



**TRANSPORT  
SCOTLAND**  
CÒMHDHAIL ALBA

## **Clyde and Hebrides Ferry Services**

Competition for the Contract for the Provision of Ferry Services (with The Scottish Ministers) And Harbour Operating Agreement (with Caledonian Maritime Assets Ltd)

Volume 1: Version 2.0  
Process Overview



**Aviation, Maritime, Freight & Canals Directorate**

**Clyde and Hebrides Ferry Services  
Competition for the  
Contract for the Provision of Ferry Services  
(with The Scottish Ministers)  
And Harbour Operating Agreement  
(with Caledonian Maritime Assets Ltd)**

**Volume 1: Version 2.0  
Process Overview**

**2 NOVEMBER 2015  
TS/MTRIPS/SER/2015/01**

Clyde and Hebrides Ferry Services Contract for Provision of Ferry Services and Harbour Operating Agreement	ITT Documents: Volume 1, Process Overview
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**CLYDE AND HEBRIDES FERRY SERVICES  
COMPETITION FOR THE  
CONTRACT FOR THE PROVISION OF FERRY SERVICES  
For the Scottish Ministers  
AND HARBOUR OPERATING SERVICES  
For Caledonian Maritime Assets Ltd**

**VOLUME 1**

**PROCESS OVERVIEW**

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**VOLUME 1**

**TS/MTRIPS/SER/2015/01**

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## GLOSSARY OF DEFINITIONS AND INTERPRETATION PROVISIONS

### Defined Terms

Defined terms used in the Competition Documents shall, where the same have been defined in Volume 3 or Volume 4 bear the same meaning as in Volume 3 or Volume 4 (as appropriate), unless otherwise defined below or as the context may otherwise require.

**Adviser** means any of the professional advisers appointed by Transport Scotland in connection with any part of the Procurement Process.

**Agreement** means the harbour operating agreement to be entered into by CMAL and the Successful Participant for the Harbour Operating Services which will comprise the conditions of the Agreement and the schedules setting out the requirements for the Harbour Operating Services.

**Award Stage** means that part of the competition following the selection of prequalified Economic Operators where Participants are invited to submit a tender for the Contract and for the Agreement and a Successful Participant is identified with whom the Contract and the Agreement will, respectively, be executed by the Scottish Ministers and CMAL.

**Base Case Schedule** means the final tender rates and prices entered into the Base Case Schedule of Price Breakdown at Part C2 of Package C for the Ferry Services Component.

**Both Components** means the Ferry Services Component and the Harbour Operating Component

**BST** means British Summer Time which for 2015 is introduced on 29 March and varies from Greenwich Mean Time by one hour such that 12 noon BST is equivalent to 11 am GMT.

**CHFS** means the Clyde and Hebrides Ferry Services.

**CMAL** means Caledonian Maritime Assets Ltd, a Scottish private limited company (SC001854) wholly owned by the Scottish Ministers.

**Community Shipowner** has the meaning defined in Article 2 of the Maritime Cabotage Regulations.



**Competition Documents** means the package of documents, issued along with the Invitation to Tender to each Participant as part of the Procurement Process, comprising Volumes 1-4, as may be amended from time to time by Transport Scotland and shall include any supplemental documents issued as part of the Procurement Process.

**Conceptual Proposals** means a specific proposal created by a Participant, the sections of which shall be incorporated into the relevant Contract schedules and Agreement schedules and which shall meet the requirements of the Contract and the Agreement specified in the Competition Documents and which shall form part of the Final Tender submitted by that Participant.

**Confidential Final Tender Bulletin** means a Final Tender Bulletin issued by Transport Scotland to one Participant only which Transport Scotland believes to be of a confidential nature.

**Confidential Final Tender Query** means a Final Tender Query which a Participant believes to be of a confidential nature.

**Confidential Tender Bulletin** means a Bulletin issued by Transport Scotland to one Participant only, which Transport Scotland believes to be of a confidential nature.

**Confidential Tender Query** means a Query which a Participant believes to be of a confidential nature.

**Contract** means the contract to be entered into by the Scottish Ministers and the Successful Participant for the Ferry Services which will comprise the conditions of the Contract and the schedules setting out the requirements for the Ferry Services.

**Contract Notice** means the advertisement for the joint procurement of the Ferry Services and Harbour Operating Services issued for publication in the Official Journal of the European Union and the Public Contracts Scotland portal by the Scottish Ministers on 17 February 2015 (OJEU Ref: 63577-2015).

**Contracting Authorities** means the Scottish Ministers in relation to the Contract and CMAL in relation to the Agreement.

**Economic Operator** means a services provider who is a Community Shipowner or has the capability and intention to be constituted as a Community Shipowner if awarded the Contract.

**EDT** means the electronic document transmission arrangements adopted for the purposes of this procurement to allow documents to be issued and received electronically and which will comprise:

- (i) a “Dropbox” web site application for the storage of information room data and the initial issue and any revised version of the Competition Documents; and
- (ii) e-mail through a dedicated mailbox for bilateral electronic submissions to and from Transport Scotland using PGP encryption for sensitive and confidential transmissions.

**Ferry Services** means the passenger, vehicle and goods public transport ferry services in the Clyde and the Hebrides.

**Ferry Services Component** means those elements of the competition which relate to the provision of Ferry Services and include Volumes 2, and 3 and the elements of tender submissions, assessments and negotiations and where relevant following the submission of initial tenders, invitations for subsequent interim tenders insofar as they relate to the provision of ferry services.

**Final Tender** means a tender which has been submitted in accordance with the ISFT and the Competition Documents and which shall be fully defined in terms of Conceptual Proposals and Operational Management System for the operation of the Ferry Services and for the Harbour Operating Services and prices and which shall be submitted without conditions or reservations in relation to its terms or acceptability.

**Final Tender Bulletin** means a communication from Transport Scotland, made in accordance with this Volume 1, to each Participant’s Contact Person during the Final Tender Period.

**Final Tender Period** means the period commencing on the date of issue of the Invitation to Submit a Final Tender to each Participant and concluding with the submission of Final Tenders.

**Final Tender Query** means a communication from a Participant’s Contact Person to Transport Scotland in accordance with Section 8.2 made in the form identified in Section 8.2 during the Final Tender Period.

**Form of Final Tender** means the submission requirements for the Final Tender set out in Appendix 1 of Volume 2.

**Harbour Operating Component** means those elements of the competition which relate to the provision of Harbour Operating Services and include Volumes 2 and 4 and the elements of tender submissions, assessments and negotiations and where relevant following the submission of initial tenders, invitations for subsequent interim tenders insofar as they relate to the provision of Harbour Operating Services.

**Harbour Operating Base Case Schedule** means the final tender rates and prices entered into the Harbour Operating Base Case Schedule of Price Breakdown at Part C2 of Package C for the Harbour Operating Component

**Harbour Operating Services** means the day to day operational services to ensure the effective functioning of those harbours controlled by CMAL as set out in the Agreement.

**Information Room** means the information relating to the Procurement Process made available without warranty to Participants through the Dropbox web site during the Tender Period.

**ISFT** means the invitation to submit a Final Tender.

**ITT** means the invitation to submit a tender.

**Letter of Confidentiality and Non-Collusion** means the letter of undertaking relating to confidentiality and non-collusion submitted by the Participant to Transport Scotland prior to the Invitation to Tender.

**Maritime Cabotage Regulations** means Council Regulation (EEC) No 3577/92 of 7 December 1992 (applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)).

**Mobilisation Plan** means the Plan required to define the activities required to prepare for the delivery of the Ferry Services

**Most Economically Advantageous Tender** and **MEAT** mean the tender which scores the highest aggregate mark for price and quality assessments and which has scored at least each of the qualifying thresholds specified for specific quality assessments for the Ferry Services and Harbour Operating Services.

**Operational Management System** means the system created by a Participant, the sections of which shall be incorporated into the relevant Contract schedules and Agreement

schedules and which shall meet the requirements of the Contract and the Agreement specified in the Competition Documents and which shall form part of the Final Tender submitted by that Participant.

**Operator** means the Successful Participant to whom the Contract has been awarded by the Scottish Ministers and the Agreement has been awarded by CMAL.

**Outline Conceptual Proposals** means the proposals which are developed by a Participant and submitted as part of its initial or subsequent interim tenders and which will form the basis of the Conceptual Proposals submitted as part of the Final Tender.

**Outline Operational Management System** means the system developed by a Participant and submitted as part of its initial or subsequent interim tenders as part of its Outline Proposals and which will form the basis of the Operational Management System in the Final Tender.

**Outline Proposals** means the Outline Conceptual Proposals and the Outline Operational Management System.

**Participant** means an Economic Operator who has been invited by the Transport Scotland to participate in the Award Stage, and as the context requires, any of:

Calmac Ferries Ltd (as described in Section 1.2.5.1), or

Serco Caledonian Ferries Ltd Ferries Ltd (as described in Section 1.2.5.2);

**Participant's Contact Person** means the person through whom all communications between the Participant and Transport Scotland shall be directed and who has been notified by the Participant to Transport Scotland.

