

Managed Email Services

Customer Guidance Document

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## 1. GLOSSARY OF TERMS

| **Term** | **Definition** |
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| Audit | A formal inspection and verification to check whether a Standard or set of Guidelines is being followed, that Records are accurate, or that efficiency and effectiveness targets are being met. An Audit may be carried out by internal or external groups. |
| Benchmarking | The process of using a third party to check the prices charged by a supplier against a basket of similar services provided to others |
| Business Case | (Service Strategy) Justification for a significant item of expenditure. Includes information about Costs, benefits, options, issues, Risks, and possible problems. |
| Order Form | The Order Form becomes the contract between customer and supplier |
| Direct Award | Direct Award can be made, without Further Competition, from the Catalogue. |
| Direct Customers | The Public Body or representative signing the Order Form, also known as the Customer Authority |
| Discovery Days | Meetings held between suppliers on the framework and customers to discuss requirements prior to Further Competition. |
| Due Diligence | Due Diligence is the activity undertaken during the procurement by suppliers to ensure that the requirement specification issued by the customer accurately reflects the actual estate to be inherited. |
| Effective Date | The date of signature of the contract; the point at which the contract term commences. |
| Exit Strategy | An exit strategy is a process which should be developed at the start of a contract. This strategy should consider responsibilities for when a contract is nearing completion |
| Further Competition | The process used by customers to request quotes and subsequently award a contract to suppliers on the Framework. For more information please see Framework Agreement Schedule 5 – Ordering Procedure. |
| Governance | Ensuring that Policies and Strategy are actually implemented, and that required Processes are correctly followed. Governance includes defining Roles and responsibilities, measuring and reporting, and taking actions to resolve any issues identified. ­ |
| Indirect Customers | Customers who do not have a direct contract with a supplier but instead were named in and use a contract set up by a Direct Customer |
| Key Performance Indicator (KPI) | Metrics for the measurement of improvements |
| Risk | A possible event that could cause harm or loss, or affect the ability to achieve objectives. A risk is measured by the probability of a threat, the vulnerability of the asset to that threat, and the impact it would have if it occurred. |
| Service Commencement Date | The date on which the services start to be delivered. |
| Service Level | Measured and reported achievement against one or more Service Level Targets. The term Service Level is sometimes used informally to mean Service Level Target. |
| Service Level Agreement | An Agreement between an Service Provider and a Customer. The SLA describes the Service, documents Service Level Targets, and specifies the responsibilities of the Service Provider and the Customer. A single SLA may cover multiple IT Services or multiple Customers. |
| Third Party | A person, group, or Business who is not part of the Service Level Agreement for a Service, but is required to ensure successful delivery of that Service. For example a software Supplier, a hardware maintenance company, or a facilities department. Requirements for Third Parties are typically specified in Underpinning Contracts or Operational Level Agreements. |
| Transformation | Conversion of the Current IT Estate to the Future IT Estate. |
| Transition | (Service Transition) A change in state, corresponding to a movement of an IT Service or other Configuration Item from one Lifecycle status to the next. |
| TUPE | **The Transfer of Undertakings (Protection of Employment) Regulations (TUPE)** preserves employees' terms and conditions when a business or undertaking, or part of one, is transferred to a new employer. |
| Value for Money | An informal measure of Cost Effectiveness. Value for Money is often based on a comparison with the Cost of alternatives. |

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# 2. INTRODUCTION

## a) Purpose of this Document

Crown Commercial Service (“CCS”) has developed this guidance to assist customers through each stage of their procurement of managed email services using the Managed Email framework agreement.

## b) Background to the Procurement

The Managed Email framework was established to facilitate the procurement by the Health and Social Care Information Commission of the replacement NHSmail service and to support other customers who wish to transition to hosted email services.

The Managed Email framework provides a complementary approach to the marketplace, putting in place a mechanism for customers to migrate onto multi-tenanted hosted email services.

## c) Benefits of the Managed Email Framework

Using a framework agreement can save customer’s time and resource costs by negating the need to issue an OJEU notice and deal directly with the supply market at large. CCS has already carried out these steps to provide public sector customers with a framework populated with a manageable number of suppliers capable of providing Managed Email services.

In addition, CCS will run a series of National Further Competitions to maximise value for money for public sector buyers. These Further Competitions will cover all aspects of Managed Email; would involve less customer effort; and should lead to lower prices. However, customers will need to engage with CCS at the earliest opportunity to ensure that the timetable is suitable and individual requirements are suitably incorporated.

The Managed Email framework enables the procurement of secure email and associated services by the full range of central Government and wider public sector bodies.

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# 3. DECIDING WHEN AND HOW TO USE THE FRAMEWORK

## a) Who Can Use the Managed Email Framework

More or less any\* publicly-funded body in the UK can use the framework. A list of organisations can be found on the CCS web site or the OJEU notice.

\*Central Government use of the framework is conditional upon approval by Government Digital Service (GDS)

Private sector bodies can only use the Managed Email Framework Agreement if they are buying on behalf of a publicly-funded body when acting as that customer’s agent. In such instances, the agency agreement must be in place prior to the private sector body commencing the procurement.

A customer that is availing of the services under this Framework may also require a supplier to provide such Managed Email services to its private sector partners (i.e. parties from either the private or third sectors that are in partnership with or otherwise work alongside that Contracting Body) so that the Contracting Body can communicate with such private sector partners via email through a secure environment. Examples of private sector partners include but are not limited to; private healthcare providers, private doctors and nurses, pharmacists, optometrists, dentists, research agencies, legal professional, victim support services, charities.

## b) Deciding when to start

In this section we look at the strategic decisions customers will have to take prior to running a competition under the Managed Email Framework – when to start, what Lot to use and whether other frameworks would be a better choice.

There are a number of factors that will determine the best time to start a competition:

* Contract End Date: the end date for current contracts. The new supplier must have taken over by this date and consequently this is the date that the procurement plan seeks to meet;
* Transition Time: the amount of time needed to allow for transition. This could be quite a short period for a small number of mailboxes, but transition of a high volume really complex service contract could take 12-18 months even if everything goes smoothly. Factors that increase transition time include the current email service (onsite / hosted) degree of inter-dependency with the rest of the IT estate, inflexible contracts with existing suppliers;
* Requirements Elicitation: how long it will take to compile and document the requirements in a suitably detailed form to allow the procurement to proceed. In part this will depend on the complexity of the requirements, particularly the length of time it takes to collect and collate data on the existing service and if/how this is expected to be different in future;
* Procurement Time: how long it will take to complete the Further Competition. In part this will depend on the complexity of the requirements and whether a multi-stage process is applied;
* National Further Competitions: combining requirements with other organisations in a CCS-led National Further Competition; and therefore customer’s activities will need to be driven by the key dates of that particular competition.

## d) The Structure of the Framework

Full details of the Managed Email Framework (such as Lot structure and the relevant suppliers on each) can be found on the CCS web portal ([http://ccs.cabinetoffice.gov.uk/](http://gps.cabinetoffice.gov.uk/)). In summary:

Lot Structure

The Services are available in each of three Lots. The Lots are defined by size of implementation rather than technology deployed, with the specification applying equally to each of the three Lots; and Suppliers are differentiated on their capability to meet the volume requirements in each Lot.

* Lot 1 – Small Volume Email Implementation (0-9999 Mailboxes)
* Lot 2 – Medium Volume Email Implementation (10000 to 99999 Mailboxes)
* Lot 3 – Large Volume Email Implementation (+ 100000 Mailboxes)

## e) Further Competition and Direct Award

Further Competitions can be structured to have a single selection stage (the traditional approach whereby all suppliers in the Lot are invited to submit a full tender) or indeed have multiple selection stages, for example inviting all suppliers to submit an outline tender, with only selected successful suppliers subsequently invited to submit a full tender;

If applying a Further Competition with multiple selection stages, the first (or indeed any subsequent ‘downselect’) stage must seek to allow the customer to differentiate the suppliers on the Lot, without adding undue complexity or risk to the procurement. It is therefore envisaged that only procurements with complex requirements would employ Further Competitions with multiple selection stages.

However, in such instances where a ‘downselect’ stage is considered appropriate, customers could evaluate an outline solution description and/or bidders’ responses to the challenge of transition in order to ‘downselect’.

The Managed Email framework also allows for Direct Award in respect of specific service packages described in their respective catalogues. A Mandatory Service Package has been provided from all suppliers awarded in a particular Lot. Subsequently the suppliers will be able to add or amend (reduce pricing) on all Service Packages to maintain a healthy competitive catalogue of services.

Fundamental to any procurement process is an understanding of what the requirement is. Once this is clear, customers may choose to review the Service Packages on the supplier catalogues available on the Crown Commercial Services eSourcing suite to see whether a Direct Award service offering is available that might satisfy their requirement and provide best value.

Customers are able to contact the suppliers to discuss their requirement if there are questions which cannot be answered via the supplier catalogues. However, customers ought to be wary of entering into ‘negotiations’ with suppliers which might vary the price or service elements of the Service Package / Direct Award. Variation of any kind to a Service Package / Direct Award which progresses to the award of a “varied” service under the guise of Direct Award will result in an invalid contract, and one that should have been competed via the Further Competition route.

If customer requirements include services that are not available via Direct Award, the customer will need to undertake a competition for those services under the Further Competition procedure. However, depending on the make-up of the requirement, customers might choose to undertake a competition for their entire requirement rather than only for the elements not available via Direct Award. This would likely be the case were it is inappropriate for components of a Service to be delivered by different suppliers.

The award criteria for Direct Award are covered under ‘Award Criteria’ p.23. Beyond this, customers need to be in a position whereby due diligence has been conducted and an evaluation or assessment exercise has been undertaken so, should their decision of supplier be challenged – the customer is confident that their Direct Award choice can be justified.

Once the customer has established which supplier is preferred they should obtain the appropriate Template Order Form For Direct Award or Template Order Form For Further Competition as appropriate. These documents can be found at the beginning of the Call Off Terms.

The customer needs to ensure that the appropriate Template Order Form is completed and signed, even if the supplier has separate forms which need completing, as it is the Template Order Form which forms the contract between the parties once completed and signed.

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# 4. THE CUSTOMER JOURNEY

Customers should allow adequate time to make a qualified selection of a supplier and also allow the supplier enough time to plan and provide resource leading up to the transfer of service from the customer’s incumbent supplier.

In summary, the stages of the journey are as follows:

1. Making the decision to start the procurement through internal strategy and planning;
2. Preparation of an Outline Business Case for approval via the Spend Controls approval process (for Central Government customers only - <https://www.gov.uk/government/publications/cabinet-office-controls/cabinet-office-controls-guidance-version-32> );
3. Decide procurement route (in isolation or via CCS led National Further Competition)
4. Data preparation, requirements elicitation and specification;
5. Holding discussions with suppliers on ‘Discovery Days’;
6. Preparing the Request for a Proposal (RFP);
7. Issuing the RFP and preparing for evaluation;
8. Evaluating the RFP responses, including undertaking an eAuction if one is to be used and making the award decision;
9. Completion of full Business Case and submission to relevant Spend Controls body for approval to proceed (for Central Government customers);
10. Issue Intent to Award/Decline letters and implement standstill period;
11. Issue final Award letter(s);
12. Debrief suppliers and transition preparation;
13. Complete and signature of Order Form by both parties;
14. Transition;
15. Service commencement;
16. Managing the contract in-life.

In the case of a CCS-led National Further Competition, Steps 5 to 10 listed above will be conducted by CCS under the auspices of a Memorandum of Understanding (MoU) signed with each customer.

The CCS eSourcing suite includes comprehensive provision for preparing and running Further Competitions. Customers are advised to use this service if conducting a Further Competition independently. Access to the system is via the CCS web portal (http://ccs.cabinetoffice.gov.uk/). Guidance on running Further Competitions can be downloaded from this site - <http://ccs.cabinetoffice.gov.uk/i-am-buyer/run-further-competition/running-further-competition>.

If you choose to use your own system, please inform CCS via [network.services@ccs.gsi.gov.uk](mailto:network.services@ccs.gsi.gov.uk) of your procurement timetable, this enables the Technology Category team to capture data relating to the throughput of Managed Email Further Competitions.

## a) Developing a Business Case

A Business Case will be required by an organisation or department to obtain management commitment and approval for investment in any business change.

Internally, customers will be required to confirm the business need and ensure that a range of options has been identified before proceeding with any procurement. Customers also need to consider the cost of any options identified including the whole life costs incurred throughout the duration of the contract, any existing contractual terms and understanding any financial and timescale implications which could impact on the procurement.

