 2A	Additional Exclusion information: Associated Persons	Pass/Fail	29
Part 2B	Additional Exclusion information: List of all Intended Sub-contractors	Pass/Fail	29
Section 3A	Standard questions: Financial capacity	Pass/Fail	30
	Question 19 - Insurance	Pass/Fail	30
Section 3A	Standard questions: Legal capacity	Pass/Fail	31
	Question 20 – Data Protection	Pass/Fail	31
Section 3A	Standard questions: Technical ability	Pass/Fail	32
	Question 25 – Health and Safety	Pass/Fail	32.8
	Project Specific Questions: - Lot 1 Questions 26 to 29; - Lot 2 Questions 30 to 32	Scored	32.9
Part 3B	Question 33 – Public Sector Contracts Only – Requirement under the	Pass/Fail	33

	Procurement Act 2023 (section 68 and 73)		
	Question 34 – Modern Slavery Statement (or equivalent statement/document)	Pass/Fail	33

25 Lot Specific Questions

25.1 Applicants should note that as the procurement is structured into two lots, the following questions need to be answered according to the Lot that the Applicant is expressing an interest in:

- (a) Section 3A - Technical ability Questions 21 to 23;
- (b) Section 3A Technical ability - Project Specific Questions – Questions 26 to 32 (Applicants should note that they are required to answer different questions depending on the Lot that they are expressing an interest in).

26 Self-Certification and Authority Verification

26.1 Whilst reserving the right to request information at any time throughout the procurement process, the Authority may enable the Applicant to self-certify that there are no Mandatory Exclusion Grounds / Discretionary Exclusion Grounds for excluding their organisation. When requesting evidence that the Applicant can meet the specified requirements the Authority may only obtain such evidence after the Tender assessment decision (i.e. from the winning Applicant only).

26.2 At this stage in the procurement the Authority permits the Applicant to self-certify its responses to the following questions:

- (a) Part 1: Question 5: Are you on the Debarment List;
- (b) Part 1: Question 6: Core Supplier Information. Exclusion grounds information;
- (c) Part 2A: Question 9: Information for each Associated Person. Exclusion grounds information;
- (d) Part 2A: Question 10: Associated Persons on the Debarment List;
- (e) Part 2B: Question 12: Confirmation on whether any intended Sub-Contractor is on the Debarment List;
- (f) Part 3A: Financial capacity; and
- (g) Part 3A: Question 19 – Insurance, Question 20 – Data Protection, Question 25 – Health and Safety, Part 3B: Question 33 - Public Sector Contracts Only – Requirement under the Procurement Act 2023 (section 68 and 73) and Question 34 – Modern Slavery.

27 Preliminary questions

27.1 Applicants are required to complete the preliminary question of the PSQ.

- 27.2 Applicants must register on the CDP and share their core supplier information by no later than the PSQ Submission Deadline. Failure to do so will result in the PSQ being rejected from this procurement.
- 27.3 Any Applicant who fails to provide all of the information required or provides information that is inaccurate, incomplete or missing and or where the Applicant is an Excluded Supplier (in accordance with the table set out below) will deemed non-compliant and excluded from the procurement process.

Criteria	Minimum Standard and method of assessment
Excluded Supplier Excludable Supplier	<p>Pass/Fail</p> <p>Pursuant to section 27(1) of the Act, before permitting an Applicant to participate in a competitive flexible procedure the Authority must determine whether the Applicant is:</p> <ul style="list-style-type: none"> a) An Excluded Supplier; or b) An Excludable Supplier. <p>If the Applicant is on the Debarment List by virtue of a Mandatory Exclusion Ground then it is an Excluded Supplier and it will “Fail” this Minimum Standard and will be exclude from the procurement process, save that pursuant to Section 57(3) of the Act, an Applicant will not be excluded where it is on the Debarment List by virtue of Paragraph 35 of Schedule 6 (national security only).</p> <p>If the Applicant is on the Debarment list by virtue of a Discretionary Exclusion Ground, then the Applicant is an Excludable Supplier and pursuant to section 27(3) the Authority may exclude the Applicant.</p>

28 Part 1: Confirmation of Core Supplier information (Pass/Fail)

- 28.1 Applicants are required to complete Part 1 (Confirmation of Core Supplier Information) of the PSQ. Any Applicant who fails to provide all of the information required or provides information that is inaccurate, incomplete or missing will be deemed non-compliant and excluded from the procurement process.
- 28.2 In response to PSQ Questions 6 and 6A, the Applicant is required to share information about their Connected Person. Applicants should note that for any Applicant awarded a contract, certain details about their Connected Person information will be published in the contract award notice pursuant to regulation 27(e)(vii) of the Procurement Regulations 2024.
- 28.3 Applicants are referred to Appendix D which sets out the exclusion grounds.

Criteria	Minimum Standard and method of assessment
Excluded Supplier Excludable	<p>Pass/Fail</p> <p>Pursuant to section 27(1) of the Act, before permitting an Applicant to participate in a competitive flexible procedure the Authority must determine whether the Applicant is;</p>

Criteria	Minimum Standard and method of assessment
Supplier	<p>a) An Excluded Supplier; or b) An Excludable Supplier.</p> <p>If the Authority considers that the Applicant's Core Supplier Information (including Connected Person information) evidences that;</p> <p>a) A Mandatory Exclusion Ground applies to the Supplier or a Connected Person; and b) The circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again*</p> <p>then it is an Excluded Supplier, and it will "Fail" this Minimum Standard and will be excluded from the procurement process, save that pursuant to Section 57(3) of the Act, an Applicant will not be excluded where it is on the Debarment List by virtue of Paragraph 35 of Schedule 6 (national security only).</p> <p><i>*In considering whether the circumstances giving rise to the application of an exclusion ground are continuing or likely to occur again, the Authority will have regard to the matters listed at section 58(1) of the Act.</i></p> <p>If the Authority considers that the Applicant's Core Supplier Information (including Connected Person information) evidences that a Discretionary Exclusion Ground applies to the Supplier or a Connected Person, then the Applicant is an Excludable Supplier and pursuant to section 27(3) the Authority may exclude the Applicant from the procurement process.</p>

29 Part 2: Additional Exclusions Information (Pass or Fail)

- 29.1 Applicants must complete Part 2 (Additional Exclusions Information) in the PSQ. Any Applicant who fails to provide all of the information required or provides information that is inaccurate, incomplete or missing will be deemed non-compliant and excluded from the procurement process.
- 29.2 Section 2 is assessed on a pass/fail basis. Applicants are required to pass Part 2 for their PSQ response to be considered further by the Authority.
- 29.3 In order to pass Part 2, Applicants must provide all of the information required in Part 2 of the PSQ and pass the Minimum Standard for Section 2 described in the two tables at paragraph 29.4. Any Applicant who fails to satisfy the Minimum Standard will be rejected from the procurement.
- 29.4 Applicants are referred to Appendix D which sets out the exclusion grounds.