**PQQ Submission** means a pre-qualification questionnaire (PQQ) which has been completed and submitted by an Economic Operator to Transport Scotland, and shall include any resubmission of a PQQ.

**Prequalification Document** means the Prequalification Prospectus and the Prequalification Questionnaire.

**Prequalification Prospectus** means the prequalification prospectus (including appendices) dated 17 February 2015, and any subsequent revision thereof, for the procurement of the Contract.

**Procurement Information** means the information contained within and/or referred to within any of the following: the Competition Documents, the contents of the Information Room, all information provided in written exchanges between Transport Scotland and the Participant and any other information provided otherwise by or on behalf of Transport Scotland pursuant to the Procurement Process.

**Procurement Process** means all activities comprised within the Award Stage which commenced on 10 July 2015. Such activities are described in the Competition Documents and include participation in Tender Period Meetings, the submission of any Tenders, the submission of Final Tenders, the process of evaluation of Final Tenders, the award of the Contract and the Agreement, and all other related activities.

**Public Service Contract and PSC** means the public services contract for the provision of the CHFS services between the Operator and the Scottish Ministers.

**Regulations** mean SSI 2012 No.88, The Public Contracts (Scotland) Regulations 2012.

**Ropax** means vessels carrying passengers, cars and other vehicles accessing the vessel by driving on and off and freight vehicles and trailers accessing the vessel by being driven on and off and freight loaded onto and from the vessel by other means such as “tugmasters”.

**Schedule of Material Additional Transport Services** means the listing of additional transport services, costs, revenues and accounting treatment for apportionment entered into the Base Case Schedule of Price Breakdown at Part C1 of Package C of the Ferry Services Component or as may be otherwise notified in writing by Transport Scotland to each Participant's Contact Person from time to time.

The **Scottish Ministers** means, as the context requires, the Scottish Ministers or their successors in relation to the provision of Grant under Section 70 of the Transport (Scotland) Act 2001 and/ or the Scottish Government.

**Services** means those public transport services as specified in Volume 3 Schedule 3.

**Start up Plan** means the Plan required to define the activities required to prepare for the delivery of the Harbour Operating Services

**Subsidy** means the compensation to be paid by Scottish Ministers to the Successful Participant under the Contract, calculated as the costs of the Ferry Services plus the agreed operator return less revenue.

**Successful Participant** means the Participant who has achieved the requisite passes and the highest combined weighted score in the evaluation of the Final Tenders to establish the most economically advantageous tender.

**Tender** means a Tender for the Contact and the Agreement and shall include an initial tender, a subsequent interim tender or the Final Tender.

**Tender Bulletin** means a communication from Transport Scotland to each Participant's Contact Person, made in accordance with this Volume 1, during the Tender Period.

**Tender Period** means the period commencing with the Invitation to Tender and concluding with the submission of Final Tenders.

**Tender Period Meeting** means a meeting described as such between:

Transport Scotland and its Advisers and the Contracting Authorities; and  
a Participant or all Participants,

as scheduled in the Timetable, or as may be otherwise agreed by the Transport Scotland from time to time and shall include meetings for the purpose of negotiating on the contents of a Tender.

**Tender Query** means a communication from a Participant's Contact Person to Transport Scotland, made in the form identified in Section 8.2 during the Tender Period.

**Timetable** means the indicative timetable identified in Section 4 of Volume 1 (Table 4: Timetable) as may be amended from time to time by Transport Scotland.

**Transport Scotland's Contact Person** means:

Clare Paterson

Telephone number: 0131 244 5312

E-mail address: [Clare.Paterson@transportscotland.gsi.gov.uk](mailto:Clare.Paterson@transportscotland.gsi.gov.uk)

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**Utilities Regulations** means SSI 2012 No 89, The Utilities Contracts (Scotland) Regulations 2012.

**Volume 1** means the " Clyde and Hebrides Ferry Services Competition for the Contract for the Provision of Ferry Services (with The Scottish Ministers) and Harbour Operating Agreement (with Caledonian Maritime Assets Ltd), Volume 1, Process Overview, dated 31 JULY 2015, TS/MTRIPS/SER/2015/01" issued by Transport Scotland and as may be amended from time to time by Transport Scotland.

**Volume 2** means the "Clyde and Hebrides Ferry Services Competition for the Contract for the Provision of Ferry Services (with The Scottish Ministers) and Harbour Operating Agreement (with Caledonian Maritime Assets Ltd), Volume 2, Instructions to Participants, dated 31 JULY 2015, TS/MTRIPS/SER/2015/01" issued by Transport Scotland and as may be amended from time to time by Transport Scotland.

**Volume 3** means the " Clyde and Hebrides Ferry Services Competition for the Contract for the Provision of Ferry Services (with The Scottish Ministers) and Harbour Operating Agreement (with Caledonian Maritime Assets Ltd), Volume 3, Contract Documentation (including the Scottish Ministers requirements) in relation to the Ferry Services Component, dated 31 JULY 2015, TS/MTRIPS/SER/2015/01" issued by Transport Scotland and as may be amended from time to time by Transport Scotland.

**Volume 4** means the " Clyde and Hebrides Ferry Services Competition for the Contract for the Provision of Ferry Services (with The Scottish Ministers) and Harbour Operating Agreement (with Caledonian Maritime Assets Ltd), Volume 4, The Agreement Documentation (including CMAL Requirements) in relation to the Harbour Operating Component, dated 31 JULY 2015, TS/MTRIPS/SER/2015/01" issued by Transport Scotland and as may be amended from time to time by Transport Scotland.

## Interpretation

The Competition Documents shall be interpreted using the interpretation provisions included in Volume 3 or Volume 4, as appropriate, unless otherwise set out below or as the context may otherwise require.

References in Volume 1 or Volume 2 to "paragraph(s)", "Section(s)", "Item(s)", "Table(s)", "Appendix/Appendices" and "Package(s)" shall refer to such "paragraph(s)", "Section(s)", "Item(s)", "Table(s)", "Appendix/Appendices" and "Package(s)" of the Volume in which that reference is made unless otherwise specified.

Reference to any of the Competition Documents, shall be a reference to the most recent version of that documentation, as amended from time to time by Transport Scotland.

Where used in the Competition Documents, the words "include", "including", "such as", "for example" and "and the like", are to be construed without limitation.

Headings and the contents lists are for convenience of reference only and do not affect the interpretation of the Competition Documents.

In the Competition Documents, any reference to any Act of Parliament shall be construed as a reference to that Act of Parliament as from time to time amended, extended or re-enacted and is to include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made or given under that Act of Parliament. Any reference to any statutory instrument, regulation or order shall be construed as a reference to that statutory instrument, regulation or order as from time to time amended, extended or re-enacted.

In the Competition Documents words importing the singular also include the plural, and words importing the masculine include the feminine and vice versa in all cases where the context requires.

In the Competition Documents, any reference to any document shall include any variation, amendment, or supplement to that document.



**Note to Participants**

Any reference in the Prequalification Document as to how the conduct of the Procurement Process shall be conducted shall not apply and is replaced in its entirety by the Competition Documents.

This procurement competition is being conducted under procedures pursuant to the requirements for Part B Services within Schedule 3 of the Regulations and the Utilities Regulations. Transport Scotland are seeking within a single competition bids for two Components:

- Ferry Services Component – leading to the execution of a Contract for Ferry Services by the Successful Participant and the Scottish Ministers
- Harbour Operating Component – leading to the execution of a Harbour Operating Agreement by the Successful Participant and CMAL

Final Tenders will be evaluated by Transport Scotland in order to determine which Final Tender is the "Most Economically Advantageous Tender". In order to make this determination, the award criteria will include price and non-price elements. These non-price elements for each of the Components are:

conceptual proposals for Services,  
operational management system, and  
key personnel.

The non-price elements will be scored on the basis of an evaluation of the proposals for each Component within each Participant's Final Tender. Certain of these non-price elements will be evaluated on the basis of the degree to which each Participant's Final Tender makes proposals beyond the minimum levels set in the Schedules in Volumes 3 and 4 as appropriate. It should be noted that there will be provisions for Performance deductions within the Contract and the Agreement to ensure delivery of these proposals post award of the Contract and the Agreement.

In addition, other aspects of each Final Tender shall be assessed for compliance with the requirements stated in the Competition Documents.

The price which will be evaluated is the sum of the prices for Both Components of the Final Tender. The Successful Participant will be the participant who has submitted the bid which aggregates to the most economically advantageous tender for Both Components.

## 1. INTRODUCTION

### 1.1. Purpose of the Competition

1.1.1. The intent of the competition is to enable:

1.1.1.1. the Scottish Ministers to appoint a suitably qualified operator to undertake the Ferry Services who is or will be eligible to be a Community Shipowner. The responsibilities in respect of the Ferry Services have been stated as the mobilisation prior to 1 October 2016 and the subsequent operation of the services for a period of 8 Years, of which the final 2 years will be subject to the satisfactory completion of a mid-term review; and

1.1.1.2. CMAL to secure a Harbour Operating Agreement with the same Operator for the concurrent operation of their harbours which are published destinations for the Ferry Services.