## b) Benefits Realisation

CCS is responsible for attributing savings achieved as a result of the implementation of the Managed Email Framework.  Baseline expenditure data for services previously consumed by Customers is not centrally available.  CCS therefore requires customers to detail previous service consumption and pricing as part of their Order.  Ideally, this would be line-level detail for 2009/10 spend, however it is understood that this is not always possible and so customers will be required to provide last price paid data.

The baseline data sought will also include areas where demand management has excluded comparable services being requested via Further Competition, e.g., where services are no longer deemed necessary.

CCS is capturing this data to allow savings against the framework to be demonstrated and does not affect customers’ own ability to claim savings. The data provided will be held securely and will not be shared with any party outside of CCS governance.

Customers are therefore requested to provide this information by completing the respective paragraph in the Order Form.

For customers joining a National Further Competition, this is a specific customer responsibility as defined within the MoU.

## c) Estimating and ensuring value for money (VFM)

VFM on this framework is generated by competition and can be ensured through benchmarking. As well as benchmarking provisions, the Managed Email framework contains ‘open book’ models, but these are probably only appropriate for the largest contracts.

CCS also has the right to publish anonymous pricing information generated by Further Competitions in order to evidence the savings generated by the Managed Email Framework. This pricing information can be used to benchmark pricing from future Further Competitions.

## d) Governance

A Governance structure can help to identify individuals’ roles and responsibilities for the management of performance throughout the procurement process. The roles may include the following:

* Project Sponsor(s)
* Senior Responsible Owner
* Programme Manager
* Programme team
* Stakeholders (internal and external) including:
  + Communications team
  + Legal team
  + Finance
  + Business areas
  + Supplier Representative(s)
  + User Champions

An effective Governance structure developed at the outset of a project ensures that all individuals know their responsibilities, what they are working towards and what they should achieve. Named individuals, defined accountabilities and clear milestones can have a positive effect on the quality and speed of the decision making process. It also facilitates the resolution of any issues arising.

For example, the project sponsor and/or SRO will understand their roles, responsibilities and what will be required of them by the project team. An appropriate Governance structure means that when approval is needed or issues arise then the selected options can be considered, selected and presented to the SRO and Project Sponsor to ensure that they are aligned with business requirements and full approval is given to proceed, ensuring any required resources are made available to the project team.

Governance also ensures that each phase of the project is satisfactorily closed and accepted before moving onto the next phase.

Governance meetings should be structured into the timescales for the project and can help to ensure that project deliverables are met.

The following table shows typical examples of Governance activities, the outputs and activities required with regard to stakeholders and communications.

|  |  |  |
| --- | --- | --- |
| **Requirement** | **Type** | **Action** |
| Stakeholder Map | Output | Identifying all stakeholder groups, their specific interests in the work and outcomes from the programme. |
| Governance Arrangements:  Stakeholder Management Strategy | Output | Defining how stakeholders will be engaged throughout the programme |
| Communication Plan | Output | Showing the schedule of communications activities with stakeholders throughout the Programme with milestones |
| Approval to proceed or stop | Decision | Formal commitment from the Project Sponsor and the SRO to proceed, stop or realign the programme |

Where complex transitions from an outgoing to incoming supplier are expected, customers should consider special Governance arrangements for transition that include both suppliers.

## e) Requirements Specification

Before starting any competition under the Managed Email Framework, customers will need to undergo a process of documenting the current estate and intentions, which is often referred to as requirements specification. In order to document requirements, customers will probably employ a period of requirements elicitation (gathering and articulating), followed by requirements analysis (completeness and consistency checking) and finally specification (documenting and validating). However, for ease this shall be referred to throughout as requirements specification.

Suppliers require relevant and accurate information from a customer in order to provide a quotation. By conducting effective requirements specification, customers can increase the accuracy of their specification and help to reduce the number of assumptions a supplier will need to make when they provide a quotation.

Time spent developing an accurate requirements specification is not wasted: it is likely that any information not collected prior to starting the competition will be asked for by the suppliers during it.

Customers will need to gain the incumbent supplier’s co-operation to assist with the requirement specification process; otherwise the incumbent supplier could have an unfair advantage in any competition as a result of information that it alone holds. Several elements of information that have a strong effect on the prices bid (at least in the short term) can only be obtained from the incumbent – these include information on transferring employees, historic service levels, and arrangements for support during transition.

The most time-consuming element of requirements specification is usually the collection of information in respect of the current estate. What customers will need to collect will depend on the sophistication of the estate, but in many cases the incoming supplier will need to know what the estate involves, the way it is managed and any problems with it so that they can provide an accurate assessment. Many contracts will have ‘exit’ requirements which list details of the information an incumbent supplier should make available to the customer (or indeed the incoming supplier) when the contract is due to expire. Customers with access to this information can incorporate this into their requirements specification, but should be prepared to provide additional information. If an exit strategy does not form part of the customer’s existing contract or where services have traditionally been provided in-house, customers should plan to undertake significant activity to obtain the relevant information.

It is also likely that the services procured in future are not the same as those that exist today, so the requirements specification will need to be clear about what the differences are and when the new service is to be in place.

Options to be considered prior to constructing the requirement specification include requiring the incoming supplier to build the new service which will go live on the commencement date, or the costs of dual running contracts whilst transition to the new service occurs, including the impact should this be prolonged.

Alternatively, there are suppliers that can perform requirement specification activity on behalf of customers, supplied as a simple consultancy contract. If internal resources are restricted, this may be a preferred option. The CCS [ConsultancyONE, Lot 3.4, Information & Communications Technology](http://ccs.cabinetoffice.gov.uk/contracts/rm1502) framework can be used to source suitable suppliers.

The list above is not exhaustive but is an example of the type of information that a supplier may need. Customers may decide that there are other data elements that they wish to include in addition to this list. Suppliers may also suggest additional data during procurement Discovery Days.

## f) Due Diligence

Customers can invite suppliers to visit their sites and provide adequate time for suppliers to assess their current estate. This is often referred to as Due Diligence.

A Due Diligence exercise gives suppliers the opportunity to determine for themselves what the customer owns and understand any transition and transformation considerations. Customers may request that suppliers sign confidentiality agreements prior to conducting any site visits. This opportunity effectively allows the Supplier to fill in any gaps of information needed for a accurate tender response.

Customers should, as far as possible, seek to support the Suppliers’ reasonable requests for data and site access in support of Due Diligence and ensure that there is sufficient time for the necessary checks to be carried out. Any information and site access provided to one bidder must of course be provided to all.

Due Diligence will ideally be conducted during the Further Competition (during the final selection stage, if multiple selection stages are employed) such that prices can be stated with few, if any, caveats. However, if the estate is complex and time is critical, it may be considered prudent to defer Due Diligence to some later point. It should be noted, however, that risk exists in deferring Due Diligence, especially if deferred to a point after contracts have been signed, as suppliers may press for prices to be ‘subject to Due Diligence’.

If customers combine their own requirements specification activity with a Due Diligence exercise and Discovery Days (discussed later), there should be very little ambiguity or uncertainty about what is actually required.

## g) Risks and Assumptions

Where uncertainty exists in a customer’s requirement, suppliers will need to make assumptions which will allow them to price the service. As a result, risk is introduced (as the assumptions may turn out to be false). Suppliers are likely to take these risks into account when calculating the service costs (suppliers are likely to price risk/uncertainty based on a worst case scenario). Therefore, as uncertainty and consequently risk increases so too does the cost borne by the customer; and where there are multiple risks the costs can escalate significantly.

In some cases, customers believe they can transfer risk over to a supplier in the hope that the risk will disappear. For example, when outsourcing a very complex contract with ‘tight’ milestones, the risk of not meeting those deadlines is not removed, it is simply transferred. In this example, a customer could penalise a supplier for not being able to deliver a service in unrealistic timescales. A supplier may choose to accept the risk, but will factor this into the price they charge for the service and customers will pay more, and may even find the risk returned to them if the information given to the incoming supplier is inaccurate or incomplete.

The best way to derive value from a service contract is to understand that service delivery is based on accurate information and the development of realistic timescales and service levels. Customers should also accept that if they wish to transfer risk to suppliers, it may result in higher prices. Customers are advised that, even if the supplier bears the risk, there are still customer responsibilities that will need to be met in order to avoid increases in contract costs. The ideal position is for the customer to ‘share’ unavoidable risks with suppliers or where appropriate risks should be assigned to the organisation best able to manage it.

In any event, the customer must ensure that their own procurement project has an up to date risk management plan.

## h) Discovery Days

CCS actively encourages early and frequent interaction with suppliers. Not only do discussions with suppliers ensure a common understanding of the requirements, it means that suppliers can reduce the number of assumptions that need to be made; and indeed early supplier engagement may assist with the development of the requirement specification.

Once the decision to run a Further Competition has been made, a customer may decide to run a Discovery Day for all suppliers within the selected Lot. The Discovery Day can be convened prior to or post-commencement of the Further Competition, depending on how advanced the customer’s own requirement specification activity has progressed.

If conducted prior to the Further Competition, Discovery Days should help to identify any gaps in the customer’s data and highlight where further research needs to be undertaken to clarify requirements prior to developing a specification. Naturally, discussions and research within the customer organisation can continue based on the information and gap analysis provided by suppliers during the Discovery Days. This information and further research should help customers improve and build upon their Business Case.

Prior to running the Discovery Day, customers should agree and document an approach to confidentiality, as information on one potential bidder’s solution must not be shared with other potential bidders. Therefore discussions are likely to occur in two phases: with all suppliers collectively; and with each supplier individually. Customers should also note that if, as a result of these discussions, the requirement is subsequently changed, that information must be shared with all potential suppliers. By stipulating at the outset that the information received from suppliers will be treated as commercially confidential, a greater amount of information will be shared, allowing suppliers to identify and discuss any areas of confusion, perceived issues and risks.

It is up to the customer to set the agenda for Discovery Days and to ensure that the same information is shared with each of the suppliers so that the procurement remains fair and transparent.

If the customer is running a Further Competition with multiple selection stages, then there may be a need to hold additional meetings with suppliers after each selection point, allowing the customer to provide more detailed information, to hold more thorough meetings on the proposed solutions, and to give feedback on the interim responses.

Customers should also understand that a key benefit of running Discovery Days is that the customer will understand what information the suppliers need in order to develop a full tender that delivers the right solution at the lowest possible cost.

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# 5 STAGE 1 – PREPARATION

## a) Planning for a successful procurement

Customers can help to reduce managed service costs by identifying where risk may occur throughout the procurement process and service delivery. Consideration should be given to mitigating actions to reduce or remove such risks.

The following tables highlight potential risk areas for customers to consider, helping reduce or remove risk transfer at the early phase, during the selection process and implementation phase.