Part 2A – Associated Persons

Criteria	Minimum Standard and method of assessment
Excluded Supplier	Pass/Fail

Criteria	Minimum Standard and method of assessment
Excludable Supplier	<p>Pursuant to section 27(1) of the Act, before permitting an Applicant to participate in a competitive flexible procedure the Authority must determine whether the Applicant is;</p> <ul style="list-style-type: none"> a) An Excluded Supplier; or b) An Excludable Supplier. <p>If an Associated Person is on the Debarment List by virtue of a Mandatory Exclusion Ground then it is an Excluded Supplier and the Applicant will “Fail” this Minimum Standard and will be excluded from the procurement process, save that pursuant to Section 57(3) of the Act, an Applicant will not be excluded where it is on the Debarment List by virtue of Paragraph 35 of Schedule 6 (national security only).</p> <p>If an Associated Person is on the Debarment list by virtue of a Discretionary Exclusion Ground, then the Authority will check the Applicant's self-declarations to ascertain whether;</p> <ul style="list-style-type: none"> a) A Mandatory Exclusion Ground or a Discretionary Exclusion Ground applies to the Associated Person; and b) The circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again* <p><i>*In considering whether the circumstances giving rise to the application of an exclusion ground are continuing or likely to occur again, the Authority will have regard to the matters listed at section 58(1) of the Act</i></p> <p>If the Authority considers that the answer to a) and b) is “Yes”, then the Authority will give the Applicant the opportunity to replace the relevant Associated Person.</p> <p>If the Applicant decides not to replace the Associated Person, then:</p> <ul style="list-style-type: none"> a) In the case of a Mandatory Exclusion Ground applying to the Associated Person, the Applicant will be excluded from the procurement; b) in the case of a Discretionary Exclusion Ground applying to the Associated Person, the Authority may exclude the Applicant from the procurement.

Part 2B – Listed of Intended Sub-Contractors

Criteria	Minimum Standard and method of assessment
Excluded Supplier	Pass/Fail
Excludable Supplier	<p>The Authority will check the Applicant's self-declaration to ascertain whether;</p> <ul style="list-style-type: none"> a) A Mandatory Exclusion Ground or a Discretionary Exclusion Ground applies to the intended Sub-Contractor; and b) The circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again*

Criteria	Minimum Standard and method of assessment
	<p><i>*In considering whether the circumstances giving rise to the application of an exclusion ground are continuing or likely to occur again, the Authority will have regard to the matters listed at section 58(1) of the Act</i></p> <p>If the Authority considers that the answer to a) and b) is “Yes”, then the Authority will give the Applicant the opportunity to replace the relevant Sub-Contractor.</p> <p>If the Applicant decides not to replace the Sub-Contractor, then:</p> <ul style="list-style-type: none"> a) In the case of a Mandatory Exclusion Ground applying to the Sub-Contractor, the Applicant will be excluded from the procurement; b) in the case of a Discretionary Exclusion Ground applying to the Sub-Contractor, the Authority may exclude the Applicant from the procurement.

Part 3 of the SQ: Questions relating to Conditions of Participation

30 Part 3A: Financial capacity (Questions 13 – 18) (Pass /Fail)

- 30.1 Part 3A (Financial capacity) is assessed on a pass/fail basis. Applicants are required to pass Part 3A (Financial capacity) in order for their responses to be considered further by the Authority. Applicants should note that the Authority has the same Minimum Standards for financial capacity for both Lot 1 and Lot 2.
- 30.2 Please note that the Authority reserves the right to reject an Applicant/Tenderer at any point in the procurement process if the Applicant/Tenderer does not satisfy or no longer satisfies the Authority’s Minimum Standard relating to financial economic and financial standing.

Minimum Standard of Financial capacity

- 30.3 In order to pass Part 3A (Financial capacity), an Applicant must:
- (a) Provide the information requested in Questions 13-18 in Part 3A (Financial capacity) (as applicable); and
 - (b) Self-certify that the Applicant (and any applicable Associated Person) meets the Authority’s requirements in relation to economic and financial standing as set out in paragraph 30.6 below (the “**Minimum Standard**”); and
 - (c) Confirm, if the Applicant is relying on an Associated Person or other security in order to meet the Conditions of Participation relating to financial capacity, that the relevant Associated person or entity will provide a guarantee or other form of security (i.e. from a bank), if required by the Authority.
- 30.4 An Applicant who:
- (a) fails to provide all of the information required under paragraph 30.3(a) or 30.3(c) will fail Part 3A (Financial capacity);

- (b) fails to satisfy the Minimum Standard set out in paragraph 30.6 may be rejected at the absolute discretion of the Authority. In exercising its discretion, the Authority may not reject an Applicant who fails to satisfy the Minimum Standard if there are convincing and mitigating factors for the failure.

30.5 Self-Certification

Applicants will note that they are required at Part 3A (Financial capacity) of the PSQ to self-certify that they (or any Associated Person that they are relying on to meet the conditions of participation relating to financial capacity) or nominated guarantor pass the Minimum Standard. However, Applicants should note that this self-certification is informative only. Subject to any clarification raised by the Authority, the Authority will carry out its own assessment of the Applicant's (or any Associated Person relied on to meet the conditions of participation relating to financial capacity or nominated guarantor) level of financial capacity based on the accounts information provided in response to Part 3A (Financial capacity) to determine whether the Applicant (or applicable Associated Person or nominated guarantor) meets the Minimum Standard. The Authority reserves the right to use a credit reference agency (such as Dun & Bradstreet) to assist with its assessment in respect of the Applicant, applicable Associated Person or any nominated guarantor(s). The Authority reserves the right to fail Applicants, any Associated Person or any nominated guarantor who have a Dun and Bradstreet risk score of high or more or who otherwise are flagged as high risk or have a poor financial performance as demonstrated via the credit check service. By submitting its PSQ response, an Applicant authorises the Authority to undertake any financial checks that it deems relevant to ascertain the financial status of the Applicant, any Associated Person or any nominated guarantor(s).

30.6 To meet the Minimum Standard, the:

- (a) The Applicant/Consortium (and/or any applicable Associated Person or nominated guarantor as applicable) must demonstrate that it has sufficient financial capacity to be able to deliver the requirements of the Project under Lot 1 or Lot 2 as applicable;
- (b) The Authority reserves the right to carry out further financial checks and request additional information and/or assurance. Without limitation to the generality of the foregoing, Applicants/Consortia may be requested to provide additional information or assurances in order to satisfy the Authority:
 - i. that any perceived risks are mitigated;
 - ii. that the Applicant's/Consortium's financial capacity (and/or any applicable Associated Person or nominated guarantor as applicable) is such that the Applicant/Consortium is capable of meeting the financial obligations anticipated under the Legal Documents and/or the Authority's requirements for the Project under the relevant Lot (as applicable); and
 - iii. that the Applicant/Consortium is capable of coping financially with requirements under the Legal Documents and/or the Authority's requirements for the delivery Project under the relevant Lot (as applicable).
- (c) Applicants should note that the Authority reserves the right to exercise its reasonable discretion in the assessment of an Applicant's/Consortium's financial robustness (and/or any applicable Associated Person or nominated guarantor as applicable).

- (d) The Authority's consideration will be based on an overall analysis and review by the Authority, with advisory support as appropriate, of the material supplied by the Applicant, along with a credit rating sourced by the Authority, if deemed necessary as mentioned at paragraph 30.5 and 30.6(b)
- 30.7 If an Applicant/Consortium fails to satisfy one or more of the metrics referred to in paragraph 30.6 above, the Authority reserves the right to invite the Applicant/Consortium to submit mitigating or supporting information relevant to the failed metric. The Authority will consider any mitigating or supporting information submitted and determine at its sole discretion whether from its point of view the mitigation is sufficient to address the failure and allow the Applicant to proceed.
- 30.8 Applicants must note that, in the interests of due diligence, the Authority reserves the right to carry out a further financial assessment prior to award to ensure that the Authority's requirements will be met.
- 30.9 The Authority reserves the right to treat as ineligible any Applicant/Consortium, Associated Person or nominated guarantor who is found to have seriously misrepresented any of the financial information required by Part 3A (Financial capacity).