### 1.2. Contract Notice and Pre-Qualification

1.2.1. The competition was advertised by the publication of the Contract Notice and by concurrent display in the Public Contracts Scotland portal, [www.publiccontractsscotland.gov.uk](http://www.publiccontractsscotland.gov.uk).

1.2.2. There was no restriction to the number of economic operators who could apply to be considered for selection as Participants in the Award Stage of the Competition. A Prequalification Document was available on the Public Contracts Scotland portal to be downloaded by each organisation which expressed an interest in the Contract Notice.

1.2.3. Transport Scotland has undertaken an assessment of Economic Operators who have provided a PQQ Submission in conformity with the requirements and criteria published in the Prequalification Documents.

1.2.4. Transport Scotland has selected the following 2 Participants comprising those suitably qualified and experienced economic operators selected openly, transparently and without discrimination within an upper limit of 5 Participants.

1.2.5. The Participants are:

1.2.5.1. Calmac Ferries Ltd (“**A**”); and

1.2.5.2. Serco Caledonian Ferries Limited (“**B**”).

## **2. COMPETITION PROCEDURE**

### **2.1 Procedure**

2.1.1 A single procurement competition is being conducted for the Ferry Services and Harbour Operating Services comprising separate activity streams for Ferry Services Component and the Harbour Operating Component leading to the submission of separate tender elements, separate tender assessments, and the combination of tender values derived from those tender assessments to identify a single Successful Participant, as described below.

2.1.2 Transport Scotland is an executive agency of the Scottish Government and is administering this joint procurement for Ferry Services and Harbour Operating Services on behalf of and with the assistance of the Scottish Ministers and CMAL respectively.

2.1.3 The Ferry Services are a Schedule 3 Part B service (as defined in the Regulations) and The Harbour Operating Services are a Schedule 3 Part B service as defined in the Utilities Regulations. Accordingly, the full requirements of the Regulations or the Utilities Regulations do not apply to this procurement competition. However the procurement process for each of the Ferry Services and the Harbour Operating Services shall be generally aligned with the principles of the Competitive procedure with negotiation as described in Article 29 of Directive 2014/24/EU, as modified as expedient for the purposes of this competition as appropriate to the Ferry Services and to the Harbour Operating Services.

2.1.4 The procurement competition will use the procedure for selection stage generally described in Tables 2.1 - 2.3 below and as set out in this Procurement Document. References to paragraphs within Tables 2.1 – 2.3 shall be references to paragraphs in Tables 2.1 – 2.3.

**Table 2.1 Procurement Procedure for the Selection Stage.**

### **Selection to participate**

1.1 Only those economic operators invited by Transport Scotland following its assessment of the information provided may submit a tender.

2.1.5 The Competition Documents will be issued by Transport Scotland to the selected Economic Operators. Each selected Economic Operator will have been asked to sign a confidentiality and non-collusion undertaking, the provision of and compliance with which shall be a condition of continuing as a Participant.

## **2.2 Procedure for Award Stage**

2.2.1 The procurement competition will use the procedure for Award Stage generally described in Table 2.2 below.

**Table 2.2: Procurement Procedure for Award Stage.**

### **The Procedure for Award Stage**

#### **Invitation to Tender**

2.1 In these Competition Documents, Transport Scotland shall identify the subject-matter of the procurement by providing a description of the needs of the Contracting Authorities and the characteristics required of the Ferry Services and of the Harbour Operating Services to be procured and specify the contract award criteria. They shall also indicate which elements of the description define the minimum requirements to be met by all tenders.

2.2. The Participants shall submit an initial tender. Unless otherwise provided for in paragraphs 2.4 or 5.1 of this table, Transport Scotland shall negotiate with Participants the initial and all subsequent tenders submitted by them, except for the final tenders within the meaning of paragraph 5.1, to improve the content thereof.

The minimum requirements and the award criteria shall not be subject to negotiations. Transport Scotland reserve the possibility of proceeding to the issue of ISFT without negotiation in respect of either or both of the Ferry Services Component or the Harbour Operating Component following assessment of the initial tenders.

#### **Negotiations**

3.1 During the negotiations, Transport Scotland shall ensure the equal treatment of all

Participants. To that end, they shall not provide information in a discriminatory manner which may give some Participants an advantage over others. They shall inform all Participants in writing of any changes to the technical specifications or other Competition Documents, other than those setting out the minimum requirements. Following these changes, Transport Scotland shall provide sufficient time for Participants to modify and re-submit amended tenders, as appropriate.

### **Confidentiality**

4.1 Transport Scotland shall not reveal to the other participants confidential information communicated by a Participant taking part in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

4.2 Unless otherwise provided in particular legislation concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers Transport Scotland shall not disclose information forwarded to it by Participants which they have reasonably designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

4.3 Transport Scotland may impose on Participants requirements aimed at protecting the confidential nature of information which Transport Scotland make available throughout the procurement procedure.

### **Invitation to submit Final Tender**

5.1 Where Transport Scotland intends to conclude the negotiations, they shall inform the Participants and set a common deadline to submit a final tender.

5.2 Transport Scotland shall verify that the final tenders are in conformity with the minimum requirements and comply with para 6.1 below, assess the final tenders on the basis of the award criteria and award the contract in accordance with para 6.1 in Table 2.3 below.

## **2.3 The ITT**

2.3.1 The ITT invites the preparation and submission of initial tenders which set out the proposals for operating the Contract, but in this call Participants are not asked to disclose prices or financial information for the delivery of the Ferry Services nor the Harbour operating Services. Separate submissions with Outline Conceptual Proposals are required in relation to the Ferry services Component and the Harbour Operating Component. Following the submission and subject to the assessment of initial tenders, Transport Scotland intends to open negotiations with the Participants, the aim of which shall be to consider and refine the Contracting Authorities requirements to secure the means best

suiting to satisfy their needs, excepting those which have been described in the Competition Documents as the Contracting Authorities' minimum requirements.

2.3.2 Transport Scotland may request further interim Tenders from each Participant which may modify the requirements for either or both of the Ferry Services and the Harbour Operating Services, until the Contracting Authorities are satisfied that their requirements can be satisfactorily described in a manner capable of meeting their needs and the characteristics of the services as described in the Competition Documents. In order for the Scottish Ministers to do this, Participants may be required to enter into negotiations following the submission of each Tender to explore how the proposals contained in their initial tender or subsequent interim tenders could be modified to meet such needs. The Scottish Ministers shall provide comments to each Participant in respect of the acceptability or otherwise of their Outline Conceptual Proposals and Operational Management System.

2.3.3 After receipt of Outline Conceptual Proposals and Operational Management System which allow Transport Scotland to prepare the needs and characteristics of the services which are satisfactory to the Contracting Authorities, Transport Scotland shall invite each Participant, by issue of the ISFT, to submit a Final Tender containing all the elements required by the Competition Documents for Both Components.

2.3.4 The Tender Period shall include Tender Period Meetings to inform or conduct negotiations with each of the Participants. The matters to be discussed at these Tender Period Meetings may include, but not be limited to:

- Clarification of ITT documents;
- Consideration of tender proposals for Ferry Services;
- Services;
- Fares;
- Vessels;
- Start up Plan;
- Marketing Plan;
- Health and Safety Plan;
- Environmental Management Plan;
- Customer Complaints process;
- Key Personnel;
- Base Case (excluding prices);
- Performance Regime;
- Operational Management Systems;
- Resilience in relation to varied capacity and usage demands;
- Consideration of tender proposals for Harbour Operating Services;

Quality assurance;

Environmental impact reduction;

Health and safety;

The requirements for the price submission and the use of the common financial spreadsheet for the Ferry Services.

2.3.5 Further information on the Tender Period Meetings and the Participant's ability to request additional Tender Period Meetings is contained within Volume 2.

## 2.4 Final Tenders

2.4.1 When Transport Scotland is satisfied that the responses to its requirements are satisfactory and are capable of providing good value for money it will confirm that the negotiations are closed and invite Final Tenders which will include proposals for operating the Contract and prices and financial information for the Subsidy required for the delivery of the Ferry Services, and proposals for operating the Agreement and prices for the delivery of the Harbour Operating Services.

## 2.5 The Award of the Contract and the Agreement

2.5.1 The procurement competition will use the procedure for award generally described in Table 2.3 below.

**Table 2.3: Procurement Procedure for Award**

### **Contract and Agreement Awards**

6.1 The Contract and the Harbour Operating Agreement shall be awarded on the basis of the criteria laid down, provided that Transport Scotland has verified that:  
the information given by the Successful Participant in relation to Sections 1 - 4 of the PQQ has not materially and detrimentally altered.  
the tender is not abnormally low in terms of regulation 30 of the Regulations.