Feedback from suppliers from the first seventy competitions held under the framework show a number of reoccurring problems with RfPs, and these are also identified in the tables below. There can be up to a dozen competitions underway at any given time, and suppliers will make choices whether to bid or not based on the quality of the RfP and the time given to them to respond.

|  |  |
| --- | --- |
| **Early stages** | **Actions and Considerations** |
| **Clearly Identify Goals and Objectives** | To ensure that any project is on target it is important to clearly define goals and objectives. Any goals and objectives should be aligned to the business strategy and be SMART with realistic milestones. |
| **Clearly Identify Expected Benefits** | To ensure that benefits are realised, develop a benefits realisation plan to determine when expected benefits have been achieved. The benefits identified should be clearly defined and aligned to the business strategy. |
| **Identify Stakeholders** | Identify stakeholders including finance departments unions and HR as well as end users, customers and incumbent suppliers. Communicate with stakeholders so that any issues and potential risks can be raised by all affected parties. Holding user forums with stakeholders at the initial stages to discuss the current service can help to identify any areas for improvement. |
| **Inform Stakeholders** | Make sure that all stakeholders are informed of project plans from the outset. Keeping stakeholders engaged and informed throughout the procurement process can encourage buy-in. This includes HR departments who may have to deal with the issues of TUPE and pensions. |
| **Establish an effective internal baseline** | Pre contract, customers should establish internal SLAs which will enable customers to determine the performance of the new service. Customers should consider that any SLAs selected for the Transition and Transformation periods may differ from those applied over the life of the contract. Once transition and transformation has taken place, SLAs will be in effect throughout the life of the contract unless varied in accordance with the terms and conditions. |
| **Dependencies** | Customers should be aware of any dependencies which may have an impact on their contract. Dependencies may include contracts with 3rd parties or internal policies and procedures. If there are any dependencies suppliers should be made aware of these during Discovery Days or within the specification. |
| **Governance** | Effective Governance will help to ensure that the contract is delivered effectively. Any Governance structure should involve all relevant stakeholder representatives, the incumbent suppliers and the new supplier. Customers should establish a governance structure at an early stage to help define roles, clarify responsibilities and facilitate communication. |
| **Allow sufficient time to bid** | The most common reason given by suppliers for not bidding is that customers had not allowed them sufficient time to respond, citing examples where customers had asked for responses within seven days. Suppliers need sufficient time to understand the requirements, ask for clarifications, develop their bids and pass through their internal governance processes before bidding. |

|  |  |
| --- | --- |
| **Selection** | **Actions and Considerations** |
| **Technical** | Customers should ensure that all technology drivers for the procurement are clearly stated at the outset, for example, the support of expiring services, technology strategy drivers and new business requirements. Customers may wish to discuss their service requirements with suppliers prior to Further Competition at Discovery Days. Such information sharing will help suppliers to understand what customers are trying to achieve and provide customers with guidance on what options will be available to them.  However, in general customers should specify the requirement in terms of the output they want, instead of the technology they want suppliers to use. |
| **Develop clear specifications** | Following discussions at Discovery Days the requirement will be more clearly defined and understood by both parties. However, this doesn’t mean that specifications have to be over prescriptive. Customers may produce output based specification which details what the service must deliver; this gives suppliers the freedom to develop solutions which meet the requirements fully rather than simply delivering a service which meets over prescriptive stipulated service levels.  Bidders will ask for clarification if the requirements are not clear, so producing summary requirements will not save you time or effort. If the requirements are not clear and the bid window is short, experience shows that suppliers will not take the risk of bidding. |
| **Make the contract as complex as it needs to be** | The second most common reason given by suppliers for not bidding was the presence of inappropriate contractual terms. Often these involve benchmarking requirements in low-value contracts or requests for Open Book financial models or Parent Company Guarantees where the value of the contract would not sustain the costs associated with these measures. Guidance is given below on simplifying the contract for low value, low complexity requirements. |
| **Due Diligence** | Performing Due Diligence allows suppliers to gain confidence in the specification and to gain a detailed understanding of what the estate looks like in terms of resource and assets. One of the benefits of effectively planned Due Diligence is that customers only have to pay for what they own rather than estimated volumes. |
| **Request for Proposal (RfP)** | The eSourcing facility on the CCS website allows customers to manage their procurement centrally. Using the tool, customers are able to upload their specification and send it directly to all the suppliers on the chosen Lot. This facility provides customers with an audit trail and allows for the monitoring and central management of the Further Competition, such as clarifications to any questions from suppliers.  Customers must include a partially-completed Order Form with the RfP. |
| **Supplier Selection** | Customers should define supplier selection and evaluation criteria prior to commencing the Further Competition and describe it full in their Request for Proposal documentation.  In developing the evaluation criteria customers will be able to focus on the elements of the service provision have most importance. |
| **Whole Life Costs** | Customers should consider the cost of the managed or outsourced service throughout the life of the contract. For example, the cost of a service is not simply the service charge but takes into account other factors such as the costs of any existing contractual arrangements for services which must be maintained until transition is complete. Calculating all costs at an early stage will negate any unforeseen costs arising. |

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| **Implementation** | **Actions and Considerations** |
| **Develop Realistic Milestones for Transition** | Customers should develop milestones to determine when stages of transition have been completed. These will help customers to monitor progress and reduce the risk of overrunning by implementing mitigating actions. |
| **Recognise Transition as a Joint Project Between Customer and Suppliers** | Remember that transition will not take place overnight. It is important to work with both the incumbent and new supplier to develop realistic milestones which can be achieved to effectively embed a new contract.  Also agree a shared risk register with the supplier so that both parties agree and understand the plan, dependencies and risks so that these can be effectively managed. |
| **Prepare for Change** | All stakeholders will need to be kept informed of the changes that will take place. Communication is key; customers may agree nominations for and meet with, end users and stakeholders to inform them of any decisions made and milestones met. The production of a communication plan, plus promotional literature, mugs and mouse mats etc can help to disseminate key messages such as new service desk contact details. |
| **Allocate sufficient resource** | Do not underestimate the resource required throughout the procurement process. From information gathering and the creation of an ITQ, to the evaluation of supplier tenders through to the delivery of the service, customers will need to ensure will be adequate staffing resource. |

## b) Reducing the Risk of Challenge

Challenges are increasingly a fact of life for public sector procurements. While customers may receive ‘scope’ or ‘timing’ challenges related to Further Competitions, the most likely challenges will arise from unsuccessful bidders challenging the evaluation outcome. This risk of challenge can be reduced if customers:

* publish the process and timings for issuing the RfP and supporting documentation, dealing with clarifications, receiving bids and placing contracts, and then stick to the process;
* make sure that evaluation criteria, sub-criteria and weightings are all published in the RFP, and then stick to them. Only use evaluation criteria that are clearly linked to the solution being offered, and not criteria such as past experience or feedback from other customers (more information is given on evaluation criteria below);
* use questions which have a clear and objective marking schema (e.g. the reasons for awarding a ‘3’ rather than a ‘2’ are made clear to bidders and to evaluators) and which are clearly tied in to the evaluation model;
* maintain an audit trail during the Further Competition, so that customers can explain to suppliers why they were unsuccessful and to defend any challenges raised;
* ensure that the entire requirement is within the scope of the relevant framework;
* Complete and sign the Order Form with the winning supplier; and
* In summary at all times remain “Fair, Open and Transparent”

If customers do receive a challenge, contact CCS who may be able to offer assistance in dealing with it.

## c) Request for Proposal (RfP) Documentation (The Invitation to Tender)

Prior to commencing the Further Competition, customers must develop a clear and complete specification with enough supporting information that allows suppliers to provide a fully-priced and complete proposal. The following diagram shows a typical RfP structure for a complex procurement:



1. **RfP instructions**

It is important to set out how what you expect to see in a supplier’s response, and how it will be evaluated. Typically, customers will define:

* The procurement process, describing any down-selection stages
* A timetable with key dates for suppliers (closure of clarifications, bid submission date etc)
* How to communicate with the customer (and how not to communicate), process for clarifications etc
* The elements that the supplier should submit in a complete tender
* Steps taken to ensure a fair competition (e.g. bids not opened until after closure of bid window, separate financial and technical evaluations)
* Evaluation criteria, sub-criteria and weightings, and how responses will be scored
* Contents of the RFP and supporting information
* Decision-making process
* What happens after the evaluation (e.g. preferred bidder, award, standstill, debriefs).

**Approach to Bidder Clarification**

The customer should clearly articulate the approach to bidder clarification. This should always involve an opportunity for bidders to raise questions (e.g. through the CCS ePortal), with responses made anonymous and issued to all bidders within a certain time (i.e. 3 days).

The customer could also include Discovery Days during the bid window, where suppliers have the opportunity to explore the customer’s requirements in face to face sessions (as described earlier).

Bidders generally appreciate a chance to meet customers and discuss their requirements face to face, and for more complex requirements we advise customers to provide this opportunity.

1. **Background information**

In order to ensure a level playing field, you will need to provide bidders with background information, especially if this is a replacement service where a complex transition will be needed. Generally, you need to provide enough information for a bidder who has not worked with you before to understand your organisation sufficiently to submit a credible bid. This may well include:

* *TUPE*: Customers should consider if there will be any Human Resource considerations in the procurement. These could be from customer staff transferring to the new supplier (especially if an in-house operation is being outsourced), or they could be staff transferring from the outgoing supplier to the incoming one. Customers should seek appropriate legal advice in respect of any potential HR complexities and consider any legal duties which may arise; ensuring as much information as possible is included in the requirement specification to inform bidders’ responses.
* *Existing estate*: Customers will need to understand how the current service is provided to understand if they are proposing a like for like service. Is the system the Customer currently uses the same as what they will be offering? i.e. Microsoft Exchange to Microsoft Exchange or will it be Microsoft Exchange to Zimbra? Allowing the supplier to understand what the Customer currently receives as a service and possibly the benefits / limitations of the existing system or proposed system. They will also need to understand what IT systems interface with / run over the system you are procuring, including any performance / security constraints.
* *Existing Software License Assets:* Customers should also pay close attention to their software licensing position as this is an essential element to access the service. The Supplier will ensure the necessary Server and Application licenses are in place for the delivery of the Service. It is however the Customers responsibility to ensure it has the necessary and appropriate Client Access License (CAL) to access the service.

CALs to access a Managed Email services represents a significant proportion of cost and should be considered in the total cost of ownership of any future service. Customers should undertake a thorough audit of its CALs to understand whether these can be reused, upgraded or will need to be entirely replaced in order to access the new Managed Email services that could be offered.

For assistance in undertaking an audit of your CAL assets please contact the Software Licensing team at CCS: [softwarelicensing@ccs.gsi.gov.uk](mailto:softwarelicensing@ccs.gsi.gov.uk)

The audit will identify the high level CAL position:

1. What software / vendor the CALs cover;
2. What versions the CAL cover;
3. How many are held; and
4. If and when they expire.

With this data the customer can clearly signpost what its licensing position is, how it will impact the total cost of ownership and articulate this to the suppliers accordingly.

If the Customer identifies that it will require new CALs to access the service these can be bought in a variety of ways:

1. In tandem with the new Managed Email service from the new supplier.
2. Separately by the Customer through a direct contract via a CCS framework or other compliant mechanism.

Customers should seek advice from Crown Commercial Service's licensing team [softwarelicensing@ccs.gsi.gov.uk](mailto:softwarelicensing@ccs.gsi.gov.uk) regarding the most appropriate way to buy the licences to best leverage on existing Government commercial arrangements.

* *Supplier environment*: what other suppliers will the winning bidder will be working with, including mutual responsibilities. If one supplier acts as a systems integrator / SIAM provider, set out the processes the winning bidder is expected to follow

1. **Requirement Specification**

The subsections below outline the different elements of a well-constructed set of requirements.

#### Describe Requirements

Customers should describe their requirement completely, clearly, concisely, logically and unambiguously. The description should also include any service management elements such as continuous improvement activities, reporting and working with other suppliers. See also section 4 (e) for further guidance.

**Service Level Agreement**

A well written Service Level Agreement (SLA) describes expectations of the customer, providing the supplier with targets for accurately measuring performance to meet objectives. Provision of SLAs means that each party knows what is expected of them and what will happen if these measures are not met.

However, careful consideration needs to be given about the service levels chosen. For example, if customers expect a supplier to answer all service desk calls within 5 seconds instead of 30, the supplier will have to employ many more service desk staff to meet the SLA and obviously the extra staff costs will be factored into the price of the contract.

Each SLA will have an impact on the contract price; therefore, customers will need to consider the stringency of SLAs. While SLAs are very important, it is also important to consider what SLAs are necessary to deliver the level of service required.

A service level schedule is set out in the Managed Email Call Off contract, but only as a baseline for Direct Awarding of a Mandatory Service Package from the Catalogue. The service level schedule can be modified through Service Packages submitted by Suppliers or by Customers to accommodate particular requirements through the Further Competition procedure. Customers can set the service levels and operating hours as high or low as they like, bearing in mind that this is one of the principal drivers of cost.

#### Incumbent

Customers should describe the current incumbent supplier(s) with whom any new supplier will be expected to cooperate. Suppliers may need to contact the incumbent(s) in order to properly construct their tender and plan for transition.

#### Obligations

Customers must clearly articulate any obligations placed on bidders, whether those obligations derive from accessing the RfP documentation (such as confidentiality) to obligations that the successful bidder will inherit (such as those imposed on incoming suppliers as part of transition arrangements in existing agreements).

Via the Further Competition Procedure specific customer requirements related to transition and transformation should be entered into the implementation plan in paragraph 2.5 of the Order Form for Further Competition. Customers purchasing via Direct Award are unable to stipulate any specific implementation plan information and will rely on the Implementation Plan set out in the Service package.

Customer responsibilities that apply to the delivered solution (i.e. which are not related to an implementation plan) should be set out in paragraph 4 of the Order Form For Further Competition.

Some generic responsibilities are additionally set out in Schedule 4 of the Call Off Contract.

#### Pricing Structure

Customers should clearly identify the required charging mechanism for the service (e.g. the charging units in the supplier’s catalogue). More complex charging mechanisms, up to and including full open book accounting can be used but customers are advised that these are intended only for the most complex of requirements.

