

Document 1

Guidance

ECO 4

Co-Badging Licence Agreement

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Guidance

This document contains guidance and support for Organisations when completing Document 2 – Return Document. Please ensure you follow these instructions.

- **Ensure the question number and description are not altered in any way.**
- **Leave the criteria/questions in the order they are presented.**
- **Clearly title your return document(s) and insert your company name in the title of the document.**
- **Save in .pdf or Word format**

Failure to comply with these instructions and conditions may **invalidate your submission.**

Failure to comply with these instructions and conditions may **invalidate your Bid.**

Please answer each question. If you have a query related to any of the questions or the format of your response, please submit them via the messaging facility on www.csw-jets.co.uk.

Useful information on the process and how your bid will be evaluated can be found in **Document 1 – Information Pack.**

Declarations: Part 1

A completed (signed and dated) declaration of Part 1 provides a formal statement and confirmation that the organisation making the declaration accepts and agrees to the declaration requirements and stipulations.

Potential Supplier Information and Exclusion Grounds: Part 2 (Section 1.1 and 1.2) and Part 3 (Section 2, 3 and 4)

The standard Selection Questionnaire is a self-declaration, made by you (the potential supplier), that you do not meet any of the grounds for exclusion¹. If there are grounds for exclusion, there is an opportunity to explain the background and any measures you have taken to rectify the situation (we call this self-cleaning).

A completed declaration of Part 2 and Part 3 provides a formal statement that the organisation making the declaration has not breached any of the exclusions grounds. Consequently we require all the organisations that you will rely on to meet the selection criteria to provide a completed Part 2 and Part 3. For example these could be parent companies, affiliates, associates, or essential sub-contractors, if they are relied upon to meet the selection criteria. This means that where you are joining in a group of organisations, including joint ventures and partnerships, each organisation in that group must complete one of these self-declarations. Sub-contractors that you rely on to meet the selection criteria must also complete a self-declaration (although sub-contractors that are not relied upon do not need to complete the self-declaration).

When completed, this form is to be sent back to the contact point given in the documents along with the selection information requested in the documentation.

Supplier Selection Questions and Additional Questions: Part 4 and Part 5

The document will provide instructions on the selection questions you need to respond to and how to submit those responses. If you are submitting on behalf of a group (consortium) or you intend to use sub-contractors, you should complete all of the selection questions on behalf of the consortium and/or any sub-contractors. If the relevant documentary evidence referred to in the Selection Questionnaire is not provided upon request and without delay we reserve the right to reject the submission.

Notes for completion

1. The “Council” means the contracting authority, or anyone acting on behalf of the contracting authority, that is seeking to invite organisations to enter into a co-badging agreement.
2. “You” / “Your” refers to the potential organisation completing this standard Selection Questionnaire i.e. the legal entity responsible for the information provided.

¹ For the list of exclusion please see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf

3. Please ensure that all questions are completed in full, and in the format requested. If the question does not apply to you, please state 'N/A'. Should you need to provide additional information in response to the questions, please submit a clearly identified annex.
4. The Council recognises that arrangements set out in section 1.2 of the standard Selection Questionnaire, in relation to a group of economic operators (for example, a consortium) and/or use of sub-contractors, may be subject to change and will, therefore, not be finalised until a later date. The lead contact should notify the Council immediately of any change in the proposed arrangements and ensure a completed Part 2 and Part 3 is submitted for any new organisation relied on to meet the selection criteria. The Council will make a revised assessment of the submission based on the updated information.
5. For the mandatory exclusion grounds only (Q2.1(a), (b) and (c)), you must complete the declaration for all relevant persons and entities. There are two categories of persons and entities:
 - members of your administrative, management or supervisory board; secondly, entities and persons who have powers of representation, decision or control. You must decide, depending on the nature and structure of the entity or person who is bidding, which entities and persons this applies to in your particular circumstances. Clearly, members of your administrative, management or supervisory board should be easily identifiable and will cover company directors (or equivalent for other types of corporate entities) and members of an executive board.
 - the second category of those with powers of representation, decision or control, is likely to be more complicated. As an illustration, entities or persons with 25% or more shareholding (or equivalent for other types of corporate entities) are likely to have powers or representation, decision or control, although those with a lower shareholding may still have the relevant powers depending on their particular rights. Similarly, your ultimate parent company (or equivalent for other types of corporate entities) is likely to have powers of representation, decision or control. Depending on your particular structure, intermediate parent companies who do not have a direct shareholding, directors or members of an executive board of your immediate parent company (for example in the case of an SPV set up specifically to bid for a particular contract), and holders of mortgages or liens may be covered. It isn't necessary to identify which entities and persons you think are covered but you must be satisfied that your declaration is made in respect of all of those that are covered.
6. For answers to Part 4 and Part 5 - If you are bidding on behalf of a group, for example, a consortium, or you intend to use sub-contractors, you should complete all of the questions on behalf of the consortium and/ or any sub-contractors, providing one composite response and declaration.
7. Part 5 Additional Supplier Questions includes further Pass/Fail criteria (with the exception of 8.16. Armed Forces Covenant) which the Bidder shall be assessed against. The Bidder shall either answer "Yes" or "No" where indicated or shall be asked to provide information in accordance with the question asked.