6.2 The Contracting Authorities may decide not to award the Contract and the Harbour Operating Agreement to the tenderer submitting the most economically advantageous tender where they have established that any of the criteria in para 6.1 above have not been met and may award the Contract and the Harbour Operating Agreement to the Participant who has submitted the most favourable tender that does meet the criteria.

2.5.2 The Successful Participant will be determined on the basis of the Most Economically Advantageous Tender which shall be the tender which provides the highest sum of each of the weighted tender values for the quality aspects of the tenders plus the weighted tender value of the combined price aspects of the tenders for the Ferry Services and the Harbour Operation Services on the basis of the award criteria specified in Volumes 1, and 2.



2.5.3 The Contracting Authorities shall, subject to their discretion to choose not to award the Contract and the Agreement, award the Contract and Agreement to the Participant who submits the most economically advantageous tender.

## **2.6 Debrief on the Outcome of the Competition**

2.6.1 Prior to the Contracting Authorities awarding the Contract and the Agreement to the Successful Participant, the Economic Operators who expressed an interest in the Contract will be informed in writing by Transport Scotland of the result of the procurement competition in the manner described in the Regulations and Utilities Regulations.

## **2.7 Relevant Standstill Period**

2.7.1 Prior to the award of any contract, the Contracting Authorities will implement a voluntary standstill period in accordance with the Regulations and Utilities Regulations.

## **2.8 Execution of the Contract and Agreement**

2.8.1 The Successful Participant shall be required to execute the Contract (as completed with information from the Successful Participant's Final Tender) and any other contractual documentation which may be required by the Contracting Authorities, including a Parent Company Guarantee if requested.

2.8.2 Transport Scotland may request the Participant identified as having submitted the most economically advantageous tender to clarify aspects of its Final Tender or confirm commitments contained in its Final Tender and which will be transposed into the executable Contract and Agreement provided that this does not have the effect of modifying substantial aspects of its Final Tender or the ISFT and does not risk distorting competition or causing discrimination.

2.8.3 Participants should note that evidence of any signatory's signing authority (e.g. board resolution or equivalent) shall be required by the Scottish Ministers prior to execution of any contractual documentation.

### **3. STRUCTURE AND CONTENT OF THE COMPETITION DOCUMENTS**

#### **3.1 Volume 1 – Process Overview**

3.1.1 This Volume 1 includes the following:

- a glossary of defined terms and interpretative provisions;
- an introduction to the competition;
- the competition procedure;
- the structure of the four volumes comprising the Competition Documents;
- the key milestone dates in the Procurement Process;
- the overarching conditions of the Procurement Process;
- a description of the information which will be made available to the Participants; and
- the process for making general and confidential queries and Tender Period Meeting submissions in respect of the Procurement Process.

3.1.2 The Appendix to Volume 1 comprises:

- process flowcharts which identify how queries are made.

#### **3.2 Volume 2 – Instructions to Participants**

3.2.1 Volume 2 includes the following:

- an overview;
- instructions for the submission of initial and final tenders;
- the award criteria;
- the specific requirements for the Ferry Services Component (Bundle 1);
- the specific requirements for the Harbour Operating Component (Bundle 2);

3.2.2 All Participants shall be invited to and shall submit a Final Tender on the same contractual terms as specified by Transport Scotland.

3.2.3 If any Final Tender contains any qualifications in respect of the Contract or the Agreement, then that Final Tender shall be deemed to be non-compliant.

3.2.4 The Successful Participant shall be required to execute the Contract and the Agreement (as completed with information from the Successful Participant's Final Tender) and any other contractual documentation which may be required by the Contracting Authorities.

3.2.5 The proposed Terms of the Contract and the structure of Schedules to the Contract are set out in Volume 3 of the Competition Documents and the proposed Terms of the

Agreement and the structure of Schedules to the Agreement are set out in Volume 4 of the Competition Documents.

3.2.6 The Appendices to Volume 2 comprises:

form of final tender;

the special requirements in relation to the Ferry Services Component (a draft for the submission of proposals to be imported into Volume 3 (the Contract Documentation) for the executed Contract);

the special requirements in relation to the Harbour Operating Component (a draft for the submission of proposals to be imported into Volume 4 (the Agreement Documentation) for the executed Agreement).

3.2.7 The content required for Final Tenders in the Form of Final Tender is divided into Bundles 1 and 2 (Ferry Services and Harbour Operating Components respectively) and thence Packages A, B, C and D.

3.2.8 Where so specifically advised to the Participant in the Invitation to Tender or the Invitation to Submit a Final Tender, or subsequently advised prior to the execution of the Contract and the Agreement as a consequence of the financial position of the company differing materially from that disclosed in the PQQ, the Scottish Ministers and CMAL shall require the provision of an irrevocable parent company guarantee from the demonstrably appropriate associated corporate entity, possessing a net worth and long term credit rating acceptable to the Scottish Ministers and having the corporate and legal capacity to issue parent company guarantees (where the parent company guarantee shall underwrite the entirety of the Operator's financial and performance obligations undertaken pursuant to the Contract and the Agreement) and/ or a performance bond from an approved guarantor in favour of the Scottish Ministers. Where so advised of either requirement, failure to provide the commitment letter for the parent company guarantee or a performance bond in the required form (included in Package D) shall be grounds for the Scottish Ministers to treat the Final Tender as non-compliant. A legal opinion will also be required to cover the validity and enforceability of the parent company guarantee.

**3.3 Volume 3 – The Contract Documentation in relation to the Ferry Services Component**

3.3.1 Volume 3 comprises the Contract and Schedules including the Scottish Ministers' requirements for the Ferry Services as indicated below.

<b>Table 3.1 - Schedules to the Contract (Volume 3)</b>	
<b>Schedule</b>	<b>Title</b>
1	Definitions

**Table 3.1 - Schedules to the Contract (Volume 3)**

<b>Schedule</b>	<b>Title</b>
2	Conditions Precedent
3	The Services
4	Fares
5	The Vessels and Ports
6	Mobilisation Plan
7	Marketing Plan
8	Health and Safety Plan
9	Environmental Management Plan
10	Customer Care and Accessibility Process
11	Human Resources and Key Personnel
12	Initial Base Case
13	Grant Payment and Financial Distress
14	Operational Management
15	Performance Regime
16	Variations to Services
17	Benchmarking

3.3.2 The Scottish Ministers reserves the right to make amendments in respect of the Contract and Schedules (with the exception of those parts which comprise mandatory requirements or characteristics of the Ferry Services) at any time.

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### 3.4 Volume 4 – The Agreement Documentation and CMAL Requirements in relation to the Harbour Operating Services Component

3.4.1 Volume 4 comprises the Agreement, including Schedules to the Agreement which give details of how the Services should be delivered and the terms of payment.

3.4.2 CMAL reserves the right to make amendments in respect of the Agreement and Schedules (with the exception of those parts which comprise mandatory requirements or characteristics of the Harbour Operating Services) at any time.

3.4.3 The proposed Terms of the Agreement and the structure of Schedules to the Agreement are set out respectively in Volume 4 of the Competition Documents

3.4.4 CMAL’s requirements for the Services are contained within the Schedules in Volume 4 as indicated below.

<b>Table 3.2 - Schedule to the Agreement</b>	
<b>Schedule</b>	<b>Title</b>
Schedule Part 1A	The Harbours
Schedule Part 1B	Harbour Buildings
Schedule Part 1C	Harbour Plans
Schedule Part 2	Scope of Operation
Schedule Part 3	Division of Responsibilities
Schedule Part 4	Insurance
Schedule Part 5	Management of Conflict
Schedule Part 6	Customer care process
Schedule Part 7	Health and Safety Plan
Schedule Part 8	Start-up Plan
Schedule Part 9	Environmental Management Plan
Schedule Part 10	Key Personnel and qualifications
Schedule Part 11	Harbour Operations organisation structure
Schedule Part 12	Operations and Safety Management system
Schedule Part 13	Variation to service process

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#### 4. KEY MILESTONES

4.1.1 Key anticipated milestones in respect of the Procurement Process are identified in Table 4 of this Volume 1 below:

**Table 4: Timetable**

Selection of Participants	10.06.2015
Issue of the ITT	31.07.2015
Submission of initial tender	21.09.2015
Consideration, discussion and negotiation, and call for Interim tenders	02.11.2015
Period allowed for interim tenders	Interim Tenders are required for the Ferry Services Component, and the Harbour Operation Component on 5 January 2016
Issue of Invitation to Submit a Final Tender	15.02.2016
Submission of Final Tenders	07.03.2016

4.1.2 Any changes to the timetable above shall be made by way of a Tender Bulletin or a Final Tender Bulletin.

4.1.3 The milestones following the evaluation of Final Tenders is shown for illustrative purposes only below:

Anticipated intent to award the Contract and the Agreement	31.05.2016
Proposed start of Services	01.10.2016

## **5. OVERARCHING CONDITIONS OF THE PROCUREMENT PROCESS**

### **5.1 Letter of Confidentiality and Non-Collusion**

5.1.1 Each Participant is required to comply with the Letter of Confidentiality and Non-Collusion signed and submitted prior to receiving an invitation to Tender. Participants are reminded of the importance of compliance with the terms of the Letter of Confidentiality and Non-Collusion.

