

# Northern Isles Ferry Service

## Invitation to Tender

Tender reference: TS/AMFC/SER/2018/01



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## Volume 1 – Instructions to Participants

# Document Version Control

## NIFS ITT Volume 1 – Instructions to Participants

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# 1. Important Notice

This document is issued by Transport Scotland pursuant to the functions of the Scottish Ministers under the Transport (Scotland) Act 2001 and Transport (Scotland) Act 2005.

1.1. The Scottish Government is the devolved Government for Scotland and is responsible for most of the issues of day-to-day concern to the people of Scotland, including health, education, justice, rural affairs and transport.

1.2. The duties and responsibilities of the Scottish Ministers with respect to the Scottish transport network are embodied in various Acts of the United Kingdom and the Scottish Parliament.

1.3. The Scottish Government is led by the First Minister who is nominated by the Scottish Parliament and in turn appoints the other Scottish Ministers who make up the Cabinet. The Scottish Government's civil servants are accountable to the Scottish Ministers, who are themselves accountable to the Scottish Parliament. Transport Scotland is an executive agency of the Scottish Government and contracts in the name of and on behalf of the Scottish Ministers.

1.4. Transport Scotland is responsible for helping to deliver the Scottish Government's capital transport investment programme, overseeing the safe and efficient running of Scotland's public transport, transport networks and national concessionary travel scheme.

1.5. This document is not a recommendation by the Scottish Ministers, or any other person, to enter into a contract, or to acquire shares in a current or prospective Participant or its parent undertaking. Potential investors considering any investment in a Participant, prospective Participant, or parent undertaking should make their own independent assessment and seek their own professional, financial and legal advice.

1.6. The information contained in the Competition Documents does not purport to contain all of the information that a prospective Participant or shareholder may require. Neither the Scottish Ministers, nor any of their employees, agents or advisers ("representatives"), make any representation or warranty (express or implied) (and no such representatives have any authority to make such representations and warranties) as to the accuracy, reasonableness or completeness of the information contained in this document.

1.7. All such persons or entities expressly disclaim any and all liability (other than in respect of fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors in or omissions from, this document or based on or relating to the recipient's use of this document, or the use by any of its subsidiaries or the respective representatives of any of them in the course of its or their evaluation of any Tender or the shares of any Participant or prospective Participant or any other decision. In the absence of express written warranties or representations, as referred to below, the information in this document shall not form the basis of any contract or any other agreement entered into in connection with the Ferry Service or acquisition of shares in a Participant.

1.8. The only information which will have any legal effect and the only information upon which any person may rely will be such information (if any) as has been specifically and expressly represented and/or warranted in writing to a Successful Participant in the relevant Contract agreement or in any other relevant agreement entered into at the same time as the Contract agreement is entered into or becomes unconditional. Nothing in this document is intended to create a Contract between the Scottish Ministers and any Participant or prospective Participant.

1.9. Transport Scotland reserves the right at any time to issue further supplementary instructions and updates and amendments to the instructions and information contained in this document as it thinks fit.

1.10. Transport Scotland reserves the right not to award the Contract to any Participant in situations where it has established that the Tender does not comply with applicable obligations in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions.

1.11. Transport Scotland reserves the right to cancel or withdraw the competition for the Ferry Service.

1.12. Unless the context otherwise requires, capitalised terms used in this document shall have the same meaning given to them as in Annex (iv) of this Volume 1.

1.13. All references in this document to Transport Scotland, where appropriate and unless the context otherwise requires are references to this bodies' predecessors and successor(s).

1.14. This document is subject to copyright. Neither this document, nor any part of it, nor any other information supplied in connection with it, may be published, reproduced, copied or distributed in any way except with the prior written consent of Transport Scotland.

## 2. Invitation to Participants

### Introduction

2.1. This procurement competition is being conducted by Transport Scotland, on behalf of the Scottish Ministers, under restricted procedure pursuant to The Public Contracts (Scotland) Regulations 2015 ("the Regulations").

2.2. The Successful Participant shall be required to execute the Contract (as completed with information from the Successful Participant's Tender) and any other contractual documentation which may be required by Transport Scotland.

2.3. The issue of this Invitation to Tender invites Participants to prepare and submit their proposals for operating the Ferry Service in accordance with the Specification of Requirements (Volume 2) and Volume 3 - Draft Contract and Schedules.

2.4. Transport Scotland expects to receive Tenders that contain no qualifications. Participants should make full use of the of the information provided with this Invitation to Tender and, thereafter, the Tender Query process. Tenders that contain qualifications may be treated as non-compliant and removed from the Procurement Process at the absolute discretion of Transport Scotland.

2.5. The issue of this Invitation to Tender shall not be construed as a commitment by Transport Scotland to finalise a Contract following the Procurement Process.

### ESPD/Contract Notice and Pre-Qualification

2.6. The competition for the Ferry Service was advertised by the publication of the Contract Notice by concurrent display in the Official Journal of the European Union (OJEU reference number: 2018/S 187-422810) and the Public Contracts Scotland portal ([www.publiccontractsscotland.gov.uk](http://www.publiccontractsscotland.gov.uk)).

2.7. The ESPD document was available on the Public Contracts Scotland portal to be downloaded by each organisation who wished to express an interest in the advertised Contract Notice.

2.8. Transport Scotland has undertaken an assessment of Economic Operators who provided an ESPD Submission in conformity with the requirements and selection criteria published in the Contract Notice.

2.9. With an upper limit of 5 Participants, Transport Scotland has selected - openly, transparently and without discrimination - suitably qualified and experienced Economic Operators to Tender for the Contract.

2.10. In the event that a Participant alters its composition (which shall include, but not be limited to, a change in the identity of any entity named in the Tender response whose capacity has been relied upon in responding to the Tender), Transport Scotland reserves the right to request that any proposed reconstituted Participant complete the ESPD as directed by Transport Scotland for re-evaluation in accordance with the criteria used in relation to the evaluation of the original request to participate.

## Letter of Confidentiality and Non-Collusion

2.11. 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. The Letter of Confidentiality and Non-Collusion shall not form part of the Contract.

## No Warranty

2.12. The Procurement Information is given in good faith for the guidance of Participants. 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 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.

2.13. Transport Scotland, its Advisers and the Scottish Ministers:

- 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.

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

2.15. 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.



2.16. No Procurement Information shall be construed as forming part of the Contract unless such Procurement Information is expressly referred to in the Contract.

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

2.18. 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.

## Purpose of the Competition

2.19. The purpose of the competition is to enable Transport Scotland to appoint a suitably qualified Operator, who is or will be eligible to be a Community Shipowner, to undertake the Northern Isles Ferry Service (hereafter referred to as the Ferry Service). The responsibilities in respect of the Ferry Service have been stated as the mobilisation period prior to 31 October 2019 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 base case recalculation, as outlined at 2.52 of this Volume 1.

2.20. The contractual responsibilities shall commence at the stated mobilisation period and full operational responsibility for the Ferry Service shall commence at the stated Contract Commencement Date.

2.21. This Invitation to Tender (ITT) sets out:

- The Northern Isles Ferry Service requirement (Volume 2, Specification of Requirements), for which Transport Scotland is seeking Tenders;
- the overall requirements in respect of the Packages, the Delivery Plans and certifications to be submitted by Participants for the Ferry Service;
- how the Participants should complete their Tenders;
- how the Participants' Tenders will be evaluated; and
- an indicative Procurement Timetable.

## Invitation to Tender Structure

2.22. The Invitation to Tender (ITT) is comprised of 3 volumes. Each have their purpose to inform and guide Participants in the Tender process and preparing their Tenders.

2.23. This Volume 1 document should be read in conjunction with the other volumes issued in this Invitation to Tender.

2.24. The 3 volumes are:

- Volume 1 – Instructions to Participants;
- Volume 2 – Specification of Requirements and Delivery Plans; and
- Volume 3 – Draft Contract and Schedules.

2.25. In terms of Tender submission, Transport Scotland requires Participants to produce a set of packages, outlined in this Volume 1, consisting of:

- Package A - Operational Services Delivery Plans;
- Package B - Services Management and Systems Delivery Plans;
- Package C - Tender Sum Submission; and
- Package D - Certificates

## Competition Procedure

2.26. The competition shall be carried out in accordance with the 'Restricted Procedure' as described in [The Public Contracts \(Scotland\) Regulations 2015](#).

2.27. The Invitation to Tender shall be issued by Transport Scotland to the selected Participants.

2.28. Only the Participants invited to do so by Transport Scotland shall submit a Tender which shall be the basis for the evaluation and subsequent Contract Award.

2.29. The Successful Participant will be determined on the basis of the Most Economically Advantageous Tender and in accordance with The Public Contracts (Scotland) Regulations 2015.

2.30. Prior to the award of any Contract, Transport Scotland shall implement a standstill period in accordance with The Public Contracts (Scotland) Regulations 2015.

## Revisions and Clarifications to the Procurement

2.31. 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.

2.32. 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 Transport Scotland 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.

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

## Discontinuance or Suspension of the Procurement Process

2.34. 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.

2.35. 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;
- fails to comply with the requirements of the Competition Documents;
- fails to satisfy the requirements stated in the Competition Documents in respect of any Tenders; and/or
- there is any change in the composition of the Participant.

2.36. 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, 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.

2.37. 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.

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

2.38. Any expenditure, work or effort undertaken during the Procurement Process is a matter solely for the commercial judgment of the Participant and is at the Participant's own risk and expense.