Insurance

- 30.10 Applicants must complete question 19 (Insurance) in the PSQ. Applicants should note that the Minimum Standards in terms of insurance requirements are the same for both Lot 1 and Lot 2.
- 30.11 Question 19 is assessed on a pass/fail basis. Applicants are required to pass question 19 in order for their PSQ Response to be considered further by the Authority. The Minimum Standard is set out in paragraph 30.12 below.
- 30.12 In order to pass question 19, Applicants must self-certify that they already have, or can commit to obtain, prior to the commencement of the Legal Documents/s, the levels of insurance indicated in the PSQ.
- 30.13 An Applicant who fails to satisfy this Minimum Standard will be excluded from the process and not be further considered.

31 Part 3A: Legal capacity – Data Protection (pass/fail)

- 31.1 Applicants must complete question 20 (Data Protection) in the PSQ.
- 31.2 Question 20 is assessed on a pass/fail basis. Applicants are required to pass question 21 in order for their PSQ Response to be considered further by the Authority. The Minimum Standard is set out in paragraph 31.3 below.
- 31.3 In order to pass question 20, Applicants must:
- (a) Answer "Yes" to question 20 to confirm that they have in place, or will have in place by contract award, the human and technical resources to perform the contract to ensure compliance with the UK General Data Protection Regulations and to ensure the protection of the rights of data subjects; and
 - (b) Provide details of the technical facilities and measures (including systems and processes) it has in place, or will have in place by contract award, to ensure

compliance with the UK General Data Protection Regulations and to ensure the protection of the rights of data subjects including the facilities and measures it has in place to address the bullet points set out in question.

- 31.4 If the Applicant answers “No” to question 20 and/or does not provide a response to question 21 or provides a response which does not address the requirements of question 20, will fail this Minimum Standard and will be excluded from the process and not be further considered..

32 Part 3A: Technical ability

- 32.1 Applicants must complete Questions 21 to 23 in Part 3A (Technical ability) in the PSQ. The Authority is entitled to exclude an Applicant from the procurement process if the Applicant fails to answer any of the Questions 21 to 23 in Part 3A.

- 32.2 The Authority is looking for evidence that the Applicant/Consortium demonstrates the necessary technical resources, experience and has the technical and professional ability to deliver the requirements under Lot 1 or Lot 2 (as applicable).

- 32.3 Responses to questions 21, 22 and 23 (as applicable) will be assessed on a pass/fail basis.

- 32.4 In order to pass questions 21 to 23 in Part 3A, Applicants must:

- (a) Provide details in response to question 21 of up to three contracts performed during the past three years that are relevant to the Authority’s requirements under Lot 1 or Lot 2 as applicable; or
- (b) Provided in response to question 22, an explanation for why no examples can be given and demonstrated that they have the technical and professional capability relevant to the Authority’s requirements in Lot 1 or Lot 2 as applicable such that the Authority can have confidence in and can be satisfied with their technical ability, resources and experience to deliver the requirements under the relevant Lot; and
- (c) Provided details of how they have maintained health supply chains with sub-contractors if the Applicant intends to sub-contract any of part of the Authority’s requirements under Lot 1 or Lot 2 (as applicable) in response to question 23.

- 32.5 Consortiums should provide relevant examples where one or more of the group/Consortium members have delivered similar requirements. If this is not possible (for example a Consortium is newly formed or an SPV will be created for the purpose of delivering the Project) up to three separate examples should be provided from the principal members of the group.

- 32.6 Where an Applicant is proposing to use a Significant Sub-Contractor, they should provide a relevant example where the Significant Sub-Contractor has delivered similar requirements.

- 32.7 Applicants should note that the Authority reserves the right to contact the named customer contact for the contract examples provided in response to Question 21 to verify the accuracy of the information provided.

32.8 Question 25 – Health and Safety – pass/fail

- (a) Applicants must complete question 25 (Health and Safety) in the PSQ.
- (b) Question 25 is assessed on a pass/fail basis. Applicants are required to pass question 25 in order for their PSQ Response to be considered further by the Authority. The Minimum Standard is set out in paragraph 32.8(b) below.

- (c) In order to pass question 25, Applicants must provide details of the arrangements that they have in place to manage health and safety effectively and control significant risks relevant to the requirement (including risks from the use of subcontractors, where relevant).
- (d) An Applicant who fails to satisfy this Minimum Standard will be excluded from the process and not be further considered.

32.9 Questions 26 to 32: Project Specific Questions to assess technical ability - Lot Specific Questions

- (a) Applicants will be assessed or scored on the basis of their responses to the Project Specific Questions 26 to 32 detailed in Appendix A of this PSQ Guidance.
- (b) Applicants must submit responses to all Project Specific Questions (Technical ability) to the Portal for the relevant Lot for which they are applying.
- (c) The Authority is entitled to exclude an Applicant from the procurement exercise if the Applicant fails to answer any individual Project Specific Questions for the relevant Lot that the Applicant is expressing interest in.
- (d) The Project Specific Questions are weighted in accordance with the stated weightings against each question set out in Appendix A and responses will be scored on a system of 0 – 5 points as indicated in the table below.
- (e) The Project Specific Questions for each Lot are set out at Appendix A to this PSQ Guidance for ease of reference.
- (f) The Authority is looking for evidence that the Applicant demonstrates the necessary technical resources, experience and has the technical ability to deliver the Authority's requirements for Lot 1 or Lot 2 (as applicable).

Score	Rating	Basis for Awarding Score
0	Unacceptable	The requested response and required information is omitted/no details provided/no relevant evidence provided.
1	Poor	The response addresses some parts of the question but contains insufficient detail or explanation to evidence the Applicant's achievements and technical capability in this market and relevance to the Authority's requirements and/or overall limited evidence of and low confidence in the Applicant's technical ability, resources and/or experience to deliver the Authority's requirements.
2	Fair	The response addresses most parts of the question but lacks details in some aspects and provides some evidence of the Applicant's achievements and technical capability in this market and relevance to the Authority's requirements and/or overall fair level of confidence in the Applicant's technical ability, resources and/or experience to deliver the Authority's requirements.
3	Satisfactory	The response addresses all aspects of the question in sufficient detail and shows relevant evidence of the Applicant's achievements and technical capability in this market and relevance to the Authority's requirements and/or overall satisfactory evidence of and satisfactory confidence in the Applicant's technical ability, resources and/or experience to deliver the Authority's requirements.

Score	Rating	Basis for Awarding Score
4	Good	The response addresses all aspects of the question very well and shows considerable relevant evidence of the Applicant's achievements and technical capability in this market and relevance to the Authority's requirements and/or overall good evidence of and good confidence in the Applicant's technical ability, resources and/or experience to deliver the Authority's requirements
5	Excellent	The response addresses all aspects of the question extremely well and in detail and shows extensive relevant evidence of the Applicant's achievements and technical capability in this market and relevance to the Authority's requirements and overall excellent evidence of and high level of confidence in the Applicant's technical ability, resources and/or experience to deliver the Authority's requirements

32.10 Moderation of scoring

- (a) The responses to the Project Specific Questions for each Lot will first be independently evaluated by individual members of an assessment panel using the scoring scale above. The Authority will then conduct a separate 'consensus scoring process' for each Lot whereby moderation of the scores awarded by the individual evaluators for the responses to the applicable Project Specific Questions for the relevant Lot will take place. During this exercise, the members of the assessment panel will agree a consensus score for the responses to each of Project Specific Questions for the relevant Lot.
- (b) For each Lot, the weighted score for the Applicant's response to each applicable Project Specific Question will be calculated in accordance with the weightings given against the question numbers in the PSQ as follows:

$$(ACTUAL\ SCORE / 5) * [WEIGHTING\ \%] * 100$$

Example

So if an Applicant under Lot 1 is awarded a score of 4 out of 5 for Question 26 which has a weighting of 25% then:

Score = 4/5

Weighting = 25%

Weighted score = $(4/5) * 0.25 * 100 = 20\%$

- (c) The Applicant's weighted percentage scores for each of the Project Specific Question for the relevant Lot will be added together to create a total percentage score out of 100% (the "**Total PSQ Score**")

33 Part 3B (pass/fail)

Question 33 – Public Sector Contracts Only – Requirement under the Procurement Act 2023 (sections 68 and 73)

- 33.1 Applicants must complete question 33 (Requirement under the Procurement Act) in the PSQ.