### **5.2 No warranty**

5.2.1 The Procurement Information is given in good faith for the guidance of Participants in respect of the Procurement Process including making Tender Period Meeting submissions, Outline Proposals and Final Tenders. No warranty or representation of any kind is given as to the sufficiency, accuracy or completeness of such Procurement Information. The Procurement Information does not purport to be comprehensive or to have been verified by Transport Scotland nor its Advisers nor the Contracting Authorities or to have been verified by any third parties whose information has been issued by Transport Scotland, or its Advisers, on behalf of such parties.

5.2.2 Transport Scotland, its Advisers and the Contracting Authorities:

shall not be liable for any errors, omissions or lack of specificity in such Procurement Information; and

shall not be liable or responsible for negligence or failure to exercise any degree of skill or care in connection with the production of the Procurement Information or for any action taken by any Participant or the Operator as a result of the Procurement Information.

5.2.3 Any reliance on or use of any Procurement Information is entirely at the risk of each Participant.

5.2.4 Participants shall be responsible for carrying out their own review and checks to satisfy themselves as to the sufficiency, adequacy and correctness of the Procurement Information before relying on and using such information as part of the Procurement Process, including making Tenders, Outline Proposals and Final Tenders.

5.2.5 No Procurement Information shall be construed as forming part of the Contract unless such Procurement Information is expressly referred to in the Contract. The Competition Documents and the Letter of Confidentiality and Non-Collusion shall not form part of the Contract.

5.2.6 No legal relationship or other obligation shall arise between any Participant and Transport Scotland or the Contracting Authorities following the issue of the Competition Documents.

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5.2.7 Scots law shall be applicable to the Procurement Process and the Scottish courts shall have exclusive jurisdiction in relation to any disputes arising in respect of the Procurement Process.

### **5.3 Revisions to the Procurement Process and the Procurement Information, Clarifications and the Issue of Additional Information**

5.3.1 Transport Scotland reserves the right, at its absolute discretion, to make revisions to the Procurement Process (including the timing, form and substance of the Procurement Process) and/or the Procurement Information at any time, including making clarifications or issuing additional information. Under no circumstances shall Transport Scotland incur any liability to any Participant in respect thereof. Unless the Participants are expressly notified of any extension by the Scottish Ministers in relation to any submission deadlines (such extension always being reasonably considered and allocated), no additional time shall be deemed to be granted following notification of any such revision, clarification or additional information.

5.3.2 Any revisions to the Procurement Process and/or the Procurement Information, any clarifications and any additional information shall be communicated by a Tender Bulletin or a Final Tender Bulletin, issued to the Participants by Transport Scotland as soon as reasonably practicable.

5.3.3 Each Participant shall ensure that its Tenders, Outline Proposals and Final Tender submissions shall be deemed to represent the views of the organisation or, in the case of a consortium or joint venture, all members of the Participant's consortium or joint venture.

### **5.4 Discontinuance or Suspension of the Procurement Process**

5.4.1 Transport Scotland may elect to discontinue or suspend the Procurement Process at any time without selecting a Successful Participant and without giving prior notice to the Participants. Transport Scotland may do so without responsibility or liability to any Participant and the Successful Participant resulting from such discontinuation or suspension, including any liability for any costs or expenditure incurred by the Participant) or inconvenience caused.

5.4.2 Transport Scotland reserves the right to reject or exclude a Participant at any time during the Procurement Process if:

that Participant breaches its Letter of Confidentiality and Non-Collusion;

that Participant fails to comply with the requirements of the Competition Documents;

that Participant fails to satisfy the requirements stated in the Competition Documents in respect of any Tenders, Outline Proposals or Final Tenders; and/or

there is any change in the composition of the Participant.



5.4.3 In the event that at any stage:

a Participant decides not to pursue its interest;

Transport Scotland disqualifies a Participant; or

Transport Scotland discontinues the Procurement Process,

the Participant shall return the Procurement Information to Transport Scotland or confirm to Transport Scotland in writing that it has been destroyed and that all copies have also been returned to Transport Scotland or destroyed.

5.4.4 Should Transport Scotland require to suspend the Procurement Process, Transport Scotland shall issue instructions to Participants regarding the expected duration of the suspension and other related matters.

## **5.5 Costs Relating to the Procurement Process**

5.5.1 Each Participant shall be solely responsible for all costs, expenses and liabilities incurred in connection with its participation in the Procurement Process.

5.5.2 Transport Scotland shall not, under any circumstances, be liable for any costs, expenses and/or liabilities howsoever incurred by the Participants.

## **5.6 Crown Copyright**

5.6.1 The copyright in the Procurement Information belongs to the Crown (unless expressly stated otherwise).

5.6.2 Except for the purposes of the Procurement Process, Participants shall not reproduce any part of the Procurement Information in any form (including photocopying or storing by electronic means) without the specific written permission of Transport Scotland.

5.6.3 The Procurement Information (and any copies thereof) are and shall remain the property of the Crown (unless expressly stated otherwise) which is entitled to demand their return and/or destruction at any time.

## **5.7 Freedom of Information and Disclosure**

5.7.1 All information submitted to Transport Scotland may need to be disclosed and published. Without prejudice to the foregoing generality, Transport Scotland is subject to the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. This means that any person who makes a valid request for information held by Transport Scotland will be entitled to receive it, unless all or part of that information can be withheld as a result of one or more of the exemptions in the relevant legislation. The decisions of Transport Scotland in the interpretation of the relevant legislation shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under

its terms, subject to determination of an appeal against any agreement or refusal to release any information by the Scottish Information Commissioner.

5.7.2 In addition, Transport Scotland may require the disclosure of information in compliance with any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure.

5.7.3 Transport Scotland may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents. Participants should be aware that, when disclosing such information to either the Scottish or United Kingdom Parliament, Transport Scotland shall, if it sees fit, disclose such information but is unable to impose any restriction upon the information they provide to Members of the Scottish Parliament, or Members of the United Kingdom Parliament.

5.7.4 Accordingly, if a Participant considers that any of the information disclosed by it during the Procurement Process is commercially sensitive this shall be identified with an expectation (in broad terms) of what prejudice might result from disclosure and/or publication. It should be remembered, though, that even where a Participant has indicated that information is commercially sensitive, Transport Scotland may disclose this information where it sees fit.

5.7.5 Receipt by Transport Scotland of any material marked "commercially sensitive", "confidential", "commercial in confidence" or equivalent should not be taken to mean that Transport Scotland accepts any duty of confidence by virtue of that marking.

5.7.6 Transport Scotland may publish, on the Scottish Government and/or Transport Scotland websites, the names and contact details of any parties who have been issued with the Competition Documents.

## **5.8 Disqualification**

5.8.1 The commission of any offence under the Bribery Act 2010 by a Participant or anyone employed by it or acting on its behalf (whether such breach or offence is with or without the knowledge of the Participant) or the offering or giving of any fee or reward the receipt of which is an offence in respect of the Procurement Process shall entitle Transport Scotland to disqualify the Participant.

## **5.9 Conflict of interest**

5.9.1 Participants are instructed to ensure that their participation in the Procurement Process and their appointment, if successful, as the Operator (and their use of any advisers, consultants or sub-suppliers) has not and will not create any conflict of interest or any situation which might compromise Transport Scotland's duty to manage an open, fair, non-discriminatory and competitive procurement process and Transport Scotland's interests generally. Any conflict or potential conflict shall be reported in writing to Transport Scotland, immediately.

5.9.2 Declaration of a potential conflict of interest shall not result in automatic disqualification of a Participant.

5.9.3 Transport Scotland will assess the likelihood of any conflict affecting the Procurement Process, taking into account the Participant's proposal for dealing with the conflict, in deciding whether or not to consider the Participant ineligible to participate in this procurement competition.

5.9.4 If it appears that the conflict will have such an effect, Transport Scotland will discuss the matter with the Participant and seek to agree a method for dealing with the conflict satisfactorily.

5.9.5 In the event that agreement is not reached on terms acceptable to the Scottish Ministers, the Participant will be excluded from further consideration.

5.9.6 Transport Scotland's decision on the matter shall be final.

#### **5.10 Publicity and Media Statements**

5.10.1 Participants shall obtain Transport Scotland's prior written consent (on form, content and purpose) before any statements or other disclosures regarding the Competition Documents and the Participant's participation in the Procurement Process generally are made to the press, media, industry journals or into any other public domain (including seminars, conferences and parties' own promotional or technical literature and internal and external intranet or website). Failure to obtain Transport Scotland's prior written consent (at Transport Scotland's absolute discretion) may result in curtailment of further participation in this Procurement Process or such other sanctions as the Scottish Ministers considers appropriate. It shall be each Participant's responsibility to ensure that any statement or disclosure, if consented to by Transport Scotland, is used in a manner which does not depart materially from the form and content so consented.