2.39. Transport Scotland shall not be responsible for the costs, expenses or losses of any Participant in relation to any matter referred to in this document howsoever incurred and/or any aspect of the Procurement Process.

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

2.40. All information submitted to Transport Scotland may require 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.

2.41. 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.

2.42. 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.

2.43. 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.



2.44. 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.

2.45. 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.

## Disqualification

2.46. 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.

## Conflict of interest

2.47. 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.

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

2.49. 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. 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.

2.50. In the event that agreement is not reached on terms acceptable to Transport Scotland, the Participant will be excluded from further consideration. Transport Scotland's decision on the matter shall be final.

## Contract Period

2.51. The Ferry Service Contract is being awarded for 8 years with a break option exercisable before the sixth anniversary of the Contract Commencement Date which, if exercised, will bring the Contract to an end at the expiry of its sixth year, unless the parties agree to an earlier termination. The Contract shall incorporate provision for a further 2 years extension, following review and base case recalculation by the end of contract year 4, before entering year 6. If Transport Scotland are content with the outcome of the base case recalculation the Contract can continue for the further 2 year period or, should the review and associated negotiations prove unacceptable, the Contract would terminate at the end of year 6. Where the Contract runs for 8 years it is expected to terminate at the Contract End Date.

## Competition Timetable

2.52. An indicative schedule of key milestones and activities for the Procurement Process is provided in the Timetable at Table 1.

Activity	Date
Invitation to Tender issued	17 January 2019
Deadline for submission of Tender Queries	22 March 2019
Submission of Tenders	29 April 2019
Tender Evaluation	28 June 2019
Contract award	2 August 2019
Commencement of Mobilisation period	9 August 2019
Service Commencement	31 October 2019

**Table 1 – Procurement Process Indicative Schedule**

2.53. Transport Scotland reserves the right to amend the above dates and the Procurement Process activities. Any amendments to the timetable or activities will be notified to Participants in writing by Tender Period Bulletin.

## Industry Day

2.54. Transport Scotland will hold an Industry day for all Participants 2 weeks following the issue of the ITT. The purpose of the Industry Day is to enable Transport Scotland to give a short presentation on the contents of the ITT. It is also to enable Participants to clarify any points within the ITT documentation and to raise any questions which may assist them in the completion of their Tender proposals.

2.55. Following the presentation there will be a question and answer session during which Participants may ask further questions to assist them in the completion of their Tender proposals. A record of all questions asked and answers given will be circulated to all Participants within one week of the Industry Day.

2.56. Should Participants prefer to submit questions in writing following the Industry Day it should be noted that all such questions and the responses provided by Transport Scotland will be issued to all Participants.

## 3. Tender Submission

### Tender Period

#### Introduction

3.1. The Tender Period shall be the time period from the date of issue of the Invitation to Tender through preparation and submission of the Tender, until the specified closing date for submitting the Tender to Transport Scotland.

3.2. Participants shall note the closing date for Tender Queries which shall be earlier than the Tender submission date.

3.3. All Participants must submit their Tender by the specified closing date. Tenders returned after the Tender submission deadline may be rejected at the sole discretion of Transport Scotland.

#### Confidentiality

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

3.5. Transport Scotland may impose on Participants requirements aimed at protecting the confidential nature of the Procurement Process and the information which Transport Scotland makes available throughout the Procurement Process.

#### Tender Period Communications

3.6. All communications during the Tender Period between the Participants and Transport Scotland shall be carried out via Electronic Document Transmission (EDT), as described in Section 5 of this Volume 1 (other than any communications with Transport Scotland in relation to logistics - which shall be addressed to Transport Scotland's Contact Person as detailed in Annex (iv) Definitions).

3.7. Transport Scotland shall acknowledge receipt of all electronic submissions.

3.8. Transport Scotland will respond to the Participant by e-mail to the Participant's notified point(s) of contact.



## Tender Non-Compliance

3.9. Transport Scotland shall be entitled to treat any incomplete, non-compliant or ambiguous Tender (or errors in any such Tender) at its absolute discretion. Submission of an incomplete or non-compliant Tender may result in rejection. If a Tender contains any qualifications in respect of Volume 3 – Draft Contract and Schedules, then that Tender shall be deemed to be non-compliant and will lead to the Tender being disqualified.

## Parent Company Guarantee

3.10. Where so specifically advised to the Participant in the Invitation to Tender, or subsequently advised prior to the execution of the Contract as a consequence of the financial position of the company differing materially from that disclosed in the ESPD, Transport Scotland 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 Transport Scotland 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/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 Transport Scotland to treat the Tender as non-compliant and will lead to the Tender being disqualified. A legal opinion will also be required to cover the validity and enforceability of the Parent Company Guarantee.

## Form of Tender

3.11. The Participant shall package the Tender in line with the Form of the Tender shown in Table 2 below.

3.12. All Tenders shall include an overarching Executive Summary that describes the Participants' vision for the Ferry Service and how they will deliver that vision. All Tenders shall additionally include Executive Summaries for each of the Delivery Plans proposed.

Tender Package	Package Section
Formal Offer	Formal Offer Evidence of authorised signatories
Executive Summary	Tender Delivery Plan (separate Executive Summary for each Plan)

Package A - Operational Services	A1 Vessels Provision A2 Passenger, Vehicle and Freight Demand Management A3 Passenger Facilities A4 Port and Harbour Logistics A5 Marketing and Sales A6 Customer Care and Accessibility
Package B - Services Management and Systems	B1 Human Resources, Training and Key Personnel B2 Mobilisation B3 Operating B4 Health and Safety B5 Environmental Management B6 Stakeholder Engagement
Package C - Tender Sum Submission	C2 Base Case Schedule of Price Breakdown C3 Tender sum
Package D - Certificates	D1 Anti-Collusion Certificate D2 Insurance Requirements for each Component (two copies) D3 Commitment to Execute Parent Company Guarantee for each Component (two copies) D4 Commitment to Execute the Contract D5 Certificate of non-involvement in serious organised crime

Table 2 – Form of Tender

## Submission of Tenders

### Instructions

3.13. Tenders, and any documents or other material forming part of the Tender, shall be submitted in the English Language and priced in pounds sterling (£).

3.14. Participants shall provide the information required in the Form of Tender set out in this Volume 1 in a clear and concise manner and only material specifically required in the Form of Tender shall be included. General promotional or publicity material shall not be submitted as part of any Tender. Participants must include, as part of their Tender submission, a clear statement confirming that all requirements of Volume 2 (Specification of Requirements) will be met and provide detailed proposals setting out, in the relevant Delivery Plans, how they intend to deliver the Ferry Service.

3.15. Tenders shall be submitted by Participants under the headings given using the tables, forms and certificates supplied by Transport Scotland in the Form of Tender, and shall follow the order and numbering contained in the Form of Tender. The font of the text to be used by Participants in any Tender shall be Arial 11 point with single spacing. Tenders must not be qualified and shall be submitted in accordance with the Competition Documents and any other part of the information provided by Transport Scotland.

3.16. Participants shall submit their Tender, which they have been invited to submit, as indicated in paragraphs 3.18 to 3.22 of this Volume 1 to arrive by no later than 12.00 Noon on the date indicated in the ITT (the date and time identified for the submission of Tenders in the Timetable) or such later date as may be subsequently advised in writing.

3.17. Submissions should be sent to the following address before the Tender submission deadline:

Alan Malone  
Transport Scotland Procurement  
Tender for the Northern Isles Ferry Service  
Transport Scotland  
Buchanan House  
58 Port Dundas Road  
Glasgow  
G4 0HF  
United Kingdom

3.18. Participants shall ensure that they receive a written receipt from the addressee, or their representative at Transport Scotland. Such written receipt shall acknowledge the date and time of receipt and shall be signed by the addressee or their representative. Transport Scotland's own record of time and date of receipt shall be conclusive and it shall be the Participant's responsibility to obtain valid confirmation of safe receipt by Transport Scotland.

3.19. Except for manifest error or as may otherwise expressly be agreed by both Transport Scotland and the Participant, the contents of the submitted Tender shall be deemed to be binding upon the Participant and open for acceptance by Transport Scotland for the duration of the validity period of 9 months.

## Tender Package

3.20. Participants shall submit their Tender on an encrypted, secure memory stick to Transport Scotland. Participants shall notify Transport Scotland of the appropriate password. Participants shall also provide one hard copy of their Tender which shall be contained in a folder or set of folders (which may be ring binder folders), each of which must contain a contents list for each Package which shall be bound immediately inside the front cover. Each item in the contents list shall be cross-referenced to show the page numbers where such items are contained in the Packages. Two hard copies must be provided (one with Packages A, B and D and one with Package C). Two memory sticks must be provided (one with Packages A, B and D and one with Package C).

3.21. Each Tender shall contain the Formal Offer (see Annex (v)), Tender and Delivery Plans Summary and Packages A, B and D. No pricing information is to be provided in any of Packages A, B or D. For the avoidance of doubt, only Package C should contain pricing information.

3.22. Each Tender shall contain the relevant Packages and Delivery Plans in accordance with the requirements set out below:

- Each Tender shall be separately wrapped – with no markings on the wrapping.
- Each page of each Package shall be numbered clearly.
- The Tender for Packages A, B and D must not include any financial information.
- Package C shall be contained within a separate sealed envelope
- Drawings and charts and other similar items shall be numbered and a drawing list shall be included as part of the contents list.
- The information within the memory stick shall be saved in both Microsoft Word 2010 format and Adobe PDF format (version X), drawings or charts shall be provided in PDF format.