33.2 Question 33 is assessed on a pass/fail basis based on self-declarations by the Applicants. Applicants are required to pass question 33 in order for their PSQ Response to be considered further by the Authority. The Minimum Standard is set out in paragraph 33.3 below.

33.3 In order to pass, the Applicant must answer Yes to question 33.

33.4 If an Applicant answers “No” or does not provide a response to Question 33, it will fail this Minimum Standard and will be excluded from further participation in the procurement.

**Question 34 –Modern Slavery Statement (or equivalent statement / document)
(pass/fail)**

33.5 Applicant must complete question 34 (Modern Slavery Statement) in the PSQ.

33.6 Question 34 is assessed on a pass/fail basis based on self-declarations by the Applicants. Applicants are required to pass question 34 in order for their PSQ Response to be considered further by the Authority. The Minimum Standard is set out in paragraph 33.7 below

33.7 In order to pass, the Applicant must either;

(a) answer “No” to 34(a); or

(b) answer “Yes” to 34(a), 34(b) and 34(c).

33.8 If an applicant answers “Yes” to 34(a) and “No” to either or both of 34(b) and 34(c) or does not provide a response to Question 34, it will fail this Minimum Standard and will be excluded from further participation in the procurement.

34 Shortlisting

34.1 Applicants that expressed interest in Lot 1 who have passed the compliance checks and the Pass / Fail questions in the Preliminary Questions, Part 1, Part 2A, Part 2 B, Part 3A (except Project Specific Questions 26 to 32) and Part 3B will then be ranked in descending order of their Total PSQ Score for the Project Specific Questions for Lot 1 for Question 26 to 29, highest scoring first.

34.2 Applicants that expressed interest in Lot 2 who have passed the compliance checks and the Pass / Fail questions in the Preliminary Questions, Part 1, Part 2A, Part 2 B, Part 3A (except Project Specific Questions 26 to 32) and Part 3B will then be ranked in descending order of their Total PSQ Score for the Project Specific Questions for Lot 2 for Question 30 to 32, highest scoring first.

34.3 Following this exercise, the Authority will draw up the shortlist of Applicants to be invited to submit Initial Tenders.

34.4 As set out in paragraph 5.2 above, provided that there are sufficient numbers of Applicants that have passed the compliance checks and the Pass / Fail questions in the Preliminary Questions, Part 1, Part 2A, Part 2 B, Part 3A (except Project Specific Questions 26 to 32) and Part 3B of the PSQ for Lot 1 and Lot 2, the Authority intends to invite:

(a) the top 3 (three) highest scoring Applicants for Lot 1; and

(b) the top 3 (three) highest scoring Applicants for Lot 2;

to submit Initial Tenders (“Shortlisted Applicants” or “Tenderers”).

34.5 However, the Authority reserves the right to:

- (a) invite 3 or 4 Applicants under Lot 1; and/or
- (b) invite 3 or 4 Applicants under Lot 2;

if there is a negligible scoring gap between Applicants 3 or 4 under either Lot in which case the Authority reserves the right to invite 3 or 4 Applicants in each Lot as applicable.

34.6 If there are fewer than three (3) Applicants expressing interest in either Lot and/or fewer than three (3) Applicants pass the compliance checks, the Pass / Fail questions in the Preliminary Questions, Part 1, Part 2A, Part 2 B, Part 3A (except Project Specific Questions 26 to 32) and Part 3B of the PSQ and achieve a Total PSQ Score in response to the Project Specific Questions for relevant Lot, the Authority reserves the right to:

- (a) either abandon this procurement; or
- (b) continue with fewer than three (3) Shortlisted Applicants in either Lot provided the Authority is satisfied there are sufficient Applicants to ensure genuine competition.

Appendix A: Project Specific Questions for each Lot

Lot 1 – Full Operation of the Winter Gardens		
Part 3A	Project Specific Questions to assess Technical Ability	
Question number	Question	Description of information in support of response, which will be taken into account in assessment
26	<p>Once completed, the Winter Gardens will offer free to access public areas, designed to encourage year-round visitors and local people to visit, dwell and enjoy the planting, atmosphere and interpretive elements of the building.</p> <p>With reference to the case studies that you have provided in response to Question 23, please set out, with supporting evidence, how you attracted visitors to the:</p> <ul style="list-style-type: none"> • commercial activities; and • free to access areas and activities <p>that took place at the venue/building.</p> <p>Your response should include, with supporting examples, the programme of events/activities that you provided to attract visitors both from the local community and more widely.</p>	<p>Responses to this question must not exceed 3 (three) sides of A4 paper when created using Microsoft Word, Arial font size 11 and with margins fixed at 1.5cm top, bottom and sides</p> <p>Weighting – 25%</p>

Lot 1 – Full Operation of the Winter Gardens		
Part 3A	Project Specific Questions to assess Technical Ability	
Question number	Question	Description of information in support of response, which will be taken into account in assessment
27	<p>With reference to case studies that you have provided in response to Question 23, please set out, with supporting evidence how you ensured that:</p> <ul style="list-style-type: none"> the food, beverage and events that you offered at the venue or building aligned with the non-commercial activities that took place; and a seamless customer experience was provided to visitors across both the food and beverage and events that were offered and the non-commercial activities that took place. 	<p>Responses to this question must not exceed 3 (three) sides of A4 paper when created using Microsoft Word, Arial font size 11 and with margins fixed at 1.5cm top, bottom and sides</p> <p>Weighting – 25%</p>

Lot 1 – Full Operation of the Winter Gardens		
Part 3A	Project Specific Questions to assess Technical Ability	
Question number	Question	Description of information in support of response, which will be taken into account in assessment
28	<p>With reference to the case studies you have provided in response to Question 23, please demonstrate your experience, with supporting evidence, of:</p> <ul style="list-style-type: none"> • providing facilities management services including health and safety compliance; and • maintaining and operating the public realm and equipment <p>at the venue/building that you operated.</p> <p>Ideally, your response should set out your experience of providing these activities within a listed building / heritage asset.</p>	<p>Responses to this question must not exceed 3 (three) sides of A4 paper when created using Microsoft Word, Arial font size 11 and with margins fixed at 1.5cm top, bottom and sides</p> <p>Weighting – 25%</p>

Lot 1 – Full Operation of the Winter Gardens		
Part 3A	Project Specific Questions to assess Technical Ability	
Question number	Question	Description of information in support of response, which will be taken into account in assessment
29	<p>A key ambition of this project is to support the local economy, creating sustainable employment, skills development and working with the local supply chain.</p> <p>Using the case studies that you have provided in response to Question 23, please set out your experience of the following:</p> <ul style="list-style-type: none"> • working in partnership with local organisations; and • providing skills and training to young people, including but not limited to the provision of apprenticeships and paid placements. <p>Your response should include, with examples, the activities you undertook and the tangible benefits that these brought to the local economy, skills development and the local supply chain with supporting evidence.</p>	<p>Responses to this question must not exceed 2 (two) sides of A4 paper when created using Microsoft Word, Arial font size 11 and with margins fixed at 1.5cm top, bottom and sides</p> <p>Weighting – 25%</p>