## **6. INFORMATION AVAILABLE TO PARTICIPANTS**

### **6.1 General**

6.1.1 Information relating to the services undertaken during the current or previous contracts which shall be made available by Transport Scotland to the Participants shall be contained within an Information room hosted on Dropbox.

6.1.2 The Information provided is for the use of Participants in the development of their Tenders, Outline Proposals and Final Tenders, but is provided without warranty and should be independently verified by the Participant if material to the content of the Final Tender.

6.1.3 Electronic copies of the Competition Documents and any revised or re-issued version of the Competition Documents shall be maintained in the Information Room.

6.1.4 The documents comprising the Information Room are contained within six libraries:

Library of Competition Documents: includes electronic versions of each issue of the Competition Documents

Library of Contracts and Other Documents: includes current operator's contract as well as vessel leasing agreement documents

Library of Operational Data: this includes detailed figures on carryings, costs, revenues and prices covering the 3 contract years from 2011 to 2014

Library of Harbour Data: includes port and building plans and current status of planned maintenance

Library of Crewing/ Staffing Information: includes employment agreements and contracts from the current operator

Library of Vessel Data: includes vessel drawings, certificates, reports and fuel information

6.1.5 Queries from Participants, Transport Scotland's answers thereto, Bulletins and Participant's submissions (other than the Outline Proposals and the Final Tender, which shall be submitted as directed in the Competition Documents) shall be issued using PGP encrypted e-mail .

## **7. ELECTRONIC DOCUMENT TRANSMISSION (EDT) FOR COMMUNICATION**

### **7.1 Introduction**

7.1.1 This Section explains how Participants will have access to operational data and other useful information relating to the Ferry Services and Harbour Operating Services. Access to the Information Room will be through the use of a Dropbox website. The Section also explains the use of e-mail and PGP Encryption.

7.1.2 Process flowcharts set out in the Appendix to this Volume 1, provide an overview of the processes which involve the use of EDT.

7.1.3 The aims of the use of EDT include the following:

providing the Participants with improved access to information;

speeding communications of documents between the Scottish Ministers and the Participants during the Tender and the Final Tender Period; and

providing a secure environment for the transfer of restricted information and communications during the Procurement Process.

7.1.4 The operating instructions set out in this Section 7 will be applicable throughout the Procurement Process.

### **7.2 Dropbox**

7.2.1 Dropbox is a web-based application for storing and sharing information. The data may then be accessed through the following options:-

A link will be provided for a password protected online folder which contains the information room data. The data may be downloaded directly through any modern web browser. This can either be by folder containing multiple files which will be downloaded as a zipped file, or on an individual file by file basis. The Dropbox website works best on the two most recent versions of Internet Explorer (9+), Google Chrome, Safari (3+) and Firefox (3+).

The information room folder can be linked to an existing Dropbox account and downloaded using the Dropbox desktop application. The Dropbox application runs on Windows, Mac OS X, and Linux operating systems. The benefit of this option being

that any updated files can be set up to automatically sync to a dedicated folder on any linked computer. As the volume of data is greater than 2GB, a standard free account will not be sufficient. Transport Scotland will therefore assign each participant one Dropbox for Business license for use during the competition.

7.2.2 Additional guidance on using Dropbox may be found at:

[www.dropbox.com/help](http://www.dropbox.com/help)

7.2.3 Bulletins will be periodically issued to participants to inform of any new data that has been uploaded or updated within the Information Room during the course of the competition.

### **7.3 Membership and Access Rights**

7.3.1 A password will be required to access the Dropbox information. This will be provided by Transport Scotland.

7.3.2 The Dropbox website and application should only be used by participants in the downloading of information. Participants should not attempt to upload any information to share with Transport Scotland, or seek any communication with Transport Scotland or others through Dropbox.

### **7.4 Participant Security Precautions**

7.4.1 Participants shall ensure the access link and password provided are not shared with others outside of the participant's bid team.

7.4.2 Dropbox does not automatically log out the user when the browser window is closed. Users are recommended to use the logout button to end their session prior to closing the browser window.

7.4.3 Should any query arise regarding information room access, they shall be directed to Transport Scotland as part of the Tender Query or Final Tender Query process.

7.4.4 Dropbox does not operate any virus scanning software. Participants shall implement appropriate procedures and processes to prevent the downloading of documents and files containing viruses or other undesirable data.

### **7.5 Information Room and Competition Document sets**

7.5.1 As described in Section 6 the Information Room will contain data made available as part of the Procurement Process for information purposes and will take the form of 'libraries' containing a large number of individual documents or files.

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7.5.2 Electronic versions of each of the Competition Documents issued with the IPD will be lodged in Dropbox. Revised or updated versions issued during the Dialogue Stage, documents issued with the ISFT and revised or re-issued documents published prior to the submission of final tenders will all be uploaded onto Dropbox for Participant's use.

7.5.3 Where information is amended during the Procurement Process, the documents may be updated. If this occurs, the latest version of such documents will be titled so as to distinguish between the different versions. In situations where documents are to be added or deleted in the Information Room or the Competition Document sets, details of these amendments will be provided in a Tender Bulletin or Final Tender Bulletin, as appropriate.

7.5.4 On entering Dropbox, all the documents in the collection are presented in a folder structure, reflecting the six libraries of data. Folder contents can be ordered by title, file type or date modified. Individual documents or folders within the collection can also be retrieved using the search function.

7.5.5 A file listing all documents in the Information Room and Competition Document sets will be provided in Dropbox under an "index" document type. This will be revised as the contents of the room are changed. Recent additions will be highlighted in red font.

## **7.6 Dedicated Transport Scotland Mailbox**

7.6.1 Transport Scotland will maintain dedicated mailboxes to which the Participant will send all electronic communications.

7.6.2 Participants shall implement appropriate procedures and processes to prevent the uploading or downloading of documents and files containing viruses or other undesirable data.

## **7.7 Encrypted E-mail Service: PGP Set Up**

7.7.1 All Participants will have equal access to the Information Room. All information available on the Dropbox site is intended to be shared by all on a "read only" basis. However, to allow for private and secure communication between individual participants and the Scottish Government, a system of encrypted e-mails has been established.

7.7.2 PGP e-mail encryption is a service which enables Scottish Government to encrypt e-mail communications with recipients who reside outside of the Government Secure Intranet (GSI).

7.7.3 Standard e-mails provide no protection at all for the information contained in them. Even password protecting a Word or Excel file doesn't provide adequate protection under the requirements and responsibilities that the Scottish Government operates. PGP e-mail provides encryption that is strong enough to meet the requirements of Scottish and UK government standards.

7.7.4 PGP encryption works by making use of what's known as a public-private key pair. These are two values, which are unique to a particular person. Information is encrypted using the public key, and decrypted using the private key.

7.7.5 This means that if you want to send a PGP encrypted e-mail to someone, they must have PGP themselves, and they must give you their public key. This is used to encrypt your e-mail to them. When it arrives, the recipient's private key is used to decrypt it. Similarly, for them to send you a PGP encrypted e-mail, you must have given them your public key, which they use to encrypt the e-mail. When it arrives, your private key is used to decrypt it.

7.7.6 PGP works in this way because while a public key can be used to encrypt information, it can not then be used to decrypt it. It takes the private key to do that, and the private key should never be given out.

7.7.7 PGP e-mail encryption can be used for the electronic mail transmission of data up to and including the protective marking Restricted.

7.7.8 Participants will be expected to obtain and manage their own PGP e-mail solution. Shareware and freeware software is readily available on the Internet.

7.7.9 Participants should provide their public keys to the Scottish Ministers' Contact Person.

## **7.8 Further Assistance**

7.8.1 In the event that further help or assistance on technical matters regarding use of Dropbox or the dedicated mailbox or PGP e-mail is required, Participants should in the first instance contact the Scottish Ministers' Contact Person.



## **8. REQUESTS FOR CLARIFICATION AND SUBMISSIONS**

### **8.1 Introduction**

8.1.1 Requests for clarification or for further information on any matters in respect of the Procurement Process other than the operation of EDT shall be submitted by the Participant in accordance with this Section.

8.1.2 Any Tender Queries shall be submitted as soon as possible and in any case not later than the date set out in the Timetable.

8.1.3 Any Final Tender Queries shall be submitted as soon as possible and in any case not later than the date set out in the Timetable.

8.1.4 Pre or post Tender Period Meeting submissions shall be submitted before or on the dates specified in the Timetable.

### **8.2 Tender Queries and Final Tender Queries**

8.2.1 The process for creating either Tender Queries during the Tender or Final Tender Queries during the Final Tender Period is explained in detail in "Process Flowchart No. 1 – Tender Queries and Final Tender Queries" contained within the Appendix of this Volume 1.