3.23. All financial information or data forming part of the Tender shall be submitted in Pounds Sterling (£). Where official documents include financial data in a foreign currency, a Sterling equivalent shall be provided by the Participant and any such Sterling equivalent shall be certified as a “true and fair” equivalent by the Participant and the relevant date of the conversion declared.

3.24. Any Participant whose Tender is not in accordance with the Form of Tender shall be rejected by Transport Scotland.



## Consortium and Joint Ventures

3.25 Each Participant shall ensure that its Tender 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. Participants intending to form a consortium must appoint a lead Participant for Tendering purposes who must respond to all of the requirements of Packages, A, B, C and D.

## Clarifications

3.26. Tenderers shall note that Transport Scotland may, subject to the Regulations, request Participants (at the sole discretion of Transport Scotland) to clarify aspects of their Tender or to confirm the commitments identified therein but only to the extent that this does not have the effect of modifying, substantially, aspects of the Tender and does not distort competition nor have a discriminatory effect. Transport Scotland may, as appropriate, enter into Tender clarifications and commercial discussions with any Tenderer(s).

3.27. Request for clarifications shall be in writing and if deemed appropriate, a bid clarification meeting with shortlisted compliant Tenderer(s) to clarify and/or verify their Tender submissions may be convened. The outcome of the clarifications may lead to an increase or decrease in the initial evaluation award criteria score.

## 4. Evaluation Process

### General

4.1. This section 4 explains, for the guidance of Participants, the basis upon which Transport Scotland intends to evaluate Tenders. Tenders will be evaluated by Transport Scotland on the basis of quality and price. Any decision of Transport Scotland concerning the evaluation of a Tender shall be at the sole discretion of Transport Scotland.

4.2. Tenders shall be evaluated in accordance with the process outlined in this section 4 to determine which is the Most Economically Advantageous Tender to the Contracting Authority, pursuant to Regulation 67 of the Public Contracts (Scotland) Regulations 2015.

4.3. Subject to paragraphs 2.29 of Volume 1, the Ferry Service contract will be awarded to the Participant who offers Transport Scotland the Most Economically Advantageous Tender in terms of quality and price in accordance with the Evaluation Process set out in this Volume 1 section 4.

4.4. The award criteria used in the evaluation of Tenders shall be weighted as follows: Quality (Packages A and B): 35%, and Price (Package C) 65% as indicated in Table 8 of this Volume 1.

4.5. In addition to the comparative evaluation of the quality and price submissions in Packages A, B, and C respectively, Packages A (Requirements V1-V2 only as set out in Volume 2, Specification of Requirements) and D will be evaluated against a number of pass/fail requirements. Failure to obtain a pass for these requirements shall result in the Participant's Tender being deemed non-compliant and removed from the competition as a result.

4.6. The Panels identified in paragraph 4.9 shall carry out the evaluation of Packages A, B and D prior to opening the separately sealed envelopes containing Package C.

### Evaluation of the Tenders by Panels

4.7. Tenders shall be checked for general compliance and completeness and evaluated by five separate Panels, as follows:

- Panel 1: General Compliance and Completeness Check (excluding Package C);
- Panel 2: Package A and B Delivery Plans;
- Panel 3: Package C – Tender Sums;
- Panel 4: Package D – Certificates; and
- Panel 5: Aggregated Quality and Price Scores.

4.8. Participants shall note that Panels 2, 3 and 4 may involve the use of sub-panels and the membership of each Panel or sub-panel will not necessarily be mutually exclusive.

4.9. The Panels shall be responsible for checking and evaluating (as appropriate) the specific sections of the Tenders as identified in Table 3 below. The table also identifies whether a section of the Tender is (a) not scored, (b) scored, (c) scored with a minimum threshold, or (d) a pass/fail section.

Package A Operational Services	Panel	Scoring
Formal Offer and accompanying Schedule 1 Checklist and evidence of authorised signatories	1	Pass/Fail Must be signed otherwise Tender shall be declared non-compliant.
Tender and Delivery Plans Executive Summary	N/A	Not scored
<b>A.1 Vessel Provision</b>		
<i>V1 Only for Participants proposing alternative vessel solutions.</i>	PASS/FAIL	PASS/FAIL
<i>V2 Only for Participants proposing alternative vessel solutions.</i>	PASS/FAIL	PASS/FAIL
Package A Operational Services	Panel	Scoring
V3 Vessel Maintenance	1 and 2	Scored
A2. Passenger, Vehicles and Freight Demand Management	1 and 2	Scored
A3. Passenger Facilities	1 and 2	Scored
A4. Ports and Harbour Logistics	1 and 2	Scored
A5. Marketing and Sales	1 and 2	Scored
A6. Customer Care and Accessibility	1 and 2	Scored
Package B Services Management and Systems	Panel	Scoring
B1. Human Resources, Training and Key Personnel	1 and 2	Scored
B2 Mobilisation	1 and 2	Scored
B3 Operating Management	1 and 2	Scored
B4 Health and Safety	1 and 2	Scored

B5 Environmental Management	1 and 2	Scored
B6. Stakeholder and Community Engagement	1 and 2	Scored
	<b>Panel</b>	<b>Scoring</b>
C2 Base Case Schedule of Price Breakdown	3	Pass/Fail (where applicable must accord with specified Cost Allocation Method)
C3 Tender Sum	3	Scored
<b>Package D Certificates</b>	<b>Panel</b>	<b>Scoring</b>
D1 Anti-Collusion Certificate	1 and 4	Pass/Fail
D2 Insurance Requirements	1 and 4	Pass/Fail
D3 Commitment to Execute Parent Company Guarantee	1 and 4	Pass/Fail
D4 Commitment to Execute the Contract	1 and 4	Pass/Fail
D5 Certificate of non-involvement in serious organised crime	1 and 4	Pass/Fail

**Table 3 – Checking and Evaluation of Tenders**

### General Compliance and Completeness Check

4.10. Panel 1 shall carry out a general compliance and completeness check of the Formal Offer and Packages A, B and D.

4.11. Package C shall only be opened after Packages A, B and D, but not before these have been checked for general compliance and completeness and the evaluation process, including any clarifications, completed in respect of those Packages. Package C will be opened by Panel 3, who will be quarantined from all other Panel members until the evaluation process for Packages A and B have been completed.

4.12. Transport Scotland reserves the right to seek clarification in respect of any missing, incomplete or ambiguous information in the Tenders. Transport Scotland shall treat an incomplete or ambiguous Tender (or errors in a Tender) in such manner as it shall determine in its absolute discretion.

4.13. Participants are reminded that the submission of an incomplete or non-compliant Tender may result in rejection of that Tender at the absolute discretion of Transport Scotland.



## Evaluation Packages A and B

4.16. The quality proposals for this Tender carry an overall weighting of 35% which is broken down according to Tables 5 and 6 of this Volume 1.

4.17. Panel members shall undertake individual scoring of Participants' responses to the proposed Delivery Plans of Packages A and B in accordance with Table 4, of this Volume 1 below.

Strength of Response	Participant's Proposals	Score
Unacceptable	The proposal demonstrates that the Participant fails to understand the technical, logistical or management challenges of the Service and that its approach leaves Scottish Ministers seriously exposed.	0
Weak	The proposal demonstrates that the Participant appreciates, but falls short of a clear and full understanding of the technical, logistical and management challenges of the Service, and that its approach appears to be weak in some significant areas.	1
Acceptable	The proposal demonstrates that the Participant has understood the technical, logistical and management challenges of the Service to an acceptable level, and that its approach appears to be sufficiently comprehensive, effective and robust.	2
Good	The proposal demonstrates that the Participant's understanding of the technical, logistical and management challenges of the Service is good, and that its approach to appears to be comprehensive, effective and robust to a better than average or satisfactory degree.	3
Excellent	The proposal demonstrates that the Participant's understanding of the technical, logistical and management challenges of the Service is excellent, and that its approach appears to be comprehensive, effective and robust to an exemplary degree.	4

**Table 4 – Quality Assessment of Delivery Plans**

4.18. A final score for each Delivery Plan will be determined utilising the mean average score of the Panel members. Where individual evaluator's scores for particular requirements differ from one another, i.e. a difference of 2 steps or more in the marking scheme, the scores and the comments will be discussed at a moderation meeting. Following discussion, evaluators may amend their original score for that requirement. Should no evaluator find fault with their original score, all scores will stand. Each Participant's Quality score shall be calculated using the following formula:

$$\text{Average panel score for requirement} \times \text{weighting} = \text{requirement weighted score}$$

*Sum of all requirement weighted scores = Quality Score for each Delivery Plan*

*Sum of all Delivery Plan scores = Participant's Total Quality Score out of 400*

*Participant's Total Quality Score divided by 4 (to give score out of 100) x 35% available for  
Quality = **Participant's Final Quality Score***

4.19. The 5 existing Vessels are available for use by Participants. Participants proposing to use the existing fleet shall not be subject to the PASS / FAIL evaluation of V1 – V2 and need not provide any evidence in support of those requirements.

4.20. Alternative vessels solutions will be evaluated as PASS / FAIL against the existing vessel specifications (contained in the Information Room) and requirements V1 – V2. The proposed alternative vessels must be at least equal to the specification and condition of the existing vessels including sufficient carrying capacity and ability to operate to the timetables, routes and requirements of the Ferry Service.