Lot 2 - Provision of a food and beverage offering and events at the Winter Gardens		
Part 3A	Project Specific Questions to assess Professional and Technical Ability	
Question number	Question	Description of information in support of response, which will be taken into account in assessment
30	<p>Once completed, the Winter Gardens will offer free to access public areas, designed to encourage year round visitors and to encourage local people to visit, dwell and enjoy the planting, atmosphere and interpretive elements of the building</p> <p>With reference to the case studies that you have provided in response to Question 23, please set out, with supporting evidence, how you attracted visitors to the:</p> <ul style="list-style-type: none"> • food and beverage offering; and • any corporate events <p>that you provided at the venue/building.</p> <p>Your response should include, with supporting examples, the programme of events/activities that you provided to attract visitors both from the local community and more widely.</p>	<p>Responses to this question must not exceed 3 (three) sides of A4 paper when created using Microsoft Word, Arial font size 11 and with margins fixed at 1.5cm top, bottom and sides.</p> <p>Weighting – 40%</p>

Lot 2 - Provision of a food and beverage offering and events at the Winter Gardens		
Part 3A	Project Specific Questions to assess Professional and Technical Ability	
Question number	Question	Description of information in support of response, which will be taken into account in assessment
31	<p>With reference to case studies that you have provided in response to Question 23, please set out, with supporting evidence how you:</p> <ul style="list-style-type: none"> ensured that the food, beverage and events that you offered at the venue or building aligned with the non-commercial activities that took place; and worked in partnership with the operator of the venue/building to ensure that a seamless customer experience was provided to visitors. 	<p>Responses to this question must not exceed 3 (three) sides of A4 paper when created using Microsoft Word, Arial font size 11 and with margins fixed at 1.5cm top, bottom and sides.</p> <p>Weighting – 30%</p>

Lot 2 - Provision of a food and beverage offering and events at the Winter Gardens		
Part 3A	Project Specific Questions to assess Professional and Technical Ability	
Question number	Question	Description of information in support of response, which will be taken into account in assessment
32	<p>A key ambition of this project is to support the local economy, creating sustainable employment, skills development and working with the local supply chain.</p> <p>Using the case studies that you have provided in response to Question 23, please set out your experience of the following:</p> <ul style="list-style-type: none"> • working in partnership with local organisations; and • providing skills and training to young people, including but not limited to the provision of apprenticeships and paid placements. <p>Your response should include, with examples, the activities you undertook and the tangible benefits that these brought to the local economy, skills development and the local supply chain with supporting evidence.</p>	<p>Responses to this question must not exceed 2 (two) sides of A4 paper when created using Microsoft Word, Arial font size 11 and with margins fixed at 1.5cm top, bottom and sides</p> <p>Weighting – 30%</p>

Appendix B: Checklist for return of PSQ

To be completed by each Applicant or Lead Applicant as applicable.

Please ensure that the following items are included as part of your PSQ response.

Applicable PSQ Question	Document	Lot Specific Requirements	Included
Preliminary questions	Completed within PSQ	No	
Part 1: Confirmation of Core Supplier Information	Completed within PSQ	No	Yes/No
Part 2: Additional Exclusions information	Completed within PSQ	No	Yes/No
Part 2A: Associated Persons	Completed within PSQ	No	Yes/No/NA
Part 2B: List of Intended Sub-contractors	Completed within PSQ	No	Yes/No/NA
Part 3A: Financial capacity	Completed within PSQ	No	Yes/No
	Question 19 – Insurance	No	Yes/No
Part 3A: Legal capacity	Question 20 – Data Protection	No	
Part 3A Section 6: Questions 21 to 23 - Technical ability	Completed within PSQ	Yes	Yes/No
	Question 25 – Health and Safety	No	
	Project Specific Questions: - Lot 1 Questions 26 to 29; - Lot 2 Questions 30 to 32 Response to be uploaded to the Portal as a separate word document	Yes	Yes/No
Part 3B – requirements for central government departments, their executive agencies and non-departmental public bodies	Completed within PSQ		
	Question 33 – Public Sector Contracts Only – Requirement under the Procurement Act 2023 (section 68 and 73)	No	
	Question 34 – Modern Slavery Statement (or equivalent statement/document)	No	

Set out below details of additional information uploaded in support of your completed PSQ.

PSQ question	Supporting information uploaded	Reference and name of attachment

Appendix C: Glossary

Words and phrases with an initial capital letter used in this PSQ Guidance shall have the meaning given in the glossary below.

Term	Meaning
Applicant(s) (or “you”)	an economic operator (whether a single bidding organisation or a Consortium) who submits or intends to submit a PSQ.
Associated Person	an Associated Person as defined in section 26(4) of the Act being a person the Applicant is relying on in order to satisfy the Conditions of Participation (other than a guarantor);
Authority	Great Yarmouth Borough Council;
Tenderer	an Applicant who submitted a PSQ and who is selected following the Participation Stage to submit an Initial Tender and participate in negotiations for the Legal Documents;
Business Days	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
Central Digital Platform or CDP	the online system referenced in the Act and defined in the Procurement Regulations 2024 as the central digital platform. It is available at www.gov.uk/find-tender
Competitive Flexible Procedure (or CFN)	the procurement procedure set out in section 20 of the Act;
Conditions of Participation	means the conditions that the Applicant must satisfy in order for the Applicant to be invited to the Initial Tender Stage and subsequently awarded the Legal Documents if the Applicant is identified as the successful Tenderer following conclusion of this procurement process as required under the Act and as detailed in this PSQ Guidance;
Conditions of Participation Methodology	the way in which the Authority intends to assess each Applicant’s PSQ response against the Minimum Standards;
Connected Person	<p>a connected person as defined in paragraph 45 of Schedule 6 to the Act. In summary, it covers:</p> <ul style="list-style-type: none"> a. a person with ‘significant control’ over the supplier (within the meaning given by section 790C(2) of the Companies Act 2006 (CA 2006)) b. a director or shadow director of the supplier c. a parent undertaking or a subsidiary undertaking of the supplier d. a predecessor company e. any other person who it can reasonably be considered stands in an equivalent position in relation to the supplier as a person within paragraph a to d. f. any person with the right to exercise, or who actually exercises, significant influence or control over the supplier g. any person over which the supplier has the right to exercise, or actually exercises, significant influence or control

Term	Meaning
Consortium	a group of economic operators whether in the form of a joint venture arrangement or in a Prime Contractor and Sub-Contractor arrangement;
Core Supplier Information	The core supplier information as defined in the regulation 6(9) of the Procurement Regulations 2024;
Debarment	means the mechanism under which a Minister of the Crown can put a supplier on the Debarment List following an investigation, whereby the minister is satisfied that a supplier is an Excluded Supplier or an Excludable Supplier;
Debarment List	the list managed by the Procurement Review Unit (PRU) under section 62 of the Act
Discretionary Exclusion Grounds	the grounds upon which the Authority may exclude an Applicant from the procurement as more particularly detailed in Schedule 7 of the Act, and which are attached at Part B of Appendix D;
Draft Tender Documents	the draft tender documents uploaded on the Portal made available to Applicants for the purpose of sections 21 and 96 of the Act;
Excludable Supplier	has the meaning given in section 57(2) of the Act;
Excluded Supplier	has the meaning given in section 57(1) of the Act;
Exclusions	means the mandatory and discretionary exclusion grounds set out in Schedules 6 and 7 of the Act;
Final Tender	means the final tender submitted by a Tenderer in response to the Invitation to Submit Final Tenders;
Final Tender Stage	means the stage, commencing with the issue of the Invitation to Submit Final Tenders, where Tenderers prepare their Final Tenders which are reviewed and evaluated by the Authority;
FTS Tender Notice	the notice advertising this procurement published in the Find a Tender Service;
Initial Tender	means an initial tender to be submitted by a Tenderer in response to the ITPN;
Invitation to Submit Final Tenders or ISFT	means the Invitation to Submit Final Tenders to be issued following the close of the Negotiation Stage;
Invitation to Submit Initial Tenders and Participate in Negotiation (ITPN)	the Authority's invitation to submit Initial Tenders and participate in negotiations issued to Tenderers;
Initial Tender Stage	means the stage, commencing with the issue of the ITPN, where Tenderers prepare their Initial Tenders which are reviewed and assessed by the Authority;
Lead Applicant	the named Lead Applicant in a Consortium, as identified in the PSQ, that is responsible for the overall preparation and submission of the PSQ Response and any subsequent Tender on behalf of all the Consortium;