#### Approach to Transition

The transition period is the stage where suppliers take over the running of the service in its current “as is” state and when processes, people, technologies and responsibilities are transferred from the customers incumbent Supplier.

The statement of requirements should describe any specific requirements for transition, including timescales, site-based requirements etc.

1. **Draft Contract**

**The Order Form**

Customers **must** submit a partially-completed Order Form with their RfP - this is not an optional extra. The final version of the Order Form will be completed jointly with the supplier and subsequently forms the Contract (with amended terms and conditions referenced out from the Order Form).

Information to assist completing the Order Forms can be found in the footnotes of the respective Order Form.

**Amending the Call Off Contract**

Customers have a degree of flexibility in the contractual terms used during a Further Competition. The Order Form allows customers the opportunity to amend Schedule 4 (Order Form and Call Off Terms) allowing them to add their own Call Off terms and potentially replace whole Call Off schedules. A guide to amending the Call Off Contract is included at Appendix 2. The customer cannot change the clauses or schedules contained within any other part of the Managed Email Framework Agreement.

Customers must also note that the Order Form & Contract forms part of the Managed Email Framework and as such was competed in its current guise. Changing the terms and conditions is not entirely risk-free as suppliers could challenge on the basis that the Call Off has substantially changed from that that was competed at framework level. This risk can be mitigated in part by ensuring that all changes are declared up front as part of the Further Competition documentation, and we advise customers to provide a marked-up version of the Call Off contract or to explain what changes were made and why. In particular, customers should avoid changes that substantially change the obligations on the supplier without giving them the opportunity to price such changes into their bid. In all cases, the risk of the procurement remains with the customer and therefore customers intending to make substantial changes to the Call Off should take appropriate legal advice.

Business models amongst our potential customers differ substantially, particularly in terms of how they use system integrators/service integrators. Some customers will want their service suppliers to work with their SIs, others to be procured by and work for the SI. The framework contain clauses that will allow customer obligations under the contract to be undertaken by a service or systems Integrator (i.e. agency), either working alongside other suppliers or acting as a surrogate for the customer. The ways the interactions will work should be clearly set out at the start of the procurement exercise. Again, in all instances the customer can delegate the management but not the ownership (i.e., the customer will always remain the Customer Authority).

It is expected that many Customers will want its private sector partners to access the service so that they are able to communicate with them securely.

The Framework is enabled to allow your private sector partners to avail of the Services that you are requesting from the Supplier (see section IV of the OJEU Notice).

Customers should take care when enabling access for private sector partners and seek legal advice as necessary. Access for private sector partners should not be done in a manner which could give rise to the risk of it constituting the award of unlawful state aid and the particular private sector partners’ access requirements should be consistent with the existing terms of this call off. Any necessary amendments/refinements to such terms should be made in accordance with Section 7 of the Order Form and provided to Suppliers at the Further Competition stage.

GPS recommends that appropriate agreements are put in place between the Customer and any private sector partners which clearly sets out private sector partners’ obligations with when receiving the Services from the Supplier

**Simplifying the Call Off Contract**

Procurements under the Managed Email Framework span a wide range of requirements, from a simple hosted email service for 10 mailboxes to complex integrated hosted email services for large requirements for up to 1M mailboxes. Very large customers with complex integration requirements will often need to add terms or schedules to the Call Off Contract.

At the other extreme, customers with simple requirements will often benefit from simplifying the contract. ‘Overly onerous contract terms’ is the second most common reason for suppliers not bidding, after ‘short bid timescales’, and some customers have been surprised by the lack of interest in their RFPs.

If your requirement is straightforward and you intend to procure this via a Further Competition you may want to consider any or all of the following steps:

* Reducing the requirement for a full security plan
* Reducing the Performance Monitoring requirements
* Specifying a simple set of test procedures
* Not including benchmarking provisions (especially where you are buying commodities on short contracts)
* Using a simple financial model, e.g. a rate card
* Reducing the requirement for a full BCDR plan
* Not requesting a supplier co-operation agreement
* Removing Open Book obligations
* Reducing or removing the requirement for a sustainability plan
* Using simple and appropriate service level metrics / service credit cap
* Not asking for a parent company guarantee (suppliers find these difficult to deliver, and many will simply not bid if you ask for a PCG on a low-value requirement. Importantly, no supplier necessitated a PCG at framework level.)

Under Direct Award the Call Off Terms cannot be amended and all of the above elements in their original draft must remain.

1. **Bid evaluation and Award Criteria**

**Evaluation Plan**

The approach to evaluation should be described in the RfP.

It is important to perform a fair and rigorous evaluation of all submitted tenders in a timely manner. This can be helped by ensuring that all of the resources customers need for evaluation are in place and available prior to publishing the RfP.

For more complex requirements, customers should consider using sets of evaluation criteria to which bidders respond in separate ‘envelopes’ (usually electronic folders rather than physical envelopes!) to simplify the evaluation process. These could include:

* *Qualification*:whether the bidder still meets the criteria tested in the RfP and any other mandatory criteria;
* *Technical*:the bidder’s solution and response to technical requirements; and
* *Commercial*:the price submission and any other commercial/contractual points.

In general, each question should be evaluated by at least two evaluators independently of each other.

Once the evaluation is complete, a consensus session should be convened by a consensus chair. At the consensus session, the evaluators will agree the mark applicable for each question evaluated; with this mark (and the rationale) being recorded appropriately (e.g. on the eSourcing Suite).

On completion of the consensus sessions, it is highly recommended that an audit be conducted by an independent auditor to ensure that all scores and rationales have been correctly recorded appropriately (e.g. on the eSourcing Suite).

**Award Criteria**

Customers must set the evaluation criteria for the competition (including sub-criteria and the weightings applied to them) at the start of the procurement process and disclose them to all suppliers. Once these have set and published, they should not be changed.

Customers do have a relatively free hand in setting the Award Criteria used for both single and multiple selection stage competitions and the weightings applied. These are as set out in Schedule 6 of Managed Email Framework Agreement.

Each selection stage is evaluated on its own merits. Good criteria for the first stage would be those that measure against the functional requirement (fully meets/partially meets/does not meet etc) and those which measure implementation/transition/transformation approaches and timescales.

**Invalid Award Criteria**

Customers cannot down-select suppliers or make awards based on:

* Pre-Qualification Questionnaire (PQQ) criteria (i.e. historic information) such as previous experience, company size or reputation;
* Background information such as ownership, presence or absence of quality management systems or other standards, insurance held, financial stability or compliance with the law;
* Criteria which favour an incumbent (such as previous experience with the customer or understanding of the customers’ existing systems).

You may, however, ask bidders to confirm that the information they supplied to CCS in the Framework ITT has not changed, or if it has changed, in what way. You may also ask about things which were not tested in the ITT, if these are relevant to your requirement, such as provision of apprenticeships or diversity/equality practices.

If a down-select stage is included, customers must make it clear to all suppliers from the outset of discussions and identify the criteria that will be used. Transparency and openness are essential.

In the event that a customer wishes to place a Direct Award under the framework then the Direct Award must be made on the basis of the Direct Award Criteria. Any Direct Award must be at the service levels and prices (and contractual terms and conditions) that have been set out in the Service Package and framework contract.

## d) Approvals

Where a customer undertakes their procurement as part of a National Further Competition, CCS will support the approvals process.

Where a customer undertakes their own Further Competition, the customer retains the obligation to ensure all appropriate approvals (including Spend Control / ministerial approvals where appropriate) have been granted.

## e) Stakeholder Maps

Stakeholder maps are a useful tool to ensure that all requirements are captured and that project communications are appropriately targeted.

## f) MoU

When a customer joins a National Further Competition, a Memorandum of Understanding will be signed with CCS to ensure both parties have a good understanding of their respective roles during the procurement.

## g) Cooperation Agreements

Where suppliers will have to work together – for example where one supplier is providing the secure email element and another is providing business partner secure email services – it can be valuable to include explicit co-operation agreements to ensure the smooth running of contracts.

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# 6 STAGE 2 – PUBLISH TENDERS

## a) Publish RfP to Suppliers

Customers do have the option of using their own procurement portal, or alternatively the preferred approach of using the eSourcing Suite on the CCS website.

Procurement tasks which customers would normally undertake manually such as managing timescales, issuing documents, responding to individual supplier queries by phone or email, are all absorbed into the eSourcing Suite. Supplier queries are also responded to, with responses made anonymous and posted to all bidders. The eSourcing Suite provides customers with a clear audit trail of their procurement process at this stage which helps to demonstrate that they have been fair and transparent throughout the process.

If you choose to use your own system, please inform CCS via [network.services@ccs.gsi.gov.uk](mailto:network.services@ccs.gsi.gov.uk) of your procurement timetable, this enables the Managed Email framework management team to capture data relating to the throughput of Managed Email Further Competitions.

## b) Bidder Clarification Sessions

Run bidder clarification sessions as planned, ensuring all suppliers get access to the session outputs (regardless of attendance).

## c) Q&A through Portal

Manage Q&A through the portal as planned, ensuring that the final Q&A is issued no later than 5 days prior to bid window closure; to provide all suppliers with a clear window to review all Q&A’s and consider these prior to completing and uploading their tender responses.

## d) Mobilise Evaluation Resource

Customers should use this opportunity to prepare their suitable evaluation resource, ensuring they are fully briefed and prepared to evaluate the appropriate aspects of the submissions.

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# 7 STAGE 3 – EVALUATION

## a) Evaluation

Evaluation must proceed as described in the RfP, with all evaluator comments being recorded appropriately.

## b) Consensus

Consensus must proceed as described in the RfP with the consensus output being appropriately recorded.

## c) Audit

Audit must proceed as described in the RfP. In the event of issues/discrepancies being identified, the Auditor must reconvene the appropriate consensus session to resolve the issue/discrepancy.

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# 8 STAGE 4 – AWARD

## a) Contract Award

Customers can use the eSourcing Suite to award the contract to the successful supplier and also notify those who were unsuccessful. The process for award is:

1. Issue Intent to Award Successful / Unsuccessful Notices to Tenderers
2. Commence Standstill Period
3. Manage appeals/challenges
4. Conclude Standstill Period
5. Issue Award letters (subject to contract signature)
6. Conduct Supplier Debrief Sessions
7. Sign Order Form (Contract)

The customer is obliged under the procurement regulations to provide appropriate feedback to unsuccessful suppliers. This is most usefully achieved by including the appropriate reports with the Intent Notices and follow up with face to face feedback sessions where requested by the supplier.

It is unlikely that every aspect of the successful supplier’s proposal was perfect; therefore the time between issuing the Award letter and the finalisation of the contract can be used to refine their proposal. This is not an opportunity for the customer to change the requirement in any way, nor is it an opportunity for the successful bidder to revise their submitted pricing. It is, however, an opportunity to ensure that issues around transition and compliance (as examples) are ironed out and that both parties have a consistent view of the challenges soon to be faced.

It should be noted that the Order Form must be completed and signed as part of post-award activities as it forms the contract between the parties under the relevant framework.

## b) Contract Commencement vs Service Commencement Date

The Call Off Initial Period of the contract commences on the Commencement Date; it is strongly advised that the Commencement Date should coincide with the formation of the Call Off Contract (i.e. the date of signature of the agreement by both parties). However service commencement may be some future date agreed between the parties (or indeed declared by the customer in the RfP). In this instance the Customer can request that certain Deliverables (e.g. delivery times of Services) take place on dates after the Call Off Commencement Date.

Extensions to this Call Off Intitial Period are possible (up to a maximum of 2 years) but these should only be considered in cases where there is a specific transition or business transformation need to be addressed. Any such extension would also be subject to the approval process relevant to that level of spend.

## c) Transition

The transition period is the stage where suppliers begin to deliver services taking over from the current service and when processes, people, technologies and responsibilities are transferred from the incumbent.

In some cases, for example, changing a small number of Mailboxes, transition is trivial. In others, for example migration of a complex, large scale (100,000 mailboxes) service to a new supplier, it is a major enterprise in its own right.

The transfer of responsibility will begin on a contractually defined date. There is no set period for a transition phase – it could be as short as a day or as long as eighteen months or more, depending on the size of the organisation and the complexity of the services being transferred. Transition can also often involve transfers of assets and staff from the existing supplier, however this is unlikely for Managed Email.

In most cases there will be a managed overlap whereby the incumbent supplier and the new supplier will work alongside each other in order to ensure that the exit strategy is executed effectively and the new supplier is prepared and ready to deliver the services.