**4.21. For the avoidance of doubt, Participants proposing alternative vessels must respond to all requirements V1, V2 and V3. Participants using existing vessels need only respond to V3.**

4.22. The score for each Tender Package A and Package B will be weighted and aggregated to give a combined weighted score out of 400 in accordance with the following tables:

Package/ Delivery Plan	Requirement	Weighting / Sub-Weighting	Maximum Attainable Weighted Score
<b>A1 Vessel Provision</b>			
	V1 <i>Only for Participants proposing alternative vessel solutions.</i>	PASS/FAIL	PASS/FAIL
	V2 <i>Only for Participants proposing alternative vessel solutions.</i>	PASS/FAIL	PASS/FAIL
<b>Package A – Services</b>		<b>60</b>	<b>240</b>
	V3 Vessel Maintenance	<b>10</b>	<b>40</b>
<b>A2. Passenger, Vehicles and Freight Demand Management</b>		<b>20</b>	<b>80</b>
	DM1 Passengers and Vehicles	7.5	30
	DM2 Freight	7.5	30
	DM3 Livestock	5	20
<b>A3. Passenger Facilities</b>		<b>5</b>	<b>20</b>
	PF1 Ferry Terminal	1.5	6
	PF2 Vessels Facilities	2	8
	PF3 Catering	1	4
	PF4 Retail	0.5	2
<b>A4. Ports and Harbour Logistics</b>		<b>2.5</b>	<b>10</b>
	PH1 Operations	2.5	10
<b>A5. Marketing and Sales</b>		<b>10</b>	<b>40</b>
	MS1 Marketing	5	20
	ME2 Booking System	3	12
	ME3 SMART Ticketing	2	8
<b>A6. Customer Care and Accessibility</b>		<b>12.5</b>	<b>50</b>
	CCA1 Customer Care	4	16
	CCA2 Customer Complaints Process	3.5	14
	CCA3 Accessibility	5	20

Package / Delivery Plan	Requirement	Weighting / Sub- Weighting	Maximum Attainable Weighted Score
<b>Package B – Services Management and Systems</b>		<b>40</b>	<b>160</b>
<b>B1. Human Resources, Training and Key Personnel</b>		<b>20</b>	<b>80</b>
	HR1 Staffing Levels and Structure	2	8
	HR2 Crewing	2.5	10
	HR3 Fair Work Practices	2.5	10
	HR4 Trade Unions	2.5	10
	HR5 Discrimination and Equality	2	8
	HR6 Employment Opportunities	2	8
	HR7 Training	2.5	10
	HR8 Key Personnel	2	8
	HR9 Pensions	2	8
<b>B2. Mobilisation</b>		<b>5</b>	<b>20</b>
	M1 Programme	2	8
	M2 Management Process	1	4
	M3 Risks and Mitigation	2	8
<b>B3. Operating Management</b>		<b>5</b>	<b>20</b>
	OM1 Operating Management Methodology	2	8
	OM2 Quality Management Methodology	2	8
	OM3 Security	1	4
<b>B4. Health and Safety</b>		<b>2.5</b>	<b>10</b>
	HSE1 Health and Safety Systems	1.5	6
	HSE2 Zero Accident Culture	1	4
<b>B5. Environmental Management</b>		<b>2.5</b>	<b>10</b>
	EM1 Environmental Management	2.5	10

B6. Stakeholder and Community Engagement		5	20
	SCE1 Stakeholder and Community Engagement	2.5	10
	SCE 2 Involvement of Supported Businesses and SMEs	2.5	10

Table 5 – Weighted Quality Assessment of Package A and Package B Delivery Plans

4.23. The combined quality score for Packages A and B shall be calculated by adding each of the weighted scores for the elements of Package A arising from the application of scorings on the basis of Table 5 of this Volume 1 to the individual Package B quality scores on the basis of Table 6 and reweighting the Participant's aggregated weighted score by a factor to provide a possible attainable total score of 100, i.e. (Total weighted score for Package A plus total weighted score for Package B) divided by 4.

### Evaluation Package D

4.24. Panel 4 shall evaluate the contents of Package D set out in Table 6 of this Volume 1 on the basis of PASS or FAIL.

4.25. A Participant's submission for Package D shall be marked as a PASS if it attains a PASS in respect of all of the items listed in Table 6 of this Volume 1.

Package	Requirement	Scoring	Pass Requirement
<b>Package D – Certificates</b>			
	D1 Anti-Collusion Certificate	Pass / Fail	Signed and completed in accordance with Volume 3 with evidence of the requisite signing authority
	D2. Insurance Requirements	Pass / Fail	
	D3 Commitment to Execute Parent Company Guarantee	Pass / Fail	
	D4 Commitment to Execute the Contract	Pass / Fail	
	D5 Form of Parent Company Guarantee	Pass / Fail	
	D6 Certificate of non-involvement in serious organised crime	Pass / Fail	

Table 6 – Evaluation of Package D

### Opening and Evaluation of Package C – Tender Sum Submission

4.26. If a pass of Package A, (V1 and V2 only for alternative vessels solution Tenders) and/or Package D is not achieved by a Participant's submission, their Package C shall not be opened nor evaluated and the score for that Package C will be deemed to be nil.

4.27. Where a Participant's submissions for Packages A and B have been found to be compliant and complete pursuant to this Section 4, and that Participant has gained a PASS in respect of Package D, then that Participant's submission for Package C shall be opened and evaluated in accordance with the process outlined in this Section 4.

4.28. Package C shall first be checked for general compliance and completeness. Participants' submissions that fail the general compliance and completeness checks shall be deemed non-compliant and shall not be evaluated further and the score for that Package C will be deemed to be nil.

4.29. Compliant submissions of Package C shall be evaluated in accordance with this Section 4 of this Volume 1.

4.30. Following the completion of evaluation of Packages A, B and D by the relevant Panels, Panel 4 will complete the evaluation of Package C.

4.31. Package C3 Tender Sum shall be evaluated for each Participant as shown in Table 7.

4.32. The Tender Sum from Package C shall be Participants' prices for evaluation.

The Price response will be evaluated using the formula:

*The Participant submitting the lowest price will receive 100.00.*

*For each other Participant, Part C3 Tender Sum shall be evaluated as follows:*

*the product of 100 times [1 minus the difference between the sums of the Tender Sums submitted by the Participant as part of its Tender and that for the Participant submitting the lowest sum divided by the value of the Tender sums submitted by the Participant submitting the lowest sum], stated to two decimal places.*

*For example:*

*Participant X Price = £1,000                      Price Score = 100*

*Participant Y Price = £1,200                      Price Score = 100 (1-(200/1000)) = 80*

Package	Requirement	Scoring	Pass / Fail Requirement
<b>Package C – Tender Sum</b>			
	C2 Base Case Schedule	Not scored but required to complete C3.	N/A
	C3 Tender Sum	Scored	Scored out of 100

**Table 7 – Evaluation of Package C**

## Calculating the Combined Score for each Tender

4.33. The combined score for each Participant shall be calculated by combining the weighted Quality and Price scores. In the unlikely event of a tie, Transport Scotland reserves the right to appoint the Tenderer who obtains the highest overall Price score.

4.34. The scores calculated in accordance with this Section 4 shall be weighted in accordance with Table 8 of this Volume 1. The weighted scores shall be added to provide a combined weighted score for each Tender by the members of Panel 5.

Component	Score (out of 100)	Weighting	Total Weighted Score
Quality		35%	
Price		65%	
Combined Score		100%	

**Table 8 – Weighted Combined Score**

4.35. The Participant who has gained a pass in respect of the evaluation of (Package A V1 and V2 if proposing alternative Vessels solution) Package D, conducted pursuant to this Section 4; and achieved the highest combined weighted score in respect of Packages A, B and C, calculated in accordance with this Section 4, will be selected as the Successful Participant.

*For example (following 4.32. of this Volume 1) Participant X would be the Successful Participant.*

Participant X	Participant Y
Quality Score: <b>75.00</b> (300 / 4)	Quality Score: <b>87.50</b> (350 / 4)
Price Score: <b>100</b>	Price Score: <b>80</b>
Weighted Quality Score: $75 \times 35\% = \mathbf{26.25}$	Weighted Quality Score: $87.50 \times 35\% = \mathbf{30.62}$
Weighted Price Score: $100 \times 65\% = \mathbf{65.00}$	Weighted Price Score: $80 \times 65\% = \mathbf{52.00}$
<b>Final Score: <math>26.25 + 65.00 = 91.25</math></b>	<b>Final Score: <math>30.62 + 52.00 = 82.62</math></b>



## The Award of Contract

4.36. The Contract will be awarded on the basis of the criteria laid down in this Section 4 to Volume 1 – Instructions to Participants, provided that Transport Scotland has verified that the information given by the Successful Participant in relation to the ESPD and Contract Notice has not materially and detrimentally altered and the Tender is not abnormally low in terms of Regulation 69 of the Public Contracts (Scotland) Regulations 2015.

### Debrief on Outcome of the Competition

4.37. Prior to Transport Scotland awarding the Contract to the Successful Participant, the Economic Operators who took part in the Procurement Process will be informed in writing by Transport Scotland of the result of the procurement competition in the manner described in the Public Contracts (Scotland) Regulations 2015.