Term	Meaning
Legal Documents	the agreement between the Authority and the successful Tenderer for the provision of the Project being the subject of this procurement process;
Minimum Standards	means the Authority's minimum standards for the Conditions of Participation in this procurement;
Negotiation Stage	means the stage following the Initial Tender Stage where the Tenderers are invited to participate in negotiations;
Portal	means the Authority's e-tendering portal which can be found at: East Suffolk Council Electronic Tendering Site - Home (in-tendhost.co.uk) ;
Prime Contractor	means a Lead Applicant of a Consortium which intends that only the Lead Applicant will enter the Legal Documents with the Authority and the other members of the Consortium will participate as Sub-Contractors;
PSQ or Procurement Specific Questionnaire	means the Authority's Procurement Specific Questionnaire for completion by Applicants wishing to express interest in the Legal Documents available separately on the Portal
Project	means the operation of the Great Yarmouth Winter Gardens as detailed in Volume 2 (Project Brief) of the ITPN;
PSQ Submission Deadline	the date in paragraph 9.3;
Responsibilities Matrix	means the document is the same title available on the Portal which sets out the responsibilities to be carried out by the Authority and those that would be carried out by a Tenderer under Lot 1 or Lot 2;
Shortlisted Applicants or Tenderers	those Applicants shortlisted for the tender stage following the assessment of their responses to the PSQ;
Significant Sub-Contractor	where an Applicant has proposed a sub-contracting arrangement, it means a proposed Sub-Contractor where that proposed Sub-Contractor will be contributing significantly to the Legal Documents, either in terms of value or importance;
SPV	a special purpose vehicle (a legal entity) established or to be established by or on behalf of an Applicant/Tenderer for the purpose of delivering Project and the Legal Documents;
Sub-Contractor	means a member of a Consortium that would not enter the Legal Documents with the Authority but would participate as a sub-contractor to the Prime Contractor;
Tender	means an Initial or Final Tender as applicable;
The Act	means the Procurement Act 2023 (as amended);
Total PSQ Score	As more particularly detailed at paragraph 32.10(c); and
Unique Identifier	As defined in regulation 8 of the Procurement Regulations 2024.

Appendix D: Exclusion Grounds

Part A: Mandatory Exclusion Grounds

Listed in Schedule 6 of the Procurement Act 2023 (as amended)

Part 1 Offences

- 1 A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been convicted of an offence referred to in this Part of this Schedule.

Corporate manslaughter or corporate homicide

- 2 An offence under [section 1](#) of the Corporate Manslaughter and Corporate Homicide Act 2007 (corporate manslaughter or corporate homicide).

Terrorism

- 3 An offence listed in [section 41](#) or [42](#) of the Counter-Terrorism Act 2008 (terrorism offences, and offences having a terrorist connection, in respect of which the notification requirements under Part 4 of that Act apply), other than an offence under section 54 of that Act.

Theft, fraud, bribery etc

- 4 An offence at common law in Scotland of theft, fraud, extortion, robbery, theft by housebreaking, housebreaking with intent to steal, uttering, embezzlement, or reset.
- 5 An offence at common law of conspiracy to defraud.
- 6 An offence under any of the following sections of the [Theft Act 1968](#)—
- (a) sections 1 to 13 (theft, robbery, burglary, etc);
 - (b) sections 17 to 21 (fraud and blackmail);
 - (c) sections 22 and 23 (offences relating to stolen goods);
 - (d) section 24A (dishonestly retaining a wrongful credit);
 - (e) section 25 (going equipped for stealing etc).
- 7 An offence under any of the following sections of the Theft Act (Northern Ireland) 1969 (c 16 (NI))—
- (a) sections 1 to 13 (theft, robbery, burglary, etc);
 - (b) sections 17 to 20 (fraud and blackmail);
 - (c) sections 21 and 22 (offences relating to stolen goods);
 - (d) section 23A (dishonestly retaining a wrongful credit);
 - (e) section 24 (going equipped for stealing etc).
- 8 An offence under [section 3](#) of the Theft Act 1978 (making off without payment).
- 9 An offence under section 5 of the Theft (Northern Ireland) Order 1978 (SI 1978/1407 (NI 23)) (making off without payment).
- 10 An offence under Article 172 or 172A of the Road Traffic (Northern Ireland) Order 1981 (SI 1981/154 (NI 1)) (taking vehicle without authority etc).
- 11 An offence under [section 58](#) of the Civic Government (Scotland) Act 1982 (convicted thief in possession).

- 12 An offence under [section 113](#) of the Representation of the People Act 1983 (bribery of electors).
- 13 An offence under [section 178](#) of the Road Traffic Act 1988 (taking motor vehicle without authority etc).
- 14 An offence under [section 327](#), [328](#) or [329](#) of the Proceeds of Crime Act 2002 (money laundering offences).
- 15 An offence under [section 2](#), [3](#), [4](#), [6](#) or [7](#) of the Fraud Act 2006 (fraud offences).
- 16 An offence under [section 993](#) of the Companies Act 2006 (fraudulent trading).
- 17 An offence under [section 1](#), [2](#) or [6](#) of the Bribery Act 2010 (bribery offences).
- 18 An offence under [section 49](#) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (offences relating to articles for use in fraud).

Labour market, slavery and human trafficking offences

- 19 An offence under the [Employment Agencies Act 1973](#) (offences relating to employment agencies) other than an offence under section 9(4)(b) of that Act.
- 20 An offence under the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (SI 1981/839) (NI 20)) (offences relating to employment agencies) other than an offence under Article 7B(11) of that Order.
- 21 An offence under [section 31\(1\)](#) of the National Minimum Wage Act 1998 (refusal or wilful neglect to pay the national minimum wage).
- 22 An offence under the [Gangmasters \(Licensing\) Act 2004](#) (offences relating to gangmasters).
- 23 An offence under [section 1](#), [2](#), [4](#) or [30](#) of the Modern Slavery Act 2015 (slavery and human trafficking offences).
- 24 An offence under [section 1](#), [4](#) or [32](#) of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) (slavery and human trafficking offences).
- 25 An offence under section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c 2) (NI)), or paragraph 16 of Schedule 3 to that Act (slavery and human trafficking offences).
- 26 An offence under [section 27](#) of the Immigration Act 2016 (failure to comply with labour market enforcement order).

Organised crime

- 27 An offence under [section 28](#) of the Criminal Justice and Licensing (Scotland) Act 2010 (agreeing to become involved in serious organised crime).
- 28 An offence under [section 45](#) of the Serious Crime Act 2015 (participating in activities of organised crime group).

Tax offences

- 29 An offence at common law of cheating the public revenue.

30

- (1) An offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.
- (2) In this paragraph, “tax” means a tax imposed under the law of any part of the United Kingdom, including national insurance contributions under—
 - (a) [Part 1](#) of the Social Security Contributions and Benefits Act 1992, or

- (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

31 An offence under [section 45](#) or [46](#) of the Criminal Finances Act 2017 (failure to prevent facilitation of tax evasion).