As with all stages of the procurement process, the Transition period should have realistic milestones and timescales applied to ensure that the project is delivered effectively and within deadlines. Transition should be treated as a project and should be planned for by the supplier and customer organisation together. Ideally, the transition should be invisible to users.

To aid this process, customers should consider any current exit plans by their incumbent supplier and (contract permitting) expose this to bidders before they submit their final tenders. If an exit plan is in place, customers should develop an appropriate governance structure to ensure that the milestones are met.

## d) Transformation

Transformation can be a complex process touching all parts of a customer’s business and much of its IT infrastructure. While there will be an emphasis on minimising user disruption, some impact is inevitable. Service transformation must be defined and agreed as a business initiative and not simply an IT project. However, it must be run as a project and the transformation process will require milestones and objectives to ensure that the transformation successfully takes place.

When planning the transformation phase of activity, customers need to consider the pace of change that can be managed by the organisation. Suppliers will assume a certain pace of change within their financial models - the faster the pace, the larger the team size, but the shorter the duration of the transformation phase. If any delays occur the supplier will look to the customer to cover the costs of the extended use of large resources.

Change management during both Transition and Transformation phases should not be under-estimated. Assessments of all projects which are already known to be, or indeed likely to be, in-flight during Transition and Transformation is crucial in helping to determine an appropriate pace of change.

Suppliers should be able to provide quite detailed plans as to how they would anticipate undertaking the Transition and Transformation phases of work.

These plans should detail as a minimum:

* The numbers and types of resources the supplier will provide;
* The organisational structure of the project teams;
* The key milestones for delivery;
* The governance structures expected to be put in place;
* The approach to risk and issue management;
* The obligations of the customer organisation to ensure successful completion;
* The likely customer staff required to join the project team full time during transition and transformation;
* The major technical changes to be undertaken;
* The approach to technical migration including details of any bespoke tooling to be created for the purpose of migration;
* The testing and implementation regimens to be employed;
* The approach to security approval for migration and end state systems; and
* The effect on other recipients of services.

Transformation should have a supporting Business Case, ideally included within the business case for the new service, clearly stating the goals of the transformation and the benefits that the project will bring to the business. Typical benefits (for which there should be a Benefits Realisation plan) may include cost, productivity, environmental efficiency and security or control.

Responsibility for tracking the benefits must be allocated to a nominated person within the Customer organisation to ensure that the anticipated benefits are being achieved or, if not, corrective action to be agreed and implemented to recover the expected position.

## e) Live Service

Once the transition and transformation stages are complete customers should ensure that they have a baseline against which to determine that the service is delivering value for money against their specified service levels. Ideally customers will be able to determine these savings against their previous contract or be aware of differences in service levels achieved.

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# 9 STAGE 5 – CLOSURE

## a) Complete Hand over

The procurement phase will normally complete when the contract (Order Form) is formally handed over from the procurement team to the delivery team.

## b) Lessons Learned

All projects should endeavour to hold a detailed lessons learned exercise, ensuring that forthcoming procurements gain knowledge and experience from preceding projects.

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# 10 AGGREGATED PROCUREMENTS

## a) Can customers buy collectively?

The model behind the Framework assumes a Direct Customer holds the prime contract and where required, a set of Indirect Customers are listed as beneficiaries to it.

There are circumstances, however, where this model is not ideal, such as:

1. where a buying agency or government department (e.g., CCS) is setting up a catalogue of services that others will use, but the agency/department running the Further Competition will not, or;
2. where a consortium of Local Authorities is aggregating their demand/buying power, but no ‘lead Authority’ (Direct Customer) is identified.

In this case, it is possible to run an aggregated procurement and name all the participating customers within the Request for Proposal (RFP) as Direct Customers. The result will be that each listed Direct Customer will have their own completed Order Form contract with the chosen supplier. This solution works where the set of listed Direct Customers bring together a committed level of spend at the start of the Further Competition and where the services have been clearly defined on a per customer basis. (This is the model that CCS operates when running a National Further Competition – circumstance ‘1’ above).

Where customers are not providing this level of commitment at the outset, either through clearly defined requirements and/or with their spend, the outcome of a Further Competition lends itself to potential legal and commercial pitfalls, particularly in the ability to achieve the best possible pricing that aggregation should be able to exploit. If this alternative model is to be adopted (circumstance ‘2’ above), it is recommended that the following is considered/adhered to:

* the services that customers can buy are well-specified at RfP stage, with relatively little customisation taking place at the point of ordering (e.g. limited to number of users and expected delivery dates only);
* that there is only one supplier, or if there are multiple ‘services’, that there is only one supplier per service;
* that prices, or at least pricing models, are fixed at the outset (detailed within the RfP document set);
* that the contract terms and conditions are clearly defined within the RfP document set.

A good example of such a procurement would be a group of NHS Trusts that want to buy a Managed Email service from a single supplier in their region. The contract and pricing model would be established, and at the point of ordering the price would be based on location, security requirement (e.g. OFFICIAL) and any other factors such as multi-tenanted hosted services already provided to other Customers. There would be little ambiguity in the definition of the service and the way that the price would be calculated.

## b) Why is CCS running aggregated procurements?

For commodity telecoms products – those which are simple to specify and for which there is a good deal of competition – price is related to volume: in other words, the more you intend to buy and commit to, the better price you get.

This places smaller buyers at a disadvantage, and the purpose of an aggregated procurement is to group together demand for commodity products and thus obtain a better price for all, leveraged wherever possible with spend from one or more of the larger buyers. Each participant gets their own contract with the winning supplier as a Direct Customer.

There will be a regular programme of National Further Competitions, which will be advertised on the CCS website.

Even though CCS is running the procurement on customers’ behalf, there will still be a need for customers to do much of the work – the principal benefit is not in time saved but in better prices. Roles are shown as follows:

|  |  |
| --- | --- |
| **Stage** | **Roles** |
| Marketing and aggregating demand | CCS will be informing potential customers about the programme of procurements. Customers can also access information via the CCS portal. |
| Making the decision to start the procurement, and how it should be constructed | The customer must make the decision as to whether aggregated procurements are right for them. Advice is available from CCS |
| Developing a business case and sorting out governance arrangements | This remains the customer’s responsibility |
| Data preparation / Requirements Specification | This remains the customer’s responsibility |
| Holding discussions with suppliers on ‘Discovery Days’ | CCS will arrange the Discovery Days but customers may be asked to participate depending on the nature of the services being procured |
| Preparing a Request for Proposal (RfP) | CCS will prepare the RfP on customers’ behalf |
| Issuing the RfP and preparing for evaluation | CCS will issue the RfP and run the tendering process |
| Evaluating the Tender Responses and making the initial award decision | CCS will run the evaluation and award process but customers may be asked to assist with the evaluation |
| Issuing the Intent Notices and managing appeals / challenges | CCS will issue Intent Notices and manage appeals. |
| Debrief unsuccessful bidders | CCS will handle the contract award process and debrief unsuccessful suppliers. |
| Issue Award Notice | The customer will be responsible for making the final award, supported by CCS |
| Completion and signature of the Order Form | Customer and winning supplier, supported by CCS |
| Transition | This remains the customer’s responsibility |
| Service commencement | This remains the customer’s responsibility |
| Transformation to a new service and | This remains the customer’s responsibility |
| Managing the contract in-life. | This remains the customer’s responsibility |

There are no overt costs for the services in the table above.

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# Appendix 1 – Further Competition - Completing the Order Form (and supporting notes)

This appendix contains a guide on how to complete the Order Form (which constitutes the contract with the supplier) when undertaking a Further Competition, with supporting notes on the terms of the Call Off Contract. Separate detailed guidance on how to complete the Order Form is available on the CCS website.

In order to reduce the length of the document, the following abbreviations are used in the tables:

**FA** Framework Agreement.

**CO** Call Off Contract.

**FCOF**  Further Competition Order Form.

**c** clause (in the main terms of any of the agreements)

**sh** a schedule in one of the agreements. Where a schedule number is followed by a letter (e.g. sh2.1A) it refers to a defined part of the schedule

**p** para (in a schedule or Order Form)

**a** Appendix (usually in reference to a Order Form)

**an** Annex

Thus:

‘**FA c15.5’** means clause 15.5 of either Framework Agreement,

**CO sh 2.1A p1’** means paragraph 1 of part A of schedule 2.1 of the Managed Email Call Off Agreement, and

**‘CF a p2.1’** means paragraph 2.1 of appendix A of the Order Form

*Following customer/supplier feedback we have also developed further step-by-step guidance notes in addition to those below, these can be found on the CCS website (*[*http://ccs.cabinetoffice.gov.uk/*](http://ccs.cabinetoffice.gov.uk/)*)*

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| Completing the Order Form for Further Competition | |
| **Topic** | **Guidance** |
| When should customers complete the Further Competition Order Form? | Customers must have issued a nearly-complete Further Competition Order Form (FCOF) prior to asking bidders for prices. This means it must be issued at the start of the competition for single stage competitions, or after the final down-select in a two- or multi-stage competition, but the earlier it is issued, the better.  Some elements of the FCOF, as set out below, are completed by the supplier as part of their bids. In practice, for complex procurements, customers will want to negotiate all elements of the form with potential suppliers prior to the final stage of the competition, developing the contents of the Order Form in several stages.  If the requirement is very small, customers should consider whether they really need all of the documents that the FCOF asks for. Customers may not, for example, need a security plan, an exit plan, a sustainability plan and a disaster recovery plan if all they are buying is a few basic mailboxes. Customers may mark these sections of the FCOF “N/A”, although of course this negates the protections that they offer. |
| Precedence | It is important to understand which elements of the contract can over-rule others. The order of precedence in the contract (FA c1.2.2 and CO c1.4) is:  1st the main terms and definitions of the FA;  2nd FA sh2-19 and FA sh21-22;  3rd the FCOF (except for the Supplier’s Call Off Solution);  4th the main terms of the CO and sh1 (Definitions);  5th the remainder of the CO;  6th Supplier Call Off Solution; and  7th FA sh20 (Tender); |
| Describing your requirement –  Further Competition | Before issuing the first version of the FCOF, customers will need to have decided the principal aspects of the services that they wish to buy (see the supporting notes on ***Specifying Requirements*** below for more information on each of these bullets) under Further Competition these can be addressed to meet the Customer’s individual requirements:   * ***Call Off Initial Period*** of the contract (CO p5.1), which is a key determinant of price and which should be set out at an early stage; * if the customer wants to specify it, the ***Supplier Call Off Solution*** can also be set out in FCOF p2.1; * customers using the Further Competition procedure may, if they wish, use different ***service levels*** from those set out in CO sh6, and amendments should be set out in FCOF p2.8; * the ***implementation plan***for transition and transformation should be set out in FCOF p2.5. NB for some types of services (e.g. low volume requirements) no plan may be needed. ***Testing*** requirements, including severity levels for test issues, should also be set out in FCOF p2.5. These will be entered by the bidder but in most cases will have been negotiated with the customer. any additional ***standards*** that are to apply (FCOF p2.7), over and above CO sh7; * any agreed ***initial Security Management Plan*** for the services should be set out in FCOF p2.5 and the ***Business Continuity / Disaster Recovery*** plan should be set out in FCOF p6.10; * Any elements of the Call Off contract to be deleted, or any ***special terms*** to be added or replaced, including replacement schedules, should be set out by the customer in FCOF p7. |
| Governance | There are certain governance details that are also set out in the final version (if not earlier) of the FCOF. These are listed below, with more information in supporting notes (see ***Governance***)***:***   * if there are any ***key personnel***and ***key roles***that the Customer has identified as material, the supplier must ensure that the ***key personnel*** fulfil the ***key roles*** at all times during the Call Off Contract Period and should not remove or replace ***key personnel*** without your consent or subject to the other circumstances listed in CO p25.4. * any ***subcontractors*** that the supplier wishes to use should be set out in FA sh7. If the supplier wants to add or remove subcontractors then they should seek the consent of the Framework Authority; |
| Transferring staff | Customers should also reference from the Further Competition Order Form any staff that are being transferred to the supplier – see supporting notes on ***IPR and Staff*** for more details:   * ***staff likely to transfer*** to the supplier, whether from the customer or the outgoing supplier, should be listed in FCOF P6.3 together with pensions details. |
| Charges and payments | The supporting notes on ***Charges and Ensuring Value for Money*** below expands on some of these points:   * any ***milestone payments*** and ***delay payments*** associated with implementation plans should be set out by the Customer: * Under Further Competition in FCOF p2.5, * ***Charges:*** the way that the customer wants to pay for services, which will either be the charges defined in the Suppliers Further Competition should be set out in FCOF p5 (Call Off Contract Charges and Payment); * If customers need to use the ***benchmarking*** provisions of the contracts they will need to undertake a Further Competition and should set out in FCOF p6.12:   the list of potential benchmarkers;  whether ‘good value’ should be set at ‘average’ or ‘upper quartile’; and  whether service levels will be by ‘mean’ or ‘median’. |
| Commercial elements | Customers will also need to set out the measures that limit the risk of the parties – more information is provided in the supporting notes on ***Contractual Elements.*** Bear in mind that these affect the prices the suppliers will bid, and for large contracts (or significant changes!) discuss them with bidders in advance of requesting prices:  **Service Credits**  Under Further Competition the point beyond which the customer can claim service credits from the supplier for poor performance should be set out as the ***service credits*** in FCOF p2.8  ***Limitations of either party’s liability.***  Under Further Competition, if customers want to change the default values in the CO contract this can also be done. (if the defaults CO c36 are fine, do not enter any information):   * + - a cap on the amount of service credits (default CO s1 “Service Credit Cap”);     - a cap on general liability (default £1000000 in first Call Off contract year and the higher of £1000000 or 150% of annual charges in subsequent Call Off contract years CO c36.2).   any ***commercially sensitive information*** that the supplier wishes to be excluded from FOIA should be listed in FCOF p3.2. This should, in line with the Government’s policy on openness of public contracts, be restricted to only a few items of information;  **Benchmarking**   * + If customers need to use the ***benchmarking*** provisions of the contracts they will need to undertake a Further Competition and should set out in FCOF p6.12:   the list of potential benchmarkers;  whether ‘good value’ should be set at ‘average’ or ‘upper quartile’; and  whether service levels will be by ‘mean’ or ‘median’.  **Other areas of consideration which can be reviewed when undertaking a Further Competition:**   * **PCG’s** * **Open Book** |