### Standstill Period

4.38. Prior to the award of any Contract, Transport Scotland will implement a standstill period in accordance with the Public Contracts (Scotland) Regulations 2015.

### Contract Award and Initiation

4.39. Transport Scotland may request the Successful Participant to clarify aspects of its Tender or confirm Contractual Obligations contained in its Tender, which will be transposed into the executable Contract provided that this does not have the effect of modifying substantial aspects of its Tender and does not risk distorting competition or causing discrimination.

4.40. The Successful Participant shall be awarded the Contract and required to initiate the Contract (as completed with information from the Successful Participant's Tender) and any other contractual documentation which may be required by Transport Scotland, including a Parent Company Guarantee if requested.

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

### Contract Award Notice

4.42. The Contract Award Notice is a public announcement of the outcome of the procurement competition. Transport Scotland shall publicise the Contract Award Notice in the Official Journal of the European Union (OJEU) and the Public Contracts Scotland portal in accordance with the Public Contracts (Scotland) Regulations 2015.

## 5. INFORMATION AVAILABLE TO PARTICIPANTS

### Access to Information

5.1. Transport Scotland will use Electronic Document Transmission (EDT) for communications consisting of:

- a cloud storage service (Dropbox); and
- a dedicated mailbox to which Participants will send all electronic communications ([NIFS@transport.gov.scot](mailto:NIFS@transport.gov.scot)).

5.2. The benefit of the use of EDT include the following:

- providing the Participants with improved access to information;
- speeding communications of documents between Transport Scotland and the Participants during the Tender Period; and
- providing a secure environment for the transfer of restricted information and communications during the Procurement Process.

5.3. Participants will have access to operational data and other useful information relating to the Ferry Service. Access to the Information Room will be through the use of a Dropbox website.

5.4. Information relating to the services undertaken during the current contract which shall be made available by Transport Scotland to the Participants shall be contained within an Information Room hosted on Dropbox.

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

5.6. Electronic copies of the Competition Documents and any revised or re-issued version of the Competition Documents shall be maintained in the Information Room. The operating instructions set out in this Section will be applicable throughout the Procurement Process.

5.7. The documents comprising the Information Room are contained within 4 libraries:

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

- Library of Operational Data: includes detailed figures on carryings, operations, finance, contracts and customer services; and
- Library of Vessel Data: includes vessels, fuel, operating manuals, maintenance, certificate check list, bare boat charters.
- Library of Staffing and Crewing Data: includes training, TUPE, pensions, staff turnover, Union and collective bargaining agreements.

5.8. Queries from Participants, Transport Scotland's responses, Tender Bulletins and Participants' submissions shall be issued using the dedicated email address and **NOT** through the use of Dropbox. Process flowcharts set out in this Section 5 to Volume 1, provide an overview of the processes which involve the use of EDT for communication.

## Dropbox

5.9. Dropbox is a cloud storage service that will be used by Transport Scotland to store information that can be accessed and downloaded by Participants.

5.10. Files in the Dropbox folder can be accessed from anywhere with an Internet connection by logging into their account to access the shared files and documents.

5.11. The data may be accessed and 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.

5.12. Additional guidance on using Dropbox can be found at: [www.dropbox.com/help](http://www.dropbox.com/help).

## Membership and Access Rights

5.13. All Participants will have equal access to the Information Room. All information available on the Dropbox site is intended to be shared with all Participants on a "read only" basis.

5.14. A password will be required to access the Dropbox files and information. This will be provided by Transport Scotland to Participants' nominated individual.

5.15. 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 other Participants through Dropbox.

## Participant Security Precautions

- 5.16. Participants shall ensure the access link and password provided are not shared with others outside of the Participant's bid team.
- 5.17. Dropbox does not automatically log out the user when the browser window is closed. Participants are recommended to use the logout button to end their session prior to closing the browser window.
- 5.18. Should any query arise regarding Information Room access, Participants shall be directed to Transport Scotland as part of the Tender Query process.
- 5.19. 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.

## Information Room and Competition Document Sets

- 5.20. 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. In the event that further help or assistance on technical matters regarding use of Dropbox is required, Participants should in the first instance contact Transport Scotland's Contact Person detailed in Annex (iv) Definitions.
- 5.21. Electronic versions of each of the Competition Documents issued with the Invitation to Tender will be lodged in Dropbox. Revised or updated versions will also all be uploaded into Dropbox.
- 5.22. 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 may require 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 as appropriate.

## Dedicated Transport Scotland Mailbox

- 5.23. Transport Scotland will maintain a dedicated mailbox to which Participants will send all electronic communications (NIFS@transport.gov.scot)
- 5.24. Requests for clarification or for further information on any matters in respect of the Procurement Process, other than the operation of EDT, shall only be submitted, through the dedicated email address, to Transport Scotland by the Participant, as a Tender Query in accordance with this Section.

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

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

## Tender Queries Process

5.27. The process for creating Tender Queries during the Tender Period is explained in detail in "Process Flowchart No. 1 – Tender Queries " contained below.

5.28. Tender Queries shall be submitted by Participants to Transport Scotland by email to the dedicated mailbox.

5.29. Any number of queries may be included on each Tender Query submission, but each query must be provided a unique, consecutive and sequential reference number that shall take the form of the letter Q, followed by the Participant's code letter (A, B, C or D) to be advised by Transport Scotland, followed by the relevant number (starting with 001 for the first query). For example, Q.B.006 will be the sixth query raised by Participant B.

5.30. Where the Participant wishes to attach additional documents to a query they should name each document by using the query naming system and add 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.

5.31. Tender Queries which do not meet the above requirements will not be considered by Transport Scotland and no response will be given.

5.32. Failure to satisfy Transport Scotland of the value of the information sought may result in the request being viewed as an unreasonable request for information.

5.33. Transport Scotland shall notify Participants of any 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.



Process Flowchart No. 1 – Tender Queries

## Tender Period Answers

5.34. Answers to compliant Tender Queries shall be issued in Tender Bulletins as appropriate.

5.35. Transport Scotland will endeavour where possible to issue a response to a query in the Tender Bulletin issued in the week following the week in which the query was received.

5.36. Except in the case of confidential queries, Transport Scotland shall give the same information to each Participant in a Tender Bulletin.

## Confidential Queries

5.37. Transport Scotland reserve the right to transmit any Tender Query together with the relevant response by Transport Scotland to all Participants. Notwithstanding this, there may be occasions when Participants seek to submit a confidential query and Transport Scotland agree 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.

5.38. When a Participant wishes Transport Scotland to treat a communication as confidential the procedure outlined in this Section must be followed.

5.39. Any communication received from a Participant not submitted in accordance with this Section shall be treated as non-confidential, unless, in accordance with paragraph 5.46 Transport Scotland (at its absolute discretion) has deemed that a response to such a communication is confidential.

## Creating Confidential Tender Queries

5.40. The process for creating Confidential Tender Queries and receiving answers to them is explained in detail in "Process Flowchart No. 2 – Confidential Tender Queries " contained below.

5.41. Any Confidential 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 Participant's enterprise if the contents are disclosed to third parties.

5.42. Transport Scotland shall notify the submitting Participant of any Confidential 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.

5.43. Subject to paragraphs 5.44 to 5.47, answers to compliant Confidential Tender Queries shall be issued in a Confidential Tender Bulletin and e-mailed to the appropriate Participant only.





Process Flowchart No. 2 – Confidential Tender Queries

## Treatment of Confidential Queries

5.44. The decision whether a query or a response can be considered confidential or not, rests solely at the absolute discretion of Transport Scotland.

5.45. If Transport Scotland considers, at its absolute discretion, that it is able to answer the query on a confidential basis, then it will do so.

5.46. If Transport Scotland considers, at its absolute discretion, that it cannot provide an answer on a confidential basis, Transport Scotland shall notify the Participant and that Participant will have the opportunity to withdraw the query.

5.47. If the Participant does not withdraw the query or Transport Scotland considers in its absolute discretion that the response to such a query should be released to all Participants to comply with Transport Scotland's obligations pursuant to the Regulations or otherwise, then the query and the associated response may be released to all Participants.

## Disclaimer

5.48. Transport Scotland 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 Transport Scotland shall not entitle the Participants to qualify their Tender submissions.

## Tender Bulletins

5.49. Tender Bulletins issued by Transport Scotland will contain 3 parts:

- Part A will provide Transport Scotland 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.

5.50. Tender Bulletins shall be issued to all Participants. When responding to a Confidential Tender Query Transport Scotland shall respond using the dedicated mailbox containing the Confidential Tender Bulletin to the submitting Participant.

## Contacts

5.51. If the Participant needs to make urgent contact with Transport Scotland, or where the Participant requires clarification or further information in respect of a logistical matter, communications shall be made to Transport Scotland's Contact Person as detailed in Annex (iv) Definitions.

5.52. Communications during the Tender with members of Transport Scotland's staff and advisers, other than through Transport Scotland's Contact Person or via the dedicated mailbox, on matters pertaining directly to the Procurement Process are not permitted.

## Package A and B Delivery Plans Overview

### Purpose

1. The Delivery Plans are included at Part 2 to the Specification of Requirements. The Delivery Plans (and supporting technical documents) serve a number of purposes. They:

- provide evidence that the Participant understands and will meet the requirements of Volume 2, Specification of Requirement
- confirm the Participant will commit to being contractually obliged to perform each Delivery Plan;
- provide evidence that the Participant's submission is robust, realistic and capable of delivering the Ferry Service requirements and could form the basis of a future Contract should the Participant be successful (i.e. it is 'deliverable');
- form the basis of the Quality evaluation.