Cartel offence

32 An offence under [section 188](#) of the Enterprise Act 2002 (cartel offence).

Ancillary offences

33 In relation to an offence otherwise referred to in this Part, any of the following offences—

- (a) aiding, abetting, counselling or procuring the commission of the offence;
- (b) in Scotland, being art and part in the commission of the offence;
- (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence;
- (d) inciting a person to commit the offence;
- (e) attempting or conspiring to commit the offence.

Offences committed outside the United Kingdom

34

- (1) An offence under the law of a country or territory outside the United Kingdom which would be an offence otherwise referred to in this Part of this Schedule if the conduct constituting that offence was carried out in any part of the United Kingdom.
- (2) For the purposes of this paragraph, an act punishable under the law of a country or territory outside the United Kingdom constitutes an offence under that law, however it is described in that law.

Part 2

Other Mandatory Exclusion Grounds

National security

35

- (1) A mandatory exclusion ground applies to a supplier in relation to contracts of a particular description if an appropriate authority determines that the supplier or a connected person—

- (a) poses a threat to the national security of the United Kingdom, and
- (b) would pose such a threat in relation to public contracts of that description.

(2) In sub-paragraph (1)—

- (a) the reference to an appropriate authority is a reference to the appropriate authority that is considering whether the exclusion ground applies;
- (b) the reference to a particular description includes, for example, a description by reference to—

(i) the goods, services or works being supplied;

(ii) the location of the supply;

(iii) the contracting authority concerned.

- (3) Sub-paragraph (1) applies only for the purpose of an appropriate authority's functions under sections 59 to 66 (debarment), and cannot otherwise be relied on by a contracting authority when considering whether a supplier is an excluded supplier under section 57(1)(a).

Misconduct in relation to tax

36

- (1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been liable to a penalty under—
- (a) section 69C of the Value Added Tax Act 1994 (transactions connected with VAT fraud) except where the penalty is reduced under section 70 of that Act, or
 - (b) section 25 of the Finance Act 2003 (evasion of tax or duty).
- (2) The supplier or connected person is not to be treated as having been liable to such a penalty unless HMRC has assessed the amount of the penalty and the time for any appeal or further appeal relating to the penalty has expired or, if later, any appeal or final appeal relating to it has been finally determined.

37

(1) A mandatory exclusion ground applies to a supplier if a penalty has been payable by the supplier or a connected person under—

- (a) [Schedule 24](#) to the Finance Act 2007 (errors in tax documentation), or
- (b) [Schedule 41](#) to the Finance Act 2008 (failure to notify and certain VAT and excise wrongdoing),
- but only where the conduct giving rise to that penalty was deliberate.

(2) Such a penalty is not to be treated as having been payable unless—

- (a) if the penalty has been assessed, the time for any appeal or further appeal relating to the penalty has expired or, if later, any appeal or final appeal relating to it has been finally determined, or
- (b) a contract has been made between HMRC and the supplier or connected person, under which HMRC undertook not to assess the penalty or (if it was assessed) not to take proceedings to recover it.

38

(1) A mandatory exclusion ground applies to a supplier if—

- (a) the supplier or a connected person has entered into or carried out tax arrangements that are abusive (within the meaning given in [section 207](#) of the Finance Act 2013), and
- (b) adjustments have accordingly been made under section 209 of that Act (countering tax advantages), including as it applies under [section 10](#) of the National Insurance Contributions Act 2014.

(2) Adjustments are not to be treated as having been made until they can no longer be challenged, whether on appeal or otherwise.

39

(1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been found by HMRC, in exercise of its powers in respect of VAT, to have engaged in an abusive practice.

(2) The supplier or connected person is not to be treated as having been found by HMRC to have engaged in those arrangements or practices until the finding can no longer be challenged, whether on appeal or otherwise.

40

(1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has incurred a defeat in respect of notifiable tax arrangements they have entered into.

(2) In this paragraph—

“defeat” means that—

(a) Condition A in paragraph 5 of [Schedule 16](#) to the Finance (No 2) Act 2017, or

(b) Condition B in paragraph 6 of that Schedule,
is met in respect of the arrangements (where “T” in those paragraphs is taken to mean the supplier or connected person entering into the arrangements);

“notifiable tax arrangements” means tax arrangements in respect of which a reference number—

(a) has been notified to the supplier or connected person under [section 311A, 312 or 312ZA](#) of the Finance Act 2004 (disclosure of tax avoidance schemes) or paragraph 22A, 23 or 23A of [Schedule 17](#) to the Finance (No 2) Act 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes), and

(b) has not been withdrawn;

“tax arrangements” has the meaning given in paragraph 3(1) of [Schedule 16](#) to the Finance (No 2) Act 2017.

Competition law infringements

41

(1) A mandatory exclusion ground applies to a supplier if the CMA has made a decision under the [Competition Act 1998](#) that the Chapter I prohibition (within the meaning given by section 2 of that Act) has been infringed by an agreement or concerted practice—

(a) to which the supplier or a connected person was party, and

(b) which was a cartel (within the meaning given by paragraph 4(1) of [Schedule 8A](#) to that Act).

(2) Sub-paragraph (1) does not apply if the CMA did not impose a penalty on the supplier or connected person in respect of the infringement because the supplier or connected person was an immunity recipient (within the meaning given by paragraph 14 of [Schedule 8A](#) to the Competition Act 1998).

(3) In this paragraph, references to the CMA include references to a regulator referred to in [section 54\(1\)](#) of the Competition Act 1998 in circumstances where it exercises functions concurrently with the CMA in accordance with that Act.

Equivalents outside the United Kingdom

42

A mandatory exclusion ground applies to a supplier if the supplier or a connected person—

(a) has been subject to a penalty or a decision by a regulator, court or other authority outside the United Kingdom, where the conduct giving rise to that penalty or decision is conduct that would give

rise to a penalty or decision referred to in any of paragraphs 36 to 41 if committed in the United Kingdom, in circumstances where the penalty or decision would be a mandatory exclusion ground, or

(b) has had a tax advantage counteracted outside the United Kingdom, in circumstances where the supplier or connected person would have incurred a defeat of the kind referred to in paragraph 40 had the tax advantage arisen in respect of tax payable in the United Kingdom.

Failure to cooperate with investigation

43

A mandatory exclusion ground applies to a supplier if—

(a) an appropriate authority has given the supplier or a connected person notice under section 60(6) (requests for documents or other assistance in connection with investigation).

(b) the supplier or connected person has failed to comply with the notice to the satisfaction of the authority before the end of the period specified in the notice, and

(c) a Minister of the Crown has made a determination that the failure to do so was sufficiently serious so as to warrant constituting a mandatory exclusion ground.

Part B: Discretionary Exclusion Grounds

Listed in Schedule 7 of the Procurement Act 2023 (as amended)

Labour market misconduct

1

A discretionary exclusion ground applies to a supplier if any of the following orders has been made against the supplier or a connected person—

(a) a slavery and trafficking prevention order, an interim slavery and trafficking prevention order, a slavery and trafficking risk order or an interim slavery and trafficking risk order under [Part 2](#) of the Modern Slavery Act 2015;

(b) a trafficking and exploitation prevention order, an interim trafficking and exploitation prevention order, a trafficking and exploitation risk order or an interim trafficking and exploitation risk order under [Part 4](#) of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12);

(c) a slavery and trafficking prevention order or an interim slavery and trafficking prevention order under Schedule 3 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c 2 (NI));

(d) a labour market enforcement order under [section 18](#) of the Immigration Act 2016.

2

A discretionary exclusion ground applies to a supplier if the supplier or a connected person has engaged in conduct outside the United Kingdom that the decision-maker considers could result in any such order being made if the conduct occurred in the United Kingdom.