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| Specifying Requirements | |
| **Topic** | **Guidance** |
| Length of Call Off Initial Period | The Call Off Commencement Date and Call Off Expiry Date setting out the Call Off Initial Period should be entered in p1.1 and p1.2 respectively in the FCOF. The Call Off Initial Period is described as ‘the initial term of this Call Off Contract from the Call Off Commencement Date to the end date of the Call Off Initial Period stated in the Order Form. Any transition period at the start of the contract is therefore included in the Call Off Initial Period.  The Call Off Initial Period for Further Competitions can be up to five (5) Years.  The Call Off Initial Period can be extended by up to a maximum period of two years by serving no less than three months written notice to the Contractor prior to the expiry of the Call Off Initial Period of the Agreement (or Extension Period). Such extensions would be subject to your normal governance arrangements  The Call Off Contract Period is defined in the Call Off contract.  Customers should take legal advice if they are contemplating making any amendments to the start or length of the Initial Term. Note the wording of the OJEU: “The normal duration of Call Off contracts placed under this framework is expected to be 5 years with option to extend for up to a maximum of 2 years. The extension options will enable a maximum contract term of 7 years to be exercised only where there is a specific transition or business transformation need to be addressed”. |
| Description of the Services | Under the Managed Email framework, Customers can buy Core and Supplementary Services as described in FA sh2A.  For Further Competition:   * There is a set of core services which have been set out at a high level in FA sh2A. Customers should identify which of these they require, with any modifications, in FCOF p2.1. * Suppliers under the framework have set out their services in more detail in FA sh2B, and all suppliers’ versions of this section can be found on the CCS website. These do have some contractual standing, although they are lower in the order of precedence than the services set out in the Order Form and in Part A. Customers may require any of these services, again with any modifications, in FCOFp2.1. * Details of how the supplier will deliver the requirements, including modifications to the standard services, should be set out in FCOFp2.1. * Any Managed Email services which are not set out above, but are within scope can also be detailed in FCOFp2.1. |
| Contractor solution | Customers who want to reach agreement, via Further Competition, with the supplier on how they will deliver the requirements may do so by asking the supplier to fill in FCOF p2.1. Leaving this section blank will make it the supplier’s responsibility to meet the stated requirements by any means they see fit to use. |
| Service levels, the Service Credit Regime and impact of service failure | General provisions for service measurement are set out in CO sh 6A, and general provisions around performance monitoring and reporting of incidents are set out in CO sh6B.  The Managed Email contract has a default set of service measures on availability, incident resolution, quality, and provisioning, together with ways they can be measured (CO sh 6A an1) and ways of calculating service credits (CO sh6A an1 p5). Measuring mechanism and service credit regimes are also set out in CO sh 6A an1.  Customers can amend these under Further Competition if they are not suitable for their organisation in FCOF p2.8. Suitable service levels are those which set out factors which are important to the customer, the levels that suppliers should meet / must meet, and service credits which reflect the level of ‘pain’ customers will experience if they are not met. Don’t go overboard - dozens of services measures, the service credit regime will be effectively diluted to the point where there are effectively no service levels at all.  The supplier has to meet (CO c12) the targets for service levels that the customer have set out in FCOF p2.8. This section should set out the things the customer feels it important to measure, how they are defined, how they should be measured, hours of measurement (e.g. 0900-1800 Mon - Fri), any exceptions, and the targets that suppliers must meet.  If the suppliers cannot meet the targets, they must follow the a Rectification Plan Process (CO c38.2) if requested by the Customer and potentially pay service credits, except of course to the extent that the supplier’s failure to meet the targets can be laid at the customer’s door (CO c39)  Customers’ rights are mostly limited to these service credits unless a trigger point is reached (CO c13, FCOF p2.9). |
| Implementation Plan | Customers should change entries to suit their particular requirement, and we would expect suppliers to complete a draft Implementation Plan as part of their bid based upon any information provided in FCOF p2.5. Always ask for a proper project plan unless the requirement is relatively simple.  Milestone dates can be specified as hard (e.g. 3rd March 2012) or they can be derived from other activities (e.g. “no more than ten days after task ‘A’”) or as precursors to other activities (e.g. “no less than twenty days before task ‘A’”). There should of course be at least one hard date, but specifying *relative* dates for milestones has the advantage that if task ‘A’ slips the parties are not held to unreasonable and irrelevant dates.  Ensure that any dependencies on external events or third parties are included in the implementation plan, along with any responsibilities on the customer.  The plan provided as part of the Further Competition response is classed as a draft plan – the supplier has to provide (CO c6) a detailed plan for your approval within a month of contract signature (or as defined by you). The contents of the detailed plan and obligations to maintain the plan are set out in CO c6. In preparing this detailed plan, the supplier may not change the milestone dates in the draft plan (CO sh4 A ) without going through change control and we advise customers not to accept a plan that modifies them. This means that arguments about delays and authority cause must be swiftly resolved before agreement of the detailed plan, and be should be wary of accepting any plan which implies acceptance of slippage.  One or more milestones can be defined as ‘Authority to Proceed’, after which the supplier can start to deliver the services. One or more subsequent milestones can be a ‘Contract Performance Point’ (CPP) which is generally an acknowledgement that the services have performed as expected for a period of time. Given that we never ‘accept’ the services (CO sh5 p3) these ATP/CPP milestones are often linked with milestone payments.  It is important to understand the rights and responsibilities that customers have in the event of a delay to implementation.   * The supplier cannot be held to account for a failure or delay to the extent that is caused by the Customer (CO c39, provided that the delay/failure is notified (CO c16). * Suppliers must notify customers of delays (CO c6.3) with an explanation and impact of the delay within two working days (CO c6.3.1). * Most delays will take place during transition or transformation. Delay which is caused by a customer leads to an extension of the milestone dates, removes the right to delay. It is therefore vital that any responsibilities customers accept as part of the implementation plan are well defined and within your power to deliver. * Delays which are not caused by the customer are implicitly caused by the supplier, in which case customers can (CO c6.4) require the supplier to provide delay payments, which have been defined in CO sh4 A. * If it isn’t clear who has caused the delay, CO c39 calls for the parties to refer to the Dispute Resolution Procedure. |
| Testing | It is important to define testing provisions to ensure customers are getting what they were intending to buy, and because fees will usually become payable once testing is complete and when the supplier moves into live service (which can be a significant commitment if the parties have chosen to set up milestone payments). Nevertheless, the supplier’s service should never be formally “accepted” in order to ensure that solution suitability and performance risks remain with the Supplier via the service performance regime.  The testing regime should be discussed fully during discovery days and do ensure that it is clearly articulated within the Testing Procedures. Testing provisions are set out at CO c11 and CO sh5.  The Test Success Criteria will be agreed between the Customer and Supplier as part of the Test Strategy Plan. The Supplier will be responsible for carrying out the testing, but customers should consider being party to, or at least witnessing the tests. Naturally, for some types of service the tests will be technical in nature, while other types of service will include detailed user acceptability tests.  The purpose of the Testing provisions in the contract is to handle tests associated with major changes, such as transition. Procedures for day-to-day testing (e.g. following introduction of a minor change to a service or after a bug fix) should be defined by you. |
| Standards | Common Government and industry standards to which the supplier must adhere are listed in FA sh 2 A 1.8 and CO sh 7. Customers can add other standards in FCOF 2.7 to cover your specific needs. Be clear about these requirements from the outset and be prepared to supply copies of the standards to bidders during the bid phase. |
| Security Plan | The supplier must deliver a security plan which complies with the customer’s stated security policy (CO c34.1), which should be provided to the customer during the bid phase and included as an attachment to the FCOF. The customer has the right to change the security policy.  General provisions about the IS Management System and the security plan are given in CO sh8. There are also a number of more general contractual provisions:   * All systems exposed to customer data must meet the security policy (CO c34.3) * Anti-virus/malware must be implemented, as set out in the security policy (CO c34.2). * Staff must be vetted to CCS standards (a minimum of Baseline Security Check) – (CO c26.1). Additional personnel checks are required where services are delivered to children and vulnerable adults (CO c26) * Both the framework authority (FA c15) and the customer (CO sh8) have a right to request a security audit, including penetration testing, of any services delivered. * Standard principles apply on maintaining confidential information, and remedying/reporting any breaches in confidentiality (CO c34.4). Most information (but excluding prices) can be shared with other public sector bodies (CO c34.10) and in some cases, other suppliers (CO c34.4.7). |
| Business Continuity and Disaster Recovery Plan | The contracts assume that customers will require a Business Continuity / Disaster Recovery Plan, which should be included in the FCOF p6.10. The supplier must be able to enact the plan at any time (CO sh 10). |
| Environmental impact and assessment | There is no requirement for a sustainability or environmental management plan under the framework or Call Off contracts. Customers may add such a requirement as a special term on the FCOF if they wish, but be aware of the additional cost this will impose on the supplier and compare that with the benefits that will be obtained by it. |
| Quality plans | The Call Off contract has a default provision that the supplier should submit a draft Quality Plan (CO c10.2) at a point set out in the FCOF 2.13. Most suppliers will have plans that can be adapted to provide such a draft with minimal effort, but customers should again again consider whether or not they need one depending on the services they are buying. |
| Equality and Diversity | Neither framework has a default provision covering equality, diversity or discrimination provisions, either in terms of positive discrimination or reporting, other than general obligations to comply with the law (CO c46.2). These may be added as special terms. |
| Machinery of Government | ‘Machinery of Government’ clauses are intended to allow the parties to re-set the contract, usually by an agreement to negotiate in good faith, when customer bodies are merged or demerged. Customers probably will not need a MoG clause, although they might be appropriate for large, ‘strategic’ services contracts. There are no Machinery of Government clauses in the contract, and customers wishing to incorporate them should consult CCS for a suitable form of words. |
| Insurance | Insurance requirements for the framework are set in FA c28, FA sh14 and CO c37. Both Customers and the Authority have the right to claim against the supplier’s insurance policies, the coverage is set at a level that all suppliers can meet. That means that the level of coverage may not be appropriate for some contracts and that customers should consider the appropriate level of Insurance for their requirement and provide this at FCOF 6.8 or whether other means of other means of protection (e.g. PCGs) would be more appropriate, bearing in mind that any change may alter the price the suppliers charge. |
| Change control | Amendments to the contract or the catalogue are made according to CO c21 (Change).  customers can amend the terms or substitute their own change control process, but the supplier’s rights should not materially different from those set out in CO c21. |
| Continuous improvement | Suppliers are obliged to report regularly to the Framework Authority on new and evolving technologies, the potential for improvements to the Services including integration with those of other suppliers and changes in business processes and ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to Customers (FA c12, FA sh12)  Similar obligations work for the benefit of the customer (CO c17).  These provisions are probably not sufficient for services that are at the ‘cutting edge’ of technology, and customers may wish to consider alternatives with bidders.  customers should take care to ensure that they do not add new types of services to the Call Off Contract under the pretext of service improvement. To do so may result in the inadvertent breach of the procurement regulations. |
| Management Information | CCS collects management information on spend and performance from the supplier about their work under the framework (FA c 14, FA sh 8, FA sh 9).  The customer’s rights to performance monitoring information under the Call Off contract is set out in CO sh6 B..  The management information to be collected is not set out in the Call Off contract, other than references in CO sh6 (Service levels Servic Credits and Perfoamnce Monitoring). Customers should therefore define the management information they require and the format (or at least the level of detail) they require it in as part of your services requirements, as referenced from FCOF p2.1 and p2.10 |