### Evidence

2. Transport Scotland requires evidence that the Delivery Plans are robust and achievable which may be in the form of relevant examples. Participants are not expected to repeat evidence of their general competency as a ferry operator that will already have been submitted and assessed as part of the evaluation undertaken at the ESPD stage.

### Evaluation of Delivery Plans

3. The Delivery Plans will be evaluated in line with Section 4 of this Volume 1 and the score will form part of the overall evaluation. Participants should note that should they be successful in this competition and awarded the Contract for the Provision of Services for the Ferry Service, the Delivery Plans will be included in the appropriate Schedules to the Contract (Volume 3) and Participants shall be contractually bound to deliver their respective Delivery Plans.

## Delivery Plans Structure

4. There are two categories of Delivery Plans:

- Package A Operational Services: these Delivery Plans focus on operational aspects of the requirements.
- Package B Services Management and Systems: these Delivery Plans focus on the Participants' management approach and systems to deliver the Ferry Service.

## Delivery Plans Format

5. The Delivery Plans shall be submitted in the sequence presented in Table 2 of this Volume

1. Participants must prepare responses to all of the Delivery Plan requirements when developing their proposals.

6. Participants shall provide an overarching executive summary to provide an introduction to the proposals set out in all of the individual Delivery Plans. This may be used to advise parties who are not involved in the competition, but who nevertheless have an interest in the provision of the Ferry Service.

7. The objective of the overarching executive summary is to provide Transport Scotland with a clear, concise and complete summary of the Participant's proposals together with an insight into the reasoning and rationale behind those proposals. The executive summary should focus on the key features of the Delivery Plans (including all key assumptions made by the Participant).

8. The overarching executive summary must only contain information drawn from other areas of the Delivery Plans and must not contain any new material. Whilst diagrams and photographs may be used, they should be high level and should not be used to support other parts of the Delivery Plans where more detailed information is required.

9. The overarching and individual executive summaries will not be formally evaluated. They will, however, be scrutinised for consistency with the respective Delivery Plans and clarification will be sought if required.

10. An executive summary should also be included for each Delivery Plan outlining the Participant's approach to the delivery of the Ferry Service highlighting key improvements proposed.

11. Participants should be aware that identification of individual(s) and any included pertinent personal information may be submitted in Delivery Plan responses. Any employees identified must be made aware that information relating to them shall be: (a) shared during the evaluation process with all evaluation panel members; (b) (with regards to the successful Participant) placed as part of the contract documentation on a shared electronic site that can be accessed by Transport Scotland staff; (c) retained for the duration of Contract + 5 years beyond the end of Contract period; (d) information relating to unsuccessful Participants' tenders shall be destroyed after one year.

## Annex (ii)

# Package C: Base Case Part 1 - Instructions

## Base Case Schedule of Price Breakdown

### Introduction

1. A single submission of the Base Case Schedule within the Tender is required. The Base Case Schedule at Part 2 of this Annex (ii) shall be completed by Participants and returned as part of their Tender.
2. The submitted Base Case Schedule shall be taken into account by Transport Scotland for the purposes of comparing and assessing the offers made by each Participant in the evaluation of Tenders. The contents of the Successful Participant's Base Case Schedule submission shall be carried forward into the Contract Schedules for administering the Contract.
3. The Base Case Schedule shall be completed in the format issued such that Transport Scotland can readily understand the main components of cost in the rates and price.

### Base Case Schedule

4. The Base Case Schedule shall be compatible with the Specification of Requirements (Volume 2), proposals and Contractual Obligations contained in the Delivery Plans, such that there is a clear relationship between these activities and prices.
5. The Base Case Schedule is an excel workbook with formulae inserted and locked to aggregate costs, revenue and operator's return within and between worksheets. Each open cell (yellow) shall have a price inserted (expressed in Pounds Sterling) or metric tonnes, or a percentage, or such other value as indicated, to provide a complete computation of the Final Tender Sum proposed by the Participant.
6. Participants shall insert a figure in each open cell where required. The use of the term "included" or the insertion of a dash in the sum column or any other entry which prevents the spreadsheet from summing must be avoided.

### Costs and Revenue

7. The amounts stated against each item must be the full inclusive value of the costs to be incurred and revenues projected to be earned in providing the Services according to the conditions, terms and obligations outlined in this Volume 1 – Instructions to Participants and Volume 3 – Draft Contract and Schedules.



8. All prices shall be exclusive of Value Added Tax (VAT).
9. All prices shall be inclusive of all relevant taxes (other than VAT), duties, charges and other fees.
10. The costs shall be prepared on the assumption that TUPE will apply (although the actual application of TUPE remains a matter of Law).
11. The rates and prices shall represent the actual distribution of the anticipated costs. If any items appear to be priced high or low, the Participant may be requested to justify the pricing in terms of Regulation 69 of [The Public Contracts \(Scotland\) Regulations 2015](#). If Transport Scotland remains of the opinion that the offer is abnormally low, they may reject the Participant's Tender accordingly.

### Operator's Return

12. The Participant shall provide in the Base Case Schedule the sum they require to earn to cover their return on investment, working capital and risks within the contract.

## Part 2 – Template for Submission: C1 Base Case Schedule

### General

13. The completed Templates comprising the Base Case Schedule shall be submitted in both excel and PDF format.

14. The table below sets out the worksheets contained in the Base Case Model and a summary of each worksheet's content and status.

Model Sheet	Content	Status
Cover Sheet	Title, Revision, Participant name and Date	Participant to complete name
Explanatory Notes	Additional information to assist completion of Base Case Model.	Participant to comply
Summary	A summary of the Cost Model which is automatically generated using excel formula.	Subsidiary workbooks will populate.
Mobilisation	Details of Mobilisation costs leading up to the commencement of the Services which will fall in Contract year 1.	Participant to complete
Vessels	Details of Vessel related costs (for each Vessel) across the Contract term.	Participant to complete
Ports and Harbours	Details of Ports and Harbours Costs, non-staff (including for each Vessel where required).	Participant to complete
Staff & Crewing	Details of staff costs (including for each Vessel where required). Staff pay cost should be on a gross basis including pension costs and national insurance.	Participant to complete
Marketing, Sales, Customer Care and Accessibility	Details of administration related operational services costs across the Contract term. Main sections cover Marketing, Ticketing, Customer Care, Stakeholder and Community Engagement.	Participant to complete
Management Systems and Overheads	Details of management related operational systems costs across the Contract term.	Participant to complete
Other Costs	Details of any other costs across the Contract term that are not captured in the main workbooks.	Participant to complete
Revenue	Details of anticipated revenues gained (for each Vessel) by Contract Year.	Participant to complete
Operator's Return	Details of Operator's return by Contract year.	Participant to complete

Model Sheet	Content	Status
Fuel Plan	Details of estimated fuel usage in metric tonnes. Transport Scotland will apply an estimated cost per metric tonne to establish total fuel costs in the summary tab.	Participant to complete

## Constraints and Assumptions

15. Participants shall use the following assumptions in preparing their Tenders:

- the Northern Isles Ferry Service will commence on 31 October 2019 (at 14:01 hours) for a period of 8 years (6 + 2);
- the units to be used in each Participant's submission are clearly set out in the templates provided;
- the prices stated in the Base Case Schedule shall be based on prices estimated to pertain at the start of the Contract e.g. 31 October 2019;
- the prices for each fuel category to be applied shall be based on an assessment of estimated forward prices as at 31 October 2019
- NET Present Values of Subsidy payments shall be discounted back to the start of the NIFS Contract - the discount rate to be applied shall be 3.5 per cent per annum.

## C2 Base Case Schedule Template

Participants shall complete the following Base Case Schedule Template:



Updated Northern  
Isles Base Case Final

## C3 Tender Sum

Participants shall complete the Tender Sum table below and return it as part of the Tender.

TENDER PRICE			
<b>A. GRANT</b> (Computed in the base case schedule)			
<b>TENDER SUM</b> (Base Case Schedule Summary tab cell B5)		£.....	
<b>B. PARTICIPANT AUTHORITY</b>			
<b>Date</b>			
<b>Signature</b>		<b>In the capacity of</b>	
<b>Name (block capitals)</b>			
<b>Duly authorised to sign the Tender and</b>			
<b>Address</b>			
<b>Telephone Number</b>			
<b>E-mail</b>			

## Package D

### Tender Certificates

Participants shall complete the certificates in this Annex (iii) and return them as part of the Tender.

The certificates included in this Annex consist of:

- D1 Anti-Collusion Certificate;
- D2 Insurance Requirements;
- D3 Commitment to Execute Parent Company Guarantee;
- D4 Commitment to Execute the Contract and the Agreement
- D5 Form of Parent Company Guarantee
- D6 Certificate of non-involvement in serious organised crime.