8.2.2 Tender Queries or Final Tender Queries shall be submitted by the Participants to the Scottish Ministers by EDT.

8.2.3 Any number of queries may be included on each Tender Query and Final Tender Query submission, but each query must be provided by a unique, consecutive and sequential reference number that shall take the form of the letter Q, followed by the Participants code letter (A or B), followed by the relevant number (starting with 001 for the first query). E.g. Q.B.006 will be the sixth query raised by Participant B, Serco Caledonian Ferries Ltd.

8.2.4 Where the Participant wishes to attach additional documents to a query they should name each document by using the query naming system and add an a,b,c etc. suffix to the query number to provide a unique document number. The remainder of the filename can identify the contents if that is appropriate. E.g. document number Q.B.006.b will be the second document submitted as an attachment to the above query.

8.2.5 Tender Queries and Final Tender Queries which do not meet the above requirements shall not be considered by the Scottish Ministers and no response shall be given.

8.2.6 The Scottish Ministers shall notify Participants of any Tender Queries or Final Tender Queries that do not meet the requirements, and for audit trail purposes they will not be deleted and will remain on the Transport Scotland Outlook e-mail box.

### **8.3 Tender Answers and Tender Period Answers**

8.3.1 Answers to compliant Tender Queries and Final Tender Queries shall be issued in Tender Bulletins or Final Tender Period Bulletins, as appropriate. Except in the case of confidential queries, the Scottish Ministers shall give the same information to each Participant in a bulletin.

8.3.2 Subject to requirement, Bulletins will be issued weekly and the Scottish Ministers will strive to issue a response to a query in the Bulletin issued in the week following the week in which the query was received or in the final week before the submission of Outline Proposals or Final tenders if sooner.

### **8.4 Confidential Queries**

8.4.1 The Scottish Ministers reserves the right to transmit any Tender Query and Final Tender Query together with the relevant response by the Scottish Ministers to all Participants. Notwithstanding this, there may be occasions when Participants seek to submit a confidential query and the Scottish Ministers agrees that the response to any such query is confidential and, as such, the response may only be transmitted to the Participant who has requested the clarification.

8.4.2 When a Participant wishes the Scottish Ministers to treat a communication as confidential the procedure identified in Section 8.5 shall be followed.

8.4.3 Any communication received from a Participant not submitted in accordance with 8.5.2 below shall be treated as non-confidential, unless, in accordance with Section 8.4, the Scottish Ministers (at its absolute discretion) has deemed that a response to such a communication is confidential.

### **8.5 Creating Confidential Tender Queries and Confidential Final Tender Queries**

8.5.1 The process for creating Confidential Tender Queries and Confidential Final Tender Queries and receiving answers to them is explained in detail in "Process Flowchart No. 2 – Confidential Tender Queries and Confidential Final Tender Queries" contained in the Appendix of this Volume 1.

8.5.2 Any Confidential Tender Queries and Confidential Final Tender Queries shall be headed "Commercial-Restricted" and include an explanation as to why the query is considered confidential and the damage which could occur to the Participants enterprise if the contents are disclosed to third parties.

8.5.3 The Scottish Ministers shall notify the submitting Participant of any Confidential Tender Query or Confidential Final Tender Query which does not meet the requirements, and provide the submitting Participant with an opportunity to withdraw the query. For audit trail purposes it will not be deleted and will remain on the Transport Scotland Outlook e-mail box throughout the Procurement Process.

8.5.4 Subject to Section 8.6, answers to compliant Confidential Tender Queries and Confidential Final Tender Queries shall be issued in a Confidential Tender Bulletin or Confidential Final Tender Bulletin, as appropriate and e-mailed to the appropriate Participant only.

## **8.6 Treatment of Confidential Queries**

8.6.1 The decision whether a query or a response can be considered confidential or not, rests solely at the absolute discretion of the Scottish Ministers. If the Scottish Ministers considers, at its absolute discretion, that it is able to answer the query on a confidential basis, then it will do so. If the Scottish Ministers considers, at its absolute discretion, that it cannot provide an answer on a confidential basis, the Scottish Ministers shall notify the Participant and that Participant will have the opportunity to withdraw the query. However, if the Participant does not withdraw the query or the Scottish Ministers considers in its absolute discretion that the response to such a query should be released to all Participants to comply with the Scottish Ministers' obligations pursuant to the Regulations or otherwise, then the query and the associated response may be released to all Participants.

## **8.7 Pre or Post Tender Period Meeting Submission**

8.7.1 A Tender Period Meeting submission shall be made in the same way as the process for creating Confidential Tender Queries and Confidential Final Tender Queries explained in section 8.5 above, excepting they should be headed "Proposals for Dialogue-Restricted".

## **8.8 Disclaimer**

8.8.1 The Scottish Ministers shall not be responsible in any way to Participants as a result of any delay or failure in responding to a query or any decision not to respond to a communication (either in full or in part) or to treat any query as confidential or not confidential. Absence of a response from the Scottish Ministers shall not entitle the Participants to qualify their Tender Period Meeting submissions, Outline Proposals or Final Tenders.

## **8.9 Bulletins**

8.9.1 Bulletins shall be issued by the Scottish Ministers on a regular basis and will contain three parts:

Part A: will provide Scottish Ministers response(s) to non-confidential queries raised by the Participants;

Part B will set out any changes to the Competition Documents; and

Part C will provide a notification of any changes to the contents of the Information Room or other notifications, as appropriate.

8.9.2 Tender Bulletins and Final Tender Bulletins shall be issued to all Participants, however, when responding to a Confidential Tender Query, a Confidential Final Tender Query or a pre or post Tender Period Meeting submission, the Scottish Ministers shall respond using an e-mail containing the Confidential Tender Bulletin or a Confidential Final Tender Bulletin to the submitting Participant.

## **8.10 Contacts**

8.10.1 All requests for clarification or for further information on any matters in respect of the Procurement Process, or for any submissions of information including the submission of information in relation to Tender Period Meetings and correspondence on the same, shall be submitted by the Participant in accordance with Section 8.2 using PGP e-mail.

8.10.2 If the Participant needs to make urgent contact with the Scottish Ministers, or where the Participant requires clarification or further information in respect of a logistical matter, communications shall be made to the Scottish Ministers' contact person.

8.10.3 Communications during the Tender outwith the Tender Period Meetings with members of the Scottish Ministers' staff and Advisers or CMAL staff, other than with or through the Scottish Ministers' Contact Person or other than via PGP e-mail on matters pertaining directly to the Procurement Process are not permitted.

Clyde and Hebrides Ferry Services Contract for Provision of Ferry Services and Harbour Operating Agreement	ITT Documents: Volume 1, Process Overview
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**CLYDE AND HEBRIDES FERRY SERVICES**

**COMPETITION FOR THE CONTRACT  
FOR THE PROVISION OF SERVICES**

**VOLUME 1**

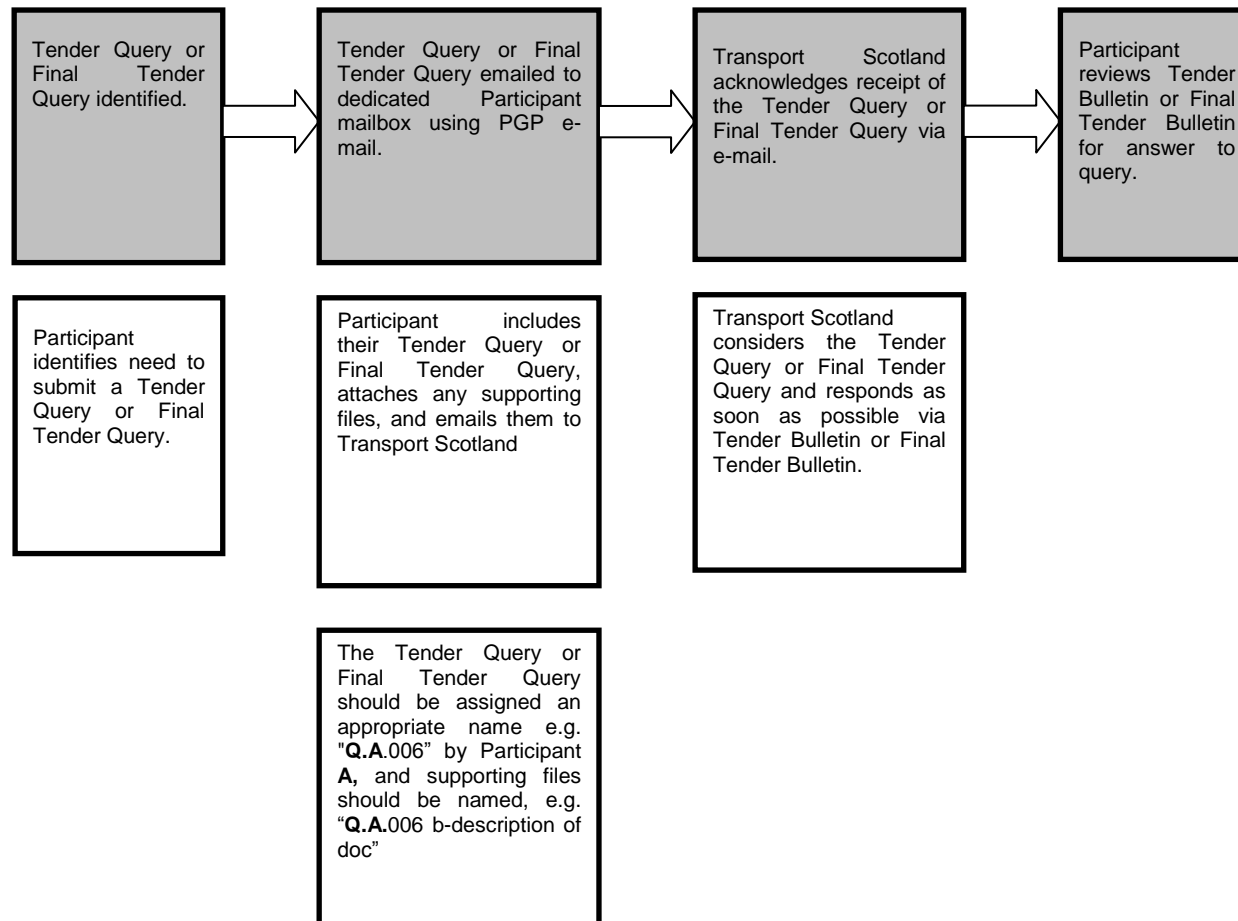
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**APPENDIX: PROCESS FLOWCHARTS**