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| Governance | |
| **Topic** | **Guidance** |
| Key personnel | The framework sets out key personnel rights at the Call Off Contract level (CO c25 and CO sh4).  The Customer can agree with the Supplier Key Personnel for individual contracts in the FCOF p6.2. Replacement of the supplier’s key personnel is dealt with in CO c25. |
| Subcontractors | The supplier can’t add or remove material subcontractors (or change the essence of the contracts) without the Framework Authority’s approval (FA c22.1.3). The list of approved subcontractors is in FA sh7.  Suppliers must pay their subcontractors within 30 working days (FA c22).  Suppliers cannot novate the contract to anyone else or assign any rights without permission (CO c47). |
| The Framework Authority | Customers will be primarily responsible for their own contract governance and managing the relationship with the chosen supplier.  The Framework Authority (namely Crown Commercial Service) has a number of rights under the framework agreement, which takes precedence over the provisions of Call Off contract. These rights are, in outline:   * The right to collect a management charge of 1.45% * Approval of subcontractors (FA c22.1.3) * Extensive rights to management information (FA s9) * Access to information about Call Off contracts (FA c15) * Right to conduct a security audit (FA c15)   In addition, the Framework Authority delivers the following services on behalf of customers:   * Ensuring insurance is maintained (FA s14) |
| Other parties who can receive services | Private Sector Partners:  A Contracting Body that is availing of the Services under this Framework may require a Supplier to provide such Services to its private sector partners (i.e. parties from either the private or third sectors that are in partnership with or otherwise work alongside that Contracting Body) so that the Contracting Body can communicate with such private sector partners via email through a secure environment. Examples of private sector partners include but are not limited to; private healthcare providers, private doctors and nurses, pharmacists, optometrists, dentists, research agencies, legal professional, victim support services, charities.  Customers with such requirements are advised to seek legal counsel to ensure they are not providing State Aid to private organisations. |

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| IPR and Staff | |
| **Topic** | **Guidance** |
| Intellectual Property Rights | FA c23 grants the suppliers IPR to the framework Authority for the term and indemnifies the Framework Authority against IPR claims in relation to use of this  FA c23 contains general protection against the parties inheriting each others’ intellectual property, but most of the IPR provisions are standard and are contained in CO c33. These are suitable for small and medium-sized requirements but for large and complex projects customers may wish to think further how the IPR can be protected and/or exploited  The IPR in question could consist of copyright, patents, database rights) etc that may reside in the software, equipment (including hardware), data, and other documentation and processes related to the services customers are buying or the project they are for.  Customers should identify what IPR they hold and what rights they are willing to provide to the supplier to use it, and customers should encourage suppliers to do the same. In addition, customers should:   * identify the relevant software, hardware, data, etc that contains IPR; * keep the details of the software, hardware, data, etc., up to date and listed in a register maintained by the supplier; * establish how important specially-written software and project-specific IPRs are to a project and whether they are likely to be capable of being commercially exploited. The customer can then establish which party is best able to exploit the IPR that resides in the software, etc and how this should be treated commercially; * ensure that the arrangements for IPR ownership or licensing is reflected by amendments in this section of the Call Off Contract (entered on the Order Form)   Licence and re-use terms for IPR are included in CO c33 and should be reviewed to ensure that sufficient rights to use the supplier’s IPR are retained to support transition at the end of the contract, and potentially thereafter. Such protection should only apply to IPR used by the supplier to deliver the Services, and not to any other rights they might own.  We recommend that customers take specialist legal advice in relation to IPR and licencing clauses. |
| Staff transfer | Staff Transfer is optional.  CO c27 discusses staff transfers both at the beginning and the end of any contract. CO sh12 provides details of the supplier’s (and in some cases, the customer’s) obligations.  When completing the Order Form (FCOF p6.3) customers will need to specify whether, to the best of their knowledge:   * No TUPE will apply (governed by CO sh12C) * Employees of the outgoing contractor will transfer (CO sh12B) * Employees of the customer will transfer (CO sh12A) * Employees of the outgoing contractor and the customer will transfer (parts A+B)   Employment legislation is a highly complex area and we recommend that customers obtain appropriate advice. |

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| Charges and Ensuring Value for Money | |
| **Topic** | **Guidance** |
| Milestone and delay payments, and retentions | Any milestone payments delay payments associated with implementation plans should be set out in FCOF 2.5.  For simple contracts, customers may be content for the bidder to nominate these, for more complex contracts customers are likely to agree them with the bidder. Alternatively, customers might allow the bidder to enter them and use them as input to your evaluation. |
| Charges | It is up to customers to define the way that they want to pay for services, and this should reflect the way that they are consumed. For example, if the services are of fixed volume, then a simple monthly payment will suffice. However, in some cases, we anticipate that customers may want to set up a service catalogue that defines pricing units for a range of components together with a price, description of the services included and the method of measurement. The monthly charge will be the sum of (unit price x number on units). These units will be set out in FCOF p5.1, or contained in the financial model.  If customers wish to specify any maximum or minimum volumes, minimum terms or minimum payments in order to obtain better value for money, or specify some form of discount arrangement, then they may do so by agreement with the supplier. However, they must expect to justify these as part of your normal approvals process.  Invoicing mechanisms are set out in CO c22 and CO sh3). This can be safely modified or replaced to meet your bill payment mechanisms. |
| Supplier’s Service Catalogue | The term ‘Supplier’s Service Catalogue’ is used in several places in the contracts, and can be confusing. Let’s divide it into ‘contractual’ and ‘practical’ uses.  It means the catalogue containing prices for Service Packages on the framework, plus any catalogues created at the request of Customers through a Further Competition.  The idea of a service catalogue creates a lot of flexibility. For example, a buyer may have several different user profiles within the organisations and therefore cannot pinpoint a single definition of the service they require. They may want to mix up the type of mailbox, archive amount, mailbox size and supplemental services required by each user profile. To cater for this variety he would ask the supplier to create a catalogue with those elements, and then he would pay on the elements selected multiplied by the catalogue prices.  Customers should set out the structure of the service catalogue they want in FCOF p5.1. |
| Financial Model | As well as benchmarking provisions, the framework contains ‘financial models’ that are constructed during the bid stage and used to determine charges during the life of the contract.  A typical simple financial model will be a pricing catalogue with a list of services and associated prices, with invoicing consisting of multiplying the number of units of each service by its price and then adding them up. The financial model should be set out in FCOF p5.1.  These models allow ‘open book’ provision (FCOF 6.11) but these will be are appropriate only for the largest contracts. We strongly recommend that customers discuss these provisions with all potential suppliers before starting their competition, as many suppliers will not accept them and therefore will not bid. |
| Benchmarking | Benchmarking is permitted, but that does not place on customers an obligation to use it. Where the services are of the nature of commodities (which is generally true under Manage Email) and where the difficulty of switching suppliers is low, customers are more likely to obtain value for money by using shorter contracts and testing the market more frequently.  Benchmarking is appropriate for large or long contracts, but retaining the option to use it (especially if customers require ‘upper quartile’ prices or better) increases the risk that suppliers bear and therefore the prices that customers will pay in the short term. Alternatives to benchmarking, for services where prices tend to decline over time, would include pre-agreed regular reductions in charges or, once again, market testing.  The benchmarking provisions are set out in CO sh17. These are optional provisions should a customer wish to include Benchmarking which should be indicated on FCOF P6.12. If Customers wish to undertake Benchmarking throughout their contract wWe recommend that customers do not make substantial changes to these provisions, except in the cases of the very largest contracts, in which case they should seek appropriate advice. The benchmarkers customers intend to use, and whether they want average or upper quartile prices, should be set out in FCOF p6.12. |
| Management Charge | Suppliers will be levied a management charge of 1.45% for all invoiced amounts. One portion of this management charge (0.5%) funds the Framework Authority’s role of framework management, running aggregated competitions and working towards the next generation of frameworks (FA c17).  The other part of the management charge (0,95%) funds PSNA’s role in setting standards, measuring compliance, and market making.  The management charge is worked out as a percentage of the invoice value (prior to service credits, delay payments etc).  If the management charge is reduced, this reduction will be carried forward into existing and new Call Off contracts  The Supplier shall not pass through or recharge to, or otherwise recover from any Contracting Body the cost of the Management Charge in addition to the Charges.  The management charge is payable on PSN services and non-PSN Services. |
| Indexation | Indexation arrangements (where prices increase each year in line with one of the inflation indices) reduce risk for the supplier and are likely to produce lower prices in the short term. However, while the cost of labour increases over time, the cost of technology does not. In addition, many customers like certainty of price and do not accept indexation arrangements. Consequently, there are no indexation arrangements set out in the framework, but customers may add them (if desired) as part of your Call Off contract as a Special Term. |
| Gainshare and incentivisation | There are no gainshare mechanisms in the framework that act to cap or claw back profit, and customers would not be able to add them as these are likely to be seen to change the ‘economic balance’ of the contract.  However, customers could introduce, with the agreement of the supplier, a financial model which either contains volume-based rebates or an element of volume-based pricing.  While we have not added any incentive mechanisms to encourage the supplier to introduce processes or technologies that reduce their prices, these can be added if desired. |

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| Contractual Elements | |
| **Topic** | **Guidance** |
| Service Performance | The point beyond which the customer can claim Service Credits from the supplier for poor performance should be set out as the Service Level Performance Criterion, Service level Performance Measures and Service Level Threshold in FCOF p2.8. These will replace the default SLA’s set out in CO sh6 A1. |
| Limitations of Liability | There are limits of liability in the Framework Agreements (FA c27) that apply to the Framework level.  CO c36 sets out the standard limits of liability for Call Off contracts, starting with claims by the customer against the supplier:   * Death, personal injury, fraud, and selling things they don’t own – unlimited (CO c36.1) * Delay payments and service credits – £1000000 or 150% of annual charges (CO c36.2.1b)   ...and claims by the supplier against §:   * Losses as a result of Customer Causes £1m or 100% of annual charges (CO c36.2.2)   With the exception of the first (death etc), all of these limits can be changed in FCOF2.8. Since these partially determine the risks the supplier is exposed to, they will have an effect on price. Increasing the limits for the contractor (or decreasing the limits on what customers will pay) is likely to increase prices and may deter companies from bidding.  It is important for customers to resist the temptation to assess the maximum possible exposure in the most extreme cases and then ensure the financial limits are sufficient so that the customer can recover in all circumstances – all protection comes at a price and the appropriate allocation of risk (through the financial liability limits and other risk allocation mechanisms) will lead to optimum value for money.  Neither party can claim for indirect losses, including loss of profits, lost opportunities etc. |
| Step-in | In the event of a material Default, customers have the right temporarily to ‘step in’ to deliver the services themselves or to appoint another supplier to deliver for them, passing the costs back to the supplier (CO c38.1). In practice, there are few circumstances under which customers could exercise these rights, particularly for complex Services. |
| Parent Company Guarantees | There are no Parent Company Guarantees (PCGs) at the framework level as no Bidders requested to have their financial tests conducted on their parent company.  PCGs can be used as a form of ‘insurance’ for Call Off contracts, providing assurance that customers will be able to recover any losses that they would have been able to legitimately recover from the supplier. ‘Delivery’ guarantees, where the parent company agrees to step in to continue to deliver the service, are generally harder to obtain as many parent companies don’t have the technical skills to do it.  We think that guarantees should be sought only in exceptional cases, for example where the services are being supplied are both of strategic importance to the customer and the supplier is likely to see them as one of their most important customers. In these cases, customers can seek a guarantee (in the form set out in the Framework Agreement (FA c7, FA sh13) as part of the Call Off contract (FCOF c6.1) |
| Financial distress | Financial distress provisions, which set out our rights in the event of a supplier getting into financial difficulty, are optional and are set out in COsh15.  Customers do not have the right to exclude a supplier from competition or downselect them on the basis of size or financial performance. |
| Dispute resolution | This dispute resolution process is set out in CO c56. Customers may substitute their own dispute resolution process, provided that it is effective. If customers use a system/service integrator or another third party to manage the contract, then the dispute resolution process must include an escalation route to the customer.  Framework-level disputes (e.g. about the management information provided to CCS) are handled according to FA c41.6.  The Framework Authority has a right to be represented in a dispute (FA c45) and may take the process over (and run it using the Dispute Resolution processes set out the Framework) if a dispute with a supplier involves multiple customers, or involves multiple suppliers. |
| Exit management | It’s important to think about what happens at the end of the contract – while that may seem a long way away, a loose set of exit provisions will not protect business interests. CO c45.5 and CO sh11 give customers a standard set of protections, but they must make sure that the supplier’s exit plan is credible and maintained. |
| Suspension and termination rights | While it may seem strange to talk about terminating a contract while it is being let, it is important for customers to understand their rights.  Customers can terminate the contract for a number of reasons, including:   * the supplier does not meet the terms of the contract, and doesn’t fix it in line with the Rectification Plan Process (CO c38.2) or fail to meet confidentiality and security requirements (CO c34) * their ownership changes * Insolvency or financial distress * They are suspended from the framework (see below) * for convenience, subject to a termination payment * in relation to tax compliance * failing to agree a variation   Customers can choose to terminate only some of the contract  The other way of effectively letting a contract die, if customers have set up a catalogue under which they can place orders, is to stop ordering and buy from somewhere else instead (assuming of course that they have not given the supplier any form of exclusivity or set up things like minimum revenue commitments or prohibitive minimum terms).  The Framework Authority can suspend or terminate the supplier:   * for material default for example they don’t pay the Management Charge (FA 17) or doesn’t supply the required MI (FA sh9) * in relation to Guarantee * on failure to agree a variation * on insolvency * on change of contraol * without cause.   Suspension means they may not bid for contracts, Suspension or termination from the framework gives a Direct Customer the right (but not the obligation) to terminate their contract (CO c41.7)  The supplier can terminate if customers don’t pay the bill (CO c42) |
| Payments made on termination | Payments will apply if they choose to terminate the contract for convenience. |