3

A discretionary exclusion ground applies to a supplier if the decision-maker considers that there is sufficient evidence that the supplier or a connected person has engaged in conduct (whether in or outside the United Kingdom) constituting (or that would, if it occurred in the United Kingdom, constitute) an offence referred to in—

- (a) [section 1](#), [2](#), [4](#) or [30](#) of the Modern Slavery Act 2015,
- (b) [section 1](#), [4](#) or [32](#) of the Human Trafficking and Exploitation (Scotland) Act 2015, or
- (c) section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, or paragraph 16 of Schedule 3 to that Act.

Environmental misconduct

4

A discretionary exclusion ground applies to a supplier if—

- (a) the supplier or a connected person has been convicted of an offence (whether in or outside the United Kingdom), and
- (b) the conduct constituting the offence caused, or had the potential to cause, significant harm to the environment, including the life and health of plants and animals.

Insolvency, bankruptcy, etc

5

A discretionary exclusion ground applies to a supplier if the supplier or a connected person has—

- (a) become bankrupt (or, in Scotland, its estate has been sequestrated),
- (b) become subject to insolvency or winding-up proceedings,
- (c) had its assets subject to administration or receivership, including by a liquidator or court,
- (d) entered into an arrangement with its creditors,
- (e) become subject to a petition or application for any such procedures or arrangements, or
- (f) in any jurisdiction, been subject to a procedure or an application the decision-maker considers to correspond to any procedure or application mentioned in paragraphs (a) to (e).

6

A discretionary exclusion ground applies to a supplier if the supplier or a connected person has suspended or ceased carrying on all or a substantial part of its business.

Potential competition infringements

7

(1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that an agreement or concerted practice to which the supplier or a connected person is party has infringed—

- (a) the Chapter I prohibition (within the meaning given by [section 2](#) of the Competition Act 1998), or
- (b) any substantially similar prohibition applicable in a jurisdiction outside the United Kingdom.

(2) Sub-paragraph (1) does not apply where—

- (a) the supplier or connected person is an immunity recipient (within the meaning given by paragraph 14 of Schedule 8A to that Act), or
- (b) a regulator or other authority outside the United Kingdom has granted the supplier or connected person immunity from penalties in respect of the infringement.

8

A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has infringed—

- (a) the Chapter II prohibition (within the meaning given by [section 18](#) of the Competition Act 1998), or

(b) any substantially similar prohibition applicable in a jurisdiction outside the United Kingdom.

9

(1) A discretionary exclusion ground applies to a supplier if—

(a) the CMA has made a decision under the [Competition Act 1998](#) that the supplier or a connected person has infringed the Chapter II prohibition, or

(b) a regulator or other authority outside the United Kingdom has made a decision that the supplier or a connected person has infringed any substantially similar prohibition.

(2) In this paragraph the reference to the CMA includes a reference to a regulator referred to in [section 54\(1\)](#) of the Competition Act 1998 in circumstances where it exercises functions concurrently with the CMA in accordance with that Act.

10

(1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has engaged in conduct constituting—

(a) an offence under [section 188](#) of the Enterprise Act 2002 (cartel offence), or

(b) a substantially similar offence under the law of a country or territory outside the United Kingdom.

(2) Sub-paragraph (1) does not apply if—

(a) the CMA has given written notice to the supplier or connected person under [section 190\(4\)](#) of the Enterprise Act 2002 (immunity from prosecution for cartel offences) in connection with the conduct, or

(b) a regulator or other authority outside the United Kingdom has determined that the supplier or connected person is immune from prosecution in respect of the conduct.

Professional misconduct

11

(1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has engaged in professional misconduct which brings into question the supplier's integrity.

(2) A discretionary exclusion ground applies to a supplier if a court, regulator or other authority has ruled that the supplier or connected person has engaged in such professional misconduct.

(3) "Professional misconduct" includes conduct involving—

(a) dishonesty;

(b) impropriety;

(c) a serious breach of ethical or professional standards applicable to the supplier (whether those standards are mandatory or not).

Breach of contract and poor performance

12

(1) A discretionary exclusion ground applies to a supplier if—

(a) the supplier has breached a relevant contract, and

(b) the breach was sufficiently serious.

(2) A discretionary exclusion ground applies to a supplier if—

(a) a court has ruled that the supplier breached a relevant contract, and

(b) the breach was sufficiently serious.

(3) A discretionary exclusion ground applies to a supplier if the supplier—

- (a) has not performed a relevant contract to the regulated authority's satisfaction,
- (b) was given proper opportunity to improve performance, and
- (c) failed to do so.

(4) A discretionary exclusion ground applies to a supplier if a contracting authority has published information under section 71(5) in respect of the supplier (information concerning either breach or poor performance).

(5) For the purposes of this paragraph, a breach of a contract is “sufficiently serious” if it results in—

- (a) termination (or partial termination) of the contract,
- (b) the award of damages,
- (c) a settlement agreement between the supplier and the regulated authority.

(6) In this paragraph—

“regulated authority” means—

- (a) a contracting authority,
- (b) another public authority, or
- (c) an authority outside the United Kingdom that the decision-maker considers to be equivalent;

“relevant contract” means a contract to which a regulated authority is party.

Acting improperly in procurement

13

(1) A discretionary exclusion ground applies to a supplier if a decision-maker considers that—

- (a) the supplier has acted improperly in relation to any procurement, and
- (b) in so doing, the supplier put itself at an unfair advantage in relation to the award of a public contract.

(2) A supplier might act improperly in relation to a procurement by—

- (a) failing to provide information requested by the contracting authority;
- (b) providing information that is incomplete, inaccurate or misleading;
- (c) accessing confidential information;
- (d) unduly influencing the contracting authority's decision-making.

National security

14

A discretionary exclusion ground applies to a supplier if a decision-maker determines that the supplier or a connected person poses a threat to the national security of the United Kingdom.

Excluded matters

15

(1) For the purpose of determining whether a discretionary exclusion ground applies to a supplier, the decision-maker must ignore any event that—

- (a) the decision-maker was aware of before the five-year period ending with the date on which the determination is made, or

(b) a reasonably well-informed decision-maker in their position would have been aware of before that period.

This is subject to sub-paragraphs (2) and (4).

(2) In determining whether a discretionary exclusion ground within sub-paragraph (3) applies to a supplier, the decision-maker must also ignore any event that—

(a) the decision-maker was aware of before the three-year period ending with the date on which the determination is made, or

(b) a reasonably well-informed decision-maker in their position would have been aware of before that period.

(3) The grounds are those listed in—

(a) paragraphs 5 and 6 (insolvency, bankruptcy etc);

(b) paragraphs 7 to 10 (potential competition infringements);

(c) paragraph 11 (professional misconduct);

(d) paragraph 12(1) or (2) (breach of contract);

(e) paragraph 12(4) (adverse information about supplier published by contracting authority), where the information is published in relation to a breach of contract;

(f) paragraph 13 (acting improperly in a procurement).

(4) In determining whether a discretionary exclusion ground listed in any of the following paragraphs applies to a supplier, the decision-maker must also ignore any event that occurred before the coming into force of this Schedule—

(a) paragraphs 1 to 3 (labour market misconduct);

(b) paragraph 4 (environmental misconduct);

(c) paragraph 12(3) (poor performance);

(d) paragraph 12(4) (adverse information about supplier published by contracting authority), where the information is not published in relation to a breach of contract;

(e) paragraph 14 (national security).

Definitions

16

In this Schedule—

“decision-maker”, in relation to a supplier, means a contracting authority or an appropriate authority that is considering whether a discretionary exclusion ground applies to the supplier;

“event” means a conviction, decision, ruling, failure or other event by virtue of which a discretionary exclusion ground would apply to a supplier;

“information” includes evidence verifying that information.

17

Other terms used in this Schedule and defined in Schedule 6 have the meanings given in that Schedule.