## D1 Anti-Collusion Certificate

[To be submitted on the headed notepaper of the Participant]

[date]

Dear Sirs

### **NORTHERN ISLES FERRY SERVICE - TENDER DATED [INSERT DATE ] D.1 - ANTI-COLLUSION CERTIFICATE**

1. We certify that this Tender is made in good faith, and that we have not fixed or adjusted the amount of the Tender by or under or in accordance with any agreement or arrangement with any other person. We also certify that we have not and we undertake that we will not before the award of any contract for the work:
  - (i)
    - (a) communicate to any person outside this Participant other than Transport Scotland or a person duly authorised in that behalf the amount or approximate amount of the Tender or proposed Tender, except where the disclosure, in confidence, of the approximate amount of the Tender was necessary to obtain insurance premium quotations required for the preparation of the Tender;
    - (b) enter into any agreement or arrangement with any person outside this Participant that they shall refrain from Tendering, that they shall withdraw any Tender once offered or vary the amount of any Tender to be submitted;
  - (ii) pay, give or offer to pay or give any sum of money or other valuable consideration directly or indirectly to any person outside this Participant for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender for the work, any act or thing of the sort described at (i)(a) or (b) above.
2. We further certify that the principles described in paragraphs 1(i) and (ii) above have been, or will be, brought to the attention of all sub-Suppliers and associated companies providing services or materials connected with the Tender and any contract entered into with such sub-Suppliers or associated companies will be made on the basis of compliance with the above principles by all parties.
3. In this certificate, the word 'person' includes any persons and any body or association, corporate or unincorporated; 'any agreement or arrangement' includes any transaction, formal or informal and whether legally binding or not; and 'the work' means the work in relation to which this Tender is made.

Tender Reference:  
TS/AMFC/SER/2018/01

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**Date**

**Signature**

**In the  
capacity of**

**Name (block  
capitals)**

**Duly authorised to  
sign on behalf of**

**Address**

**Telephone Number**

**E-mail Address**



## D2 Insurance Requirements Certificate

[Each certificate to be submitted on the headed notepaper of the Participant. In this respect each Participant shall particularly note that the Scottish Ministers reserves the right to, and shall make periodic checks to, ensure that the provisions of the Insurance Requirements Certificate shall be being observed by the Operator in the event that a contract for the Service shall be awarded.]

[date]

Dear Sirs

### **NORTHERN ISLES FERRY SERVICE - TENDER DATED [INSERT DATE ] D2 - INSURANCE REQUIREMENTS CERTIFICATE**

Throughout the whole of the period of the Contract, having examined the requirements of the Conditions of Contract designed to ensure the provision of insurance cover we confirm that we shall comply with the provisions in the Contract.

**Date**

**Signature**

**In the capacity of**

**Name (block capitals)**

**Duly authorised to sign for and on behalf of**

**Address**

**Telephone Number**

**E-Mail Address**

### D3 Supply and Commitment to Execute Parent Company Guarantee

[To be submitted on headed notepaper of each Parent Company Guarantor]

[date]

Dear Sirs

#### **NORTHERN ISLES FERRY SERVICE - TENDER DATED [INSERT DATE ] D3 - PROVISION OF PARENT COMPANY GUARANTEE**

Having been so advised of the requirement in the Invitation to Submit a Tender we enclose a Parent Company Guarantee which will take effect on the execution of the Contract, together with a legal opinion in a form acceptable to you confirming the PCG's validity and enforceability.

[OR, WHERE A PARENT COMPANY GUARANTEE HAS NOT BEEN REQUESTED IN THE INVITATION TO TENDER (ITT) BUT SUBSEQUENT FINANCIAL CHECK PROVIDES REASONABLE CAUSE FOR THE JUSTIFICATION OF THE REQUIREMENT]

In the event of [*Participant name*] being awarded the Contract, this letter is our confirmation that if so requested we shall provide a Parent Company Guarantee ("PCG") to the Scottish Ministers in the form contained in this Volume 2 of the Competition Documentation without any qualification or amendment to the terms thereof.

We shall deliver the executed PCG on the date intimated to the Participant by the Scottish Ministers as being the date of execution of the Contract, together with a legal opinion in a form acceptable to you confirming the PCG's validity and enforceability.

We understand that our submission of this commitment letter is a requirement for a compliant Tender pursuant to the Competition Documentation issued by Transport Scotland. We hereby undertake to maintain this commitment unchanged until either (i) the actual issue of the PCG by us on the date of execution of the Contract in the event [*Participant name*] is the Successful Participant or (ii) execution of the Contract.

We acknowledge that a failure to provide the PCG to you in the agreed form on the date intimated to the Participant by Transport Scotland as being the date for execution of the Contract may result in the loss of [*Participant's name*] status as

Successful Participant and summary disqualification from further participation in the procurement competition for the Contract.

Yours faithfully

**Director**

for and on behalf of Parent Company Guarantor

*Note. This must be signed by an authorised signatory of the Parent Company, giving full name and address as well as the name and title of the signatory. Evidence of the authority of the signatory must be provided in the form of a certified Board Resolution (or equivalent probative document). Absence of said authority will be deemed as non-compliance with the requirements for submission of Tenders identified in Volume 2.*

## D4 Commitment to Execute the Contract and the Agreement

[To be submitted on the headed notepaper of the Participant]

[date]

Dear Sirs

### **NORTHERN ISLES FERRY SERVICE - TENDER DATED [INSERT DATE ] D4 - CONTRACT EXECUTION COMMITMENT LETTER**

In the event that we, [*Participant name*], are awarded the Contract, this letter is our commitment to enter into the Contract with the Scottish Ministers in the form contained in Volume 3 of the Competition Documentation without any qualification or amendment to the terms thereof. We shall execute the Contract on the date intimated to us by Transport Scotland as being the date for execution of the Contract.

We understand that our submission of this commitment letter is a requirement for a compliant Tender pursuant to the Competition Documentation issued by Transport Scotland. We hereby undertake to maintain this commitment unchanged until either (i) the actual execution of the Contract by us at contract signature in the event that we, [*Participant name*] are the Successful Participant or (ii) the execution of the Contract.

We acknowledge that a failure to execute the Contract in the agreed form on the date intimated to us by Transport Scotland as being the date for execution of the Contract may result in the loss of our status as Successful Participant and summary disqualification from further participation in the procurement competition for the Contract.

Yours faithfully

**Director**

for and on behalf of [insert name of Participant]

*Note. This must be signed by an authorised signatory of the Participant, giving full name and address as well as the name and title of the signatory. Evidence of the authority of the signatory must be provided in the form of a certified Board Resolution (or equivalent probative document). Absence of said authority will be deemed as non-compliance with the requirements for submission of Tenders identified in Volume 2.*

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## D5 Form of Parent Company Guarantee

*Parent Company Guarantee as detailed in Volume 3, Schedule 2, Conditions  
Precedent, Part 2*

## D6 Certificate of Non-Involvement in Serious Organised Crime

[To be submitted on the headed notepaper of the Participant]

[date]

Dear Sirs

### **NORTHERN ISLES FERRY SERVICE - TENDER DATED [INSERT DATE ] D6 - CERTIFICATE OF NON-INVOLVEMENT IN SERIOUS ORGANISED CRIME**

We hereby undertake that in respect of the Tender Submission for NORTHERN ISLES FERRY SERVICE that we have read and understood sections 28 and 31 of the **Criminal Justice and Licensing (Scotland) Act 2010**.

We hereby declare that we have nothing to report in relation to this legislation at this time.

We can confirm that no director, shareholder, or other persons acting on our behalf who have power of representation, decision or control over in respect of our business area or otherwise connected to us are engaged in serious organised crime, as defined in the Criminal Justice and Licensing (Scotland) Act 2010.

We certify that any sub-contract for services entered into by the Contractor shall provide a clause for ensuring the non-involvement in serious organised crime.

In making this declaration, we confirm that we have taken all the necessary steps to ensure the accuracy of our attestation and understand that the wilful provision of misleading or inaccurate information may constitute fraud and or termination of the Contract.

In this certificate the word “person” includes any persons and any body or association, corporate or unincorporated and “agreement” or “arrangement” include any such transactions, whether formal or informal, legally binding or not.

Tender Reference:  
TS/AMFC/SER/2018/01

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Participants

**Date**

**Signature**

**In the  
capacity of**

**Name (block  
capitals)**

**Duly authorised to  
sign on behalf of**

**Address**

**Telephone Number**

**E-mail Address**



## Annex (iv)

# Interpretations, Definitions and Abbreviations

## Interpretations

1. The Competition Documents shall be interpreted using the interpretation provisions included in Volume 3 – Draft Contract and Schedules, as appropriate, unless otherwise set out below or as the context may otherwise require.
2. 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.
3. 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.
4. Where used in the Competition Documents, the words “include”, “including”, “such as”, “for example” and “and the like”, are to be construed without limitation.
5. Headings and the contents lists are for convenience of reference only and do not affect the interpretation of the Competition Documents.
6. 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.
7. 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.
8. In the Competition Documents, any reference to any document shall include any variation, amendment, or supplement to that document.

## Definitions and Abbreviations

9. The defined terms and abbreviations provided shall apply to this Document and to other Competition Documents unless otherwise defined or as the context may otherwise require.

A	
<b>Act of Parliament</b>	means UK or Scottish primary legislation.
<b>Adviser</b>	means any of the professional advisers appointed by Transport Scotland in connection with any part of the Procurement Process
<b>Alternative Vessel</b>	means any alternative vessel proposed by the Participant to provide the Ferry Service
<b>Award Stage</b>	means that part of the competition following the selection of pre-qualified Economic Operators where Participants are invited to submit a Tender for the Contract and a Successful Participant is identified with whom the Contract will be executed by the Scottish Ministers.
B	
<b>Base Case Grant</b>	means the Subsidy calculated in the Base Case Schedule for the projected cumulative difference between Operating Costs (including the Operator's Return) and the Revenue for each Service Year.
<b>Base Case Schedule</b>	means the Tender rates and prices entered into the Base Case Schedule of Price Breakdown at Part C2 of Package C of Volume 1.
<b>BST</b>	means British Summer Time which for 2019 is introduced on 31 March and ends 27 October and which varies from Greenwich Mean Time by one hour such that 12 noon BST is equivalent to 11 am GMT.
C	
<b>Committed Obligations</b>	means the Contractual Obligations incorporated into the respective schedules of the Public Service Contract.