The Council confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the regulations, or pursuant to an order of the court or demand made by any competent authority or body where the Council is under a legal or regulatory obligation to make such a disclosure.

Mandatory Exclusion Grounds

Part 3 Section 2 of the standard Selection Questionnaire.

Listed in Public Contract Regulations 2015 (as amended) R57(1), (2) and (3) and the Public Contract Directives 2014/24/EU Article 57(1).

Participation in a criminal organisation

- ❖ Participation offence as defined by section 45 of the Serious Crime Act 2015
- ❖ Conspiracy within the meaning of:
 - section 1 or 1A of the Criminal Law Act 1977; or
 - article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983,where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime.

Corruption

- ❖ Corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;
- ❖ The common law offence of bribery;
- ❖ Bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010, or section 113 of the Representation of the People Act 1983.

Terrorist offences or offences linked to terrorist activities

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

Money laundering or terrorist financing

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

Child labour and other forms of trafficking human beings

- ❖ An offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004;
- ❖ An offence under section 59A of the Sexual Offences Act 2003

- ❖ An offence under section 71 of the Coroners and Justice Act 2009;
- ❖ An offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994
- ❖ An offence under section 1, 2 or section 4 of the Modern Slavery Act 2015.

Non-payment of tax and social security contributions

- ❖ Breach of obligations relating to the payment of taxes or social security contributions that has been established by a judicial or administrative decision.
- ❖ Where any tax returns submitted on or after 1 October 2012 have been found to be incorrect as a result of:
 - HMRC successfully challenging the potential supplier under the General Anti – Abuse Rule (GAAR) or the “Halifax” abuse principle; or
 - a tax authority in a jurisdiction in which the potential supplier is established successfully challenging it under any tax rules or legislation that have an effect equivalent or similar to the GAAR or “Halifax” abuse principle;
 - a failure to notify, or failure of an avoidance scheme which the supplier is or was involved in, under the Disclosure of Tax Avoidance Scheme rules (DOTAS) or any equivalent or similar regime in a jurisdiction in which the supplier is established.

Other offences

- ❖ Any other offence within the meaning of Article 57(1) of the Directive as defined by the law of any jurisdiction outside England, Wales and Northern Ireland.
- ❖ Any other offence within the meaning of Article 57(1) of the Directive created after 26th February 2015 in England, Wales or Northern Ireland.

Discretionary exclusions

Part 3 Section 3 of the standard Selection Questionnaire.

Listed in Public Contract Regulations 2015 (as amended) R57(8) and the Public Contract Directives 2014/24/EU Article 57(4).

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

- Where an organisation has violated applicable obligations in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Directive (see copy below) as amended from time to time; including, but not limited to, the following:-
 - In the last 3 years, where the organisation or any of its Directors or Executive Officers has been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body).
 - In the last three years, where the organisation has had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds of alleged unlawful discrimination.
 - In the last three years where the organisation has been convicted of a breach of the Health and Safety legislation.
 - In the last three years, where any finding of unlawful discrimination has been made against the organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or incomparable proceedings in any jurisdiction other than the UK).
 - Where the organisation has been in breach of section 15 of the Immigration, Asylum, and Nationality Act 2006;
 - Where the organisation has a conviction under section 21 of the Immigration, Asylum, and Nationality Act 2006;
 - Where the organisation has been in breach of the National Minimum Wage Act 1998.

Bankruptcy, insolvency

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

Grave professional misconduct

- Guilty of grave professional misconduct

Distortion of competition

- Entered into agreements with other economic operators aimed at distorting competition.

Conflict of interest

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

Been involved in the preparation of the procurement procedure.

- Advised the contracting authority or contracting entity or otherwise been involved in the preparation of the procurement procedure.

Prior performance issues

- Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.

Misrepresentation and undue influence

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

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

- The contracting authority reserves the right to use its discretion to exclude a potential supplier where it can demonstrate by any appropriate means that the potential supplier is in breach of its obligations relating to the non-payment of taxes or social security contributions.

Additional grounds

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

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

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

Consequences of misrepresentation

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

- The potential supplier may be excluded from bidding for contracts for three years, under regulation 57(8)(h)(i) of the PCR 2015;
- The contracting authority may sue the supplier for damages and may rescind the contract under the Misrepresentation Act 1967.
- If fraud, or fraudulent intent, can be proved, the potential supplier or the responsible officers of the potential supplier may be prosecuted and convicted of the offence of fraud by false representation under s.2 of the Fraud Act 2006, which can carry a sentence of up to 10 years or a fine (or both).
- If there is a conviction, then the company must be excluded from procurement for five years under reg. 57(1) of the PCR (subject to self-cleaning).

9.2 Maintaining healthy supply chains

With respect to question 9.2(f), if the bidder has not paid all invoices within the agreed contractual terms in at least one reporting period, they must explain why in order to pass. And, if they need to submit an action plan under 9.2(g), that plan must also cover what actions they are taking to improve payment of their suppliers within the agreed terms.