# Appendix 3 – Direct Award - Completing the Direct Award Order Form

This appendix contains a guide on how to complete the Sample Order Form or other supplier Order Form for Direct Award (which constitutes the contract with the supplier) when undertaking a Direct Award, with supporting notes on the terms of the Call Off Contract.

In order to reduce the length of the document, the following abbreviations are used in the tables:

**FA** Framework Agreement.

**CO** Call Off Contract.

**DAOF** Direct Award Order Form.

**c** clause (in the main terms of any of the agreements)

**sh** a schedule in one of the agreements. Where a schedule number is followed by a letter (e.g. sh2.1A) it refers to a defined part of the schedule

**p** para (in a schedule or Order Form)

**a** Appendix (usually in reference to a Order Form)

Thus:

‘**FA c15.5’** means clause 15.5 of either Framework Agreement,

‘**CO sh 2.1A p1’** means paragraph 1 of part A of schedule 2.1 of the Call Off Agreement, and

**‘DAOF a4p2.1’** means paragraph 2.1 of appendix A of the Direct Award Order Form

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| Completing the Sample Order Form for Direct Award | |
| **Topic** | **Guidance** |
| When should customers complete the Order Form? | The procedure for issuing an Order Form under the Direct Award procedure is somewhat different in that the services are already fully defined as per the Service Packages within the Supplier’s Service Catalogue and delivered upon the default terms within the CO. Therefore in this instance many paragraphs seen in the Further Competition Order Form allowing a customer to express its individual requirements, are absent from the Order Form applicable for Direct Awards. To deviate from the standard terms would affect the commercial model on which the supplier determined its Service Package pricing. This standardised form and any other more concise variant provided by the Supplier is hereafter referred to as the Direct Award Order Form (DAOF).  This DAOF has been prepared by the Framework Authority to assist Suppliers and prospective Customers entering into Call Off Contracts in respect of any Service Packages offered by Supplier’s and as described in Annex 1 Service Catalogue in Framework Schedule 3 (Framework Prices).  Suppliers may provide their own more concise version of the DAOF, this concise version sets out the specific elements which are unique to a Customer Authority and should be read in tandem with the main DAOF so as to ensure the complete picture is understood. Once executed by both parties, the concise supplier DAOF, pertaining to the main DAOF shall constitute a valid Direct Award Order Form under the Framework Agreement.  The DAOF and any concise supplier variant should be read together with the full Call Off Terms and Conditions as well as this guidance document.  The Framework Authority reminds all prospective Customers that it is their responsibility to ensure that the supplier Service Package and default Call Off terms is sufficient for their requirements. Should this not meet the Customers requirements a Further Competition process should be undertaken to secure a Service suitable for their requirements, whereupon the full Further Competition Order Form can then be completed. Furthermore all the information on any completed Direct Award Order Form is up to date and accurate before entering into a Call Off Contract with a Supplier |
| Precedence | It is important to understand which elements of the contract can over-rule others. The order of precedence governing the Call Off Contract and Framework Agreement is set out in (CO c1.4). It is  1st the FA (Except schedule 19 Tender)  2nd the Order Form  3rd the Call Off Terms  4th Supplier Call Off solution (FW sh2 B and FW sh3 a1 which sets out the Suppliers’ Service Package(s))  5th Framework Schedule 19 (Tender) |
| Describing your requirement | The principal aspects of the services that you wish to buy would be outlined in the Supplier’s Service Package:   * ***Call Off Initial Period*** of the contract (DAOF p1.1 and p1.2), is the term specified against the Service set out as part of the Supplier’s Service Package; * a ***description of the services*** is fully detailed in the Supplier’s Service Package and as such the DAOF can be populated by the Customer with the full details transposed from the Supplier’s Service Package or as a minimum reference to the respective Service Package * Any service measures, service level targets, and failure thresholds are as described in the Call Off Terms or the Supplier’s Service Package; Customers cannot stipulate anything different under Direct Call Off. If Different levels are required a Further Competition will be necessary. * There is no by which a Customer can stipulate an ***implementation plan***for services under Direct Award. This is set by the Supplier as part of the Service Package. Customers wishing to define a specific Implementation Plan are advised to do so via a Further Competition * There are no additional ***standards*** that are to apply, over and above FW sh2; Customers wishing to define a specific standards are advised to do so via a Further Competition * There is no ***security plan*** or ***Business Continuity / Disaster Recovery*** plan for Services via Direct Award; Customers wishing to define a specific Security and or Business Continuity / Disaster Recovery plan are advised to do so via a Further Competition * Under Direct Award no elements of the Call Off contract should be deleted, or any ***special terms*** added or replaced, including replacement schedules. Customers wishing to define special terms are advised to do so via a Further Competition. |
| Governance | There are certain governance details that are also set out in the Order Form. These are listed below, with more information in supporting notes (see ***Governance***)***:***   * if there are any ***key personnel***that the supplier should not replace without your consent, these must be listed in DAOF p6.2; It is expected that there would not be any Key personnel in the delivery of Service via Direct Award. * the principal **addresses** of the parties should be set out (DAOF section A) |
| Transferring assets | Customers should not be transferring any assets when undertaking a Direct Award for a Supplier’s Service Package:   * No assets are being provided or being sold to the supplier (e.g, assets used to run the existing service), known as ***customer assets*** under Direct Award. Customers wishing to transfer assets are advised to state this requirement via a Further Competition * No equipment under Direct Award is to be provided by the supplier exclusively for the customer, and which may need to be acquired at the end of the contract. * No leases on equipment will be provided by the supplier under Direct Award. * No ***staff likely to transfer*** to the supplier as part of a Direct Award. Customers wishing to define staff transfer provisions are advised to do so via a Further Competition |
| Charges and payments | The supporting notes on ***Charges and Ensuring Value for Money*** below expands on some of these points:   * No ***milestone payments*** or ***delay payments*** associated with implementation plans are applicable for Direct Award unless specified in the Supplier Service Package; * ***Charges:*** are the charges as defined in the Supplier’s Service Package therefore this is referenced in DAOF p5.1, * No ***benchmarking*** provisions are applicable for Direct Award. Customers wishing to undertake ***benchmarking*** are advised to do so via a Further Competition. |
| Commercial elements | Customers undertaking a Direct Award are subject to the level of risk as laid out by the Service they are purchasing as the service is fully defined and priced accordingly. Therefore will not be able to set out differing measures that limit the risk of the parties – more information is provided in the supporting notes on ***Contractual Elements.***   * Customer cannot vary the ***limitations of the supplier’s liability*** under Direct Award * the point at which customers can exercise ***step in*** rights, expressed as a percentage of fees paid as service credits (default 15%, applies to all Direct Awards); * ***commercially sensitive information*** that the supplier wishes to be excluded from FOIA is listed in FA s17. This should, in line with the Government’s policy on openness of public contracts, be restricted to only a few items of information; Suppliers will expect to insert their Supplier’s Service Package(s). * for contracts under Direct Award, the customer should not want to place any ***geographical limitations*** on where the supplier can hold and process your data. The default is the European Economic Area (see ***restricted countries*** in FW s1 Definitions); Customers wishing to define specific geographical limitations are advised to do so via a Further Competition. * Under Direct Award no ***Parent Company Guarantees*** are possible; * the ***law*** under which the contract is governed – customers can specify Scottish or Northern Ireland law as the governing structure within the DAOF, whereupon the alternative clauses in Schedule 15 will be incorporated. If this is omitted the contract will default to English law. (see CO c57). |

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| Specifying Requirements | |
| **Topic** | **Guidance** |
| Length of Call Off Initial Period | The ***Call Off Initial Period*** is as per the Supplier’s Service Package for that particular service. The ***Call Off Initial Period*** is described as ‘means the initial term of this ***Call Off Contract*** from the ***Call Off Commencement Date*** to the end date of the Call Off Initial Period stated in the Order Form; and for Direct Award Call Off Contracts shall be three (3) years’ (CO s1 Definition).  Any transition period at the start of the contract is therefore included in the ***Call Off Initial Period***.  A ***Call Off Initial Period*** of more than three years should not be used for Direct Award.  The Call Off Initial Period can be extended by up to two years periods by serving no less than three months written notice to the Contractor prior to the expiry of the ***Call Off Initial Period*** of the Agreement. Such extensions would be subject to your normal governance arrangements  The ***Call Off Contract Period*** is defined in the Call Off contract (CO sh1 Definitions). |
| Description of the Services | The description of the Services available under Direct Award will be fully articulated in the Supplier’s Service Package |
| Service levels, the Service Credit Regime and impact of service failure | General provisions for service measurement are set out in CO sh6 A, and general provisions around performance monitoring and reporting of incidents are set out in CO sh6 B.  Any other service measures for Direct Award are defined in the Suppliers Service Package which is therefore referenced in DAOF 2.1. For Direct Award the Services and their associated service levels are those set out by the Suppliers when defining their commoditised goods and services to go into their Supplier’s Service Package.  The supplier has to meet (CO c12) the targets for service levels set out in DAOF 2.7 which in turn should reference their own Service Package.  If the suppliers cannot meet the targets, they may be instructed by the Customer to follow the ***Rectification Plan Process***  (CO sh6 A 4.8) and potentially pay service credits, except of course to the extent that the supplier’s failure to meet the targets can be laid at the customer’s door (CO c39 Supplier Relief Due to Customer Cause) |
| Implementation Plan | There are no implementation plans expected for the Direct Award from a Supplier’s Service Package. Customers wishing to define an implementation plan are advised to do so via a Further Competition |
| Testing | There are no Testing Procedures expected for the Direct Award from a Supplier’s Service Package. Customers wishing to define a Testing Procedure are advised to do so via a Further Competition |
| Standards | Common Government and industry standards to which the supplier must adhere are listed in FA sh 2 c1.8. Customers cannot add any additional standards. Customers wishing to define a specific standards are advised to do so via a Further Competition |
| Security Plan | There are no additional Security Plan provisions expected from Customers for the Direct Award from a Supplier’s Service Package. Customers wishing to define a specific Security Plans are advised to do so via a Further Competition |
| Business Continuity and Disaster Recovery Plan | There are no Business Continuity and Disaster Recovery Plan provisions expected for the Direct Award from Supplier’s Service Package. Customers wishing to define a specific Business Continuity and Disaster Recovery Plan are advised to do so via a Further Competition. |