Clyde and Hebrides Ferry Services Contract for Provision of Ferry Services and Harbour Operating Agreement	ITT Documents: Volume 1, Process Overview
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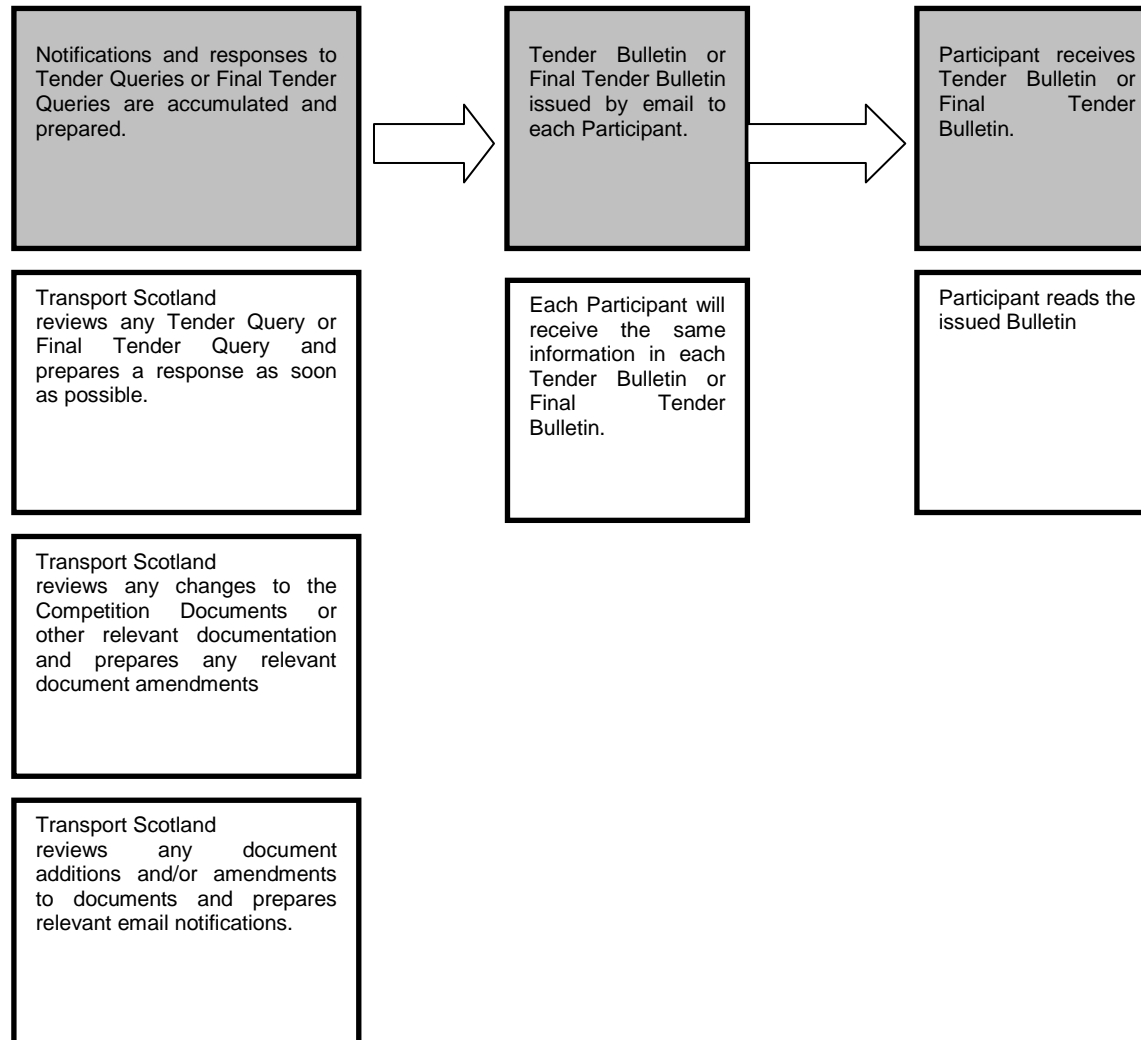
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**Process Flowchart 1  
Tender Queries and Final Tender Queries**

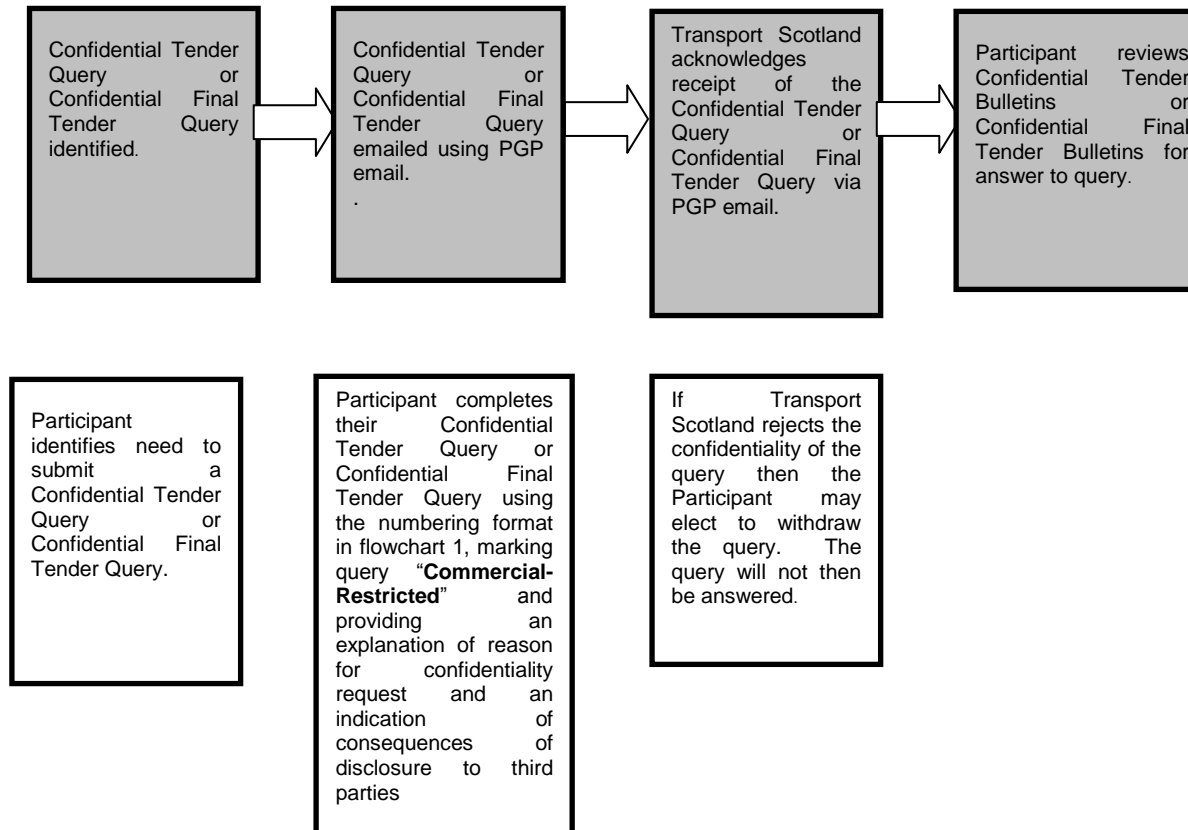




**Process Flowchart 1A  
Tender Bulletins and Final Tender Bulletins**



## Process Flowchart 2 Confidential Tender Queries and Confidential Final Tender Queries



**Process Flowchart 2A**  
**Confidential Tender Queries and Confidential Final Tender Queries – Bulletin Response**