Bidder's performance	Assessment criteria and methodology	Outcome
Bidder pays all supply chain invoices within agreed terms.	Bidder meets the required standard.	Pass
Bidder does not pay all supply chain invoices within agreed terms but provides an explanation why.	Bidder meets the required standard.	Pass
Bidder does not pay all supply chain invoices within agreed terms and does not provide an explanation why.	Bidder does not meet the required standard.	Fail

With respect to question 9.2(g), if the bidder has not met the required standard of payment of 95% of all invoices in 60 days in at least one reporting period, they will still pass provided:

- After the bidder has removed intercompany payments from the calculations, it pays 95% of all invoices within 60 days in at least one of the previous two reporting periods.
- The bidder has paid between 85% and 95% of all its invoices within 60 days in at least one of the previous two reporting periods (after removing intercompany payments if relevant) and it demonstrates that it has a compliant action plan to achieve the required standard in future.
- The bidder is a new entrant to the market (trading for less than 12 months). In these circumstances bidders should not be disadvantaged and should therefore pass

question 9.2 e, f and g. The bidder is still expected to respond to questions 9.2 a, b, c and d and pass.

Question 9.2 (g)

The evaluation methodology to be applied when assessing question 9.2(g) is set out below.

Bidder's performance	Assessment criteria and methodology	Outcome
Bidder pays $\geq 95\%$ of all supply chain invoices in 60 days in at least one of the previous two six month reporting periods.	Bidder meets the required standard.	Pass
Bidder pays $\geq 95\%$ of all supply chain invoices in 60 days in at least one of the two previous six month reporting periods after removing intercompany payments.	Bidder meets the required standard.	Pass
Bidder pays $\geq 85\% < 95\%$ of all supply chain invoices in 60 days in at least one of the two previous six month reporting periods after removing intercompany payments (if relevant)	Bidder demonstrates action plan that includes (as a minimum) the following: 1. Identification of the primary causes of failure to pay: (a) 95% of all supply chain invoices within 60 days; and (b) (if relevant) all supply chain invoices within agreed terms. 2. Actions to address each of these causes. 3. Regular reporting on progress to the bidder's audit committee (or equivalent). 4. Plan signed off by a director. 5. Plan published on its website. (This can be a shorter, summary plan)	Pass
	No action plan or action plan does not include all of the above features.	Fail
Bidder does not pay $\geq 85\%$ of all supply chain invoices in 60 days in at least one of the two previous six month reporting periods after removing intercompany payments (if relevant).	Bidder's payment performance falls substantially below the required standard.	Fail

Evidence Requirements

Evidence for self-declarations (questions 8.2 b, c and d): Prior to contract award the following evidence will be required from the successful bidder (where the bidder has answered "Yes" to question 1.2(b) - (i) in order to verify the bidder's responses	
Question	Evidence
B	A copy of your standard payment terms for all of your supply chain contracts.

C	A copy of your procedures for resolving disputed invoices promptly and effectively.
C	Details of any payments of interest for late payments you have paid in the past twelve months or which became due during the past twelve months and remain payable (contractually or under late payment legislation) and, if any such payment has been made (or arose), an explanation as to why this occurred and an outline of what remedial steps have been taken to ensure this does not occur again.
D	A copy of your standard payment terms used with sub-contractors on public sector contracts subject to the Public Contract Regulations 2015

9.18 Carbon Reduction Plan

The evaluation methodology to be applied when assessing question 9.18 including all sub-questions is set out below.

Bidder's performance	Assessment criteria and methodology	Outcome
Carbon Reduction Plan submitted which; confirms the supplier's commitment to achieving Net Zero by 2050, contains emissions reported for all required Scopes (in accordance with the required methodology), details environmental management and carbon reduction measures in effect during the delivery of the contract and reporting period is falls no more than 12 months prior to the date of commencement of the procurement	Bidder meets the required standard.	Pass
Carbon Reduction Plan not submitted	Bidder has failed to meet the required reporting standard.	Fail
Carbon Reduction Plan fails to confirm supplier's commitment to achieving Net Zero by 2050	Bidder has failed to meet the required reporting standard.	Fail
Emissions in the Carbon Reduction Plan are not reported for any Scopes or only for some Scopes, without explanation why	Bidder has failed to meet the required reporting standard.	Fail
Emissions in the Carbon Reduction Plan not reported for any Scopes or only for some Scopes, but supplier provides an acceptable explanation why	Bidder meets the required standard.	Pass
Reporting period is more than 12 months from the date of commencement of the procurement	Bidder has failed to meet the required reporting standard.	Fail
Reporting period is more than 12 months from the date of commencement of the procurement, but provides an acceptable explanation why	Bidder meets the required standard.	Pass
Supplier fails to detail the environmental management measures in effect, including certification schemes or specific carbon reduction measures that will be in effect during the performance of the contract	Bidder has failed to meet the required reporting standard.	Fail

Bidders should not be disadvantaged where they are a new entrant to the market (trading for less than 12 months). In these circumstances the supplier should confirm their commitment to achieving Net Zero by 2050 and should publish a full CRP as soon as possible.