<b>Community Shipowner</b>	<p>means:</p> <p>(a) nationals of a Member State established in a Member State in accordance with the legislation of that Member State and pursuing shipping activities;</p> <p>(b) shipping companies established in accordance with the legislation of a Member State and whose principal place of business is situated, and effective control exercised, in a Member State;</p> <p>or</p> <p>(c) nationals of a Member State established outside the Community or shipping companies established outside the Community and controlled by nationals of a Member State, if their ships are registered in and fly the flag of a Member State in accordance with its legislation.</p>
<b>Comparative Cost of Tender</b>	means the comparative cost of the Tender submitted by each Participant in accordance with Part C2 of Package C of Volume 1
<b>Competition Documents</b>	means the package of documents comprising of Volumes 1 to 3 and any supplemental documents issued to each Participant as part of the Procurement Process.
<b>Confidential Tender Bulletin</b>	means a Bulletin issued by Transport Scotland to one Participant only, which Transport Scotland believes to be of a confidential nature.
<b>Confidential Tender Query</b>	means a Query which a Participant believes to be of a confidential nature.
<b>Contract</b>	means the Contract to be entered into by the Scottish Ministers and the Successful Participant for the Ferry Service which will comprise the conditions of the Contract and the schedules setting out the requirements for the Ferry Service.
<b>Contract Notice</b>	means the advertisement for the procurement of the Northern Isles Ferry Service issued for publication in the Official Journal of the European Union and the Public Contracts Scotland portal by the Scottish Ministers on 25 September 2018 (OJEU ref number 2018/S 187-422810).
<b>Contracting Authority</b>	means the Scottish Ministers.

<b>Crown Copyright</b>	means work created by a Transport Scotland official or an officer/servant of the Crown in the course of their duties (which includes, but is not restricted to, the competition documents) qualifies for copyright protection in accordance with the Copyright, Designs and Patents Act 1988.
<b>D</b>	
<b>Delivery Plan</b>	means the specific proposals created by a Participant, sections of which shall be incorporated into the relevant Contract schedules and which shall meet the requirements of the Contract specified in the Competition Documents and which shall form part of the Tenders submitted by that Participant.
<b>Dropbox</b>	means the cloud storage service used by Transport Scotland to store information that can be accessed and downloaded by invited participants.
<b>E</b>	
<b>Economic Operator</b>	means a service provider who is a Community Shipowner or has the capability and intention to be constituted as a Community Shipowner if awarded the Contract.
<b>EDT</b>	means the Electronic Document Transmission
<b>Electronic Document Transmission</b>	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: <ul style="list-style-type: none"> <li>(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</li> <li>(ii) e-mail through a dedicated mailbox.</li> </ul>
<b>ESPD</b>	means European Single Procurement Document.
<b>European Single Procurement Document</b>	means European Single Procurement Document for the procurement of the Ferry Service issued for publication in the Official Journal of the European Union and the Public Contracts Scotland portal by the Scottish Ministers on 25 September 2018 (OJEU ref number 2018/S 187-422810).

<b>European Single Procurement Document</b>	means European Single Procurement Document for the procurement of the Ferry Service issued for publication in the Official Journal of the European Union and the Public Contracts Scotland portal by the Scottish Ministers on 25 September 2018 (OJEU ref number 2018/S 187-422810).
<b>Evaluation Process</b>	means the activities pertaining to the evaluation of Tenders as described in the Competition Documents, which commence with the receipt of the Invitation to Tender.
<b>F</b>	
<b>Ferry Service</b>	means the passenger ferry service between the Northern Isles as detailed in Volume 2 Specification of Requirement.
<b>Vessels</b>	means the vessels that will be used to operate the ferry service upon completion of the Interim Period
<b>First Minister</b>	means the head of the Scottish Government.
<b>Form of Tender</b>	means the submission requirements for the Tender set out in Section 3 to Volume 1.
<b>G</b>	
<b>No entries</b>	
<b>H</b>	
<b>No entries</b>	
<b>I</b>	
<b>Information Room</b>	means the information room relating to the Procurement Process made available without warranty to Participants through the Dropbox web site during the Tender Period.
<b>Invitation to Participants</b>	means the Invitation Tender, in accordance with the invitation and the Competition Documents.
<b>ITT</b>	means Invitation to Tender.
<b>Invitation to Tender</b>	means the invitation to submit a Tender, in accordance with the invitation and the Competition Documents.
<b>J</b>	
<b>No entries</b>	

K	
<b>No entries</b>	
L	
<b>Letter of Confidentiality and Non-Collusion</b>	means the letter of undertaking relating to confidentiality and non-collusion submitted by the Participant to Transport Scotland prior to the Invitation to Tender
M	
<b>Maritime Cabotage Regulation</b>	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)).
<b>MEAT</b>	means the Most Economically Advantageous Tender.
<b>Mobilisation Plan</b>	means the Plan required to define the activities required to prepare for the delivery of the Ferry Service.
<b>Most Economically Advantageous Tender</b>	means 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 Service.
N	
<b>NIFS</b>	Means the Northern Isles Ferry Service
<b>Northern Isles Ferry Service</b>	means the town centre lifeline ferry service transporting passengers between Aberdeen, Kirkwall, Lerwick, Scrabster and Stromness harbour.
O	
<b>Official Journal of the European Union</b>	means the publication by the Publications Office containing public sector contract Tenders and notices from every EU member country.
<b>OJEU</b>	means the Official Journal of the European Union
<b>Operational Management System</b>	means the system created by a Participant, the sections of which shall be incorporated into the relevant Contract schedules and which shall meet the requirements of the Contract specified in the Competition Documents and which shall form part of the Tender submitted by that Participant.

<b>Operator</b>	means the Successful Participant to whom the Contract has been awarded by the Scottish Ministers.
<b>P</b>	
<b>Package</b>	means the package within the form of the Tender containing the required information set out in Volume 1 - Instructions to Participants.
<b>Package A</b>	means those elements of the package set out in Volume 1 - Instructions to Participants which relate to the operational services Delivery Plan.
<b>Package B</b>	means those elements of the package set out in Volume 1 - Instructions to Participants which relate to the services management and systems Delivery Plans.
<b>Package C</b>	means those elements of the package set out in Volume 1 - Instructions to Participants which relate to the Tender sum submission.
<b>Package D</b>	means those elements of the package set out in Volume 1 - Instructions to Participants which relate to the certificates.
<b>Panel</b>	means the Transport Scotland officials who form the Panel and evaluate the Tender in accordance with the evaluation process set out in Volume 1 - Instructions to Participants.
<b>Parent Company Guarantee</b>	means a form of security to protect Scottish Ministers in the event of default on a contract by an Economic Operator that is controlled by a parent company (or holding company).
<b>Participant</b>	means an Economic Operator who has been invited by Transport Scotland to submit a Tender.
<b>Participant's Contact Person</b>	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.
<b>Post Contract Award</b>	means the subsequent time, events, activities etc. following the award of the Contract.
<b>Pound Sterling</b>	means the official currency of the United Kingdom, commonly known as the pound.

<b>Procurement Information</b>	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.
<b>Procurement Process</b>	means the activities comprised within the Ferry Service procurement which commenced with the issue of the ITT. Such activities are described in the Competition Documents the submission of Tenders, the process of evaluation of Tenders, the award of the Contract, and all other related activities.
<b>PSC</b>	means the Public Service Contract.
<b>Public Contracts Scotland</b>	means the national advertising website for public sector procurement in Scotland.
<b>Public Service Contract</b>	means the Public Service Contract for the provision of the Northern Isles Ferry Service between the Operator and the Scottish Ministers.
<b>Q</b>	
<b>Qualified Tenders</b>	means any qualifications in respect of the proposed Volume 3 – Draft Contract and Schedules. Tenders which contain such qualifications shall be deemed to be non-compliant and will lead to the Tender being disqualified.
<b>R</b>	
<b>Regulations</b>	mean SSI 2015 No.446, The Public Contracts (Scotland) Regulations 2015.
<b>Operator</b>	means the Successful Participant to whom the Contract has been awarded by the Scottish Ministers.
<b>S</b>	
<b>Scottish Government</b>	means the devolved government for Scotland, which runs the country in relation to matters that are devolved to it including: the economy, education, health, justice, rural affairs, housing, environment, equal opportunities, consumer advocacy and advice, transport and taxation
<b>Scottish Ministers</b>	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.
<b>Scottish Parliament</b>	means the law making body for devolved matters.



<b>Service Commencement Date</b>	means commencement of full operational responsibility for the ferry service by the Operator.
<b>Services</b>	means those public transport services as specified in Schedule 2 to Volume 3 – Draft Contract and Schedules.
<b>Subsidy</b>	means the compensation to be paid by Scottish Ministers to the Successful Participant under the Contract, calculated as the costs of the Ferry Service plus the agreed operator return less revenue.
<b>Successful Participant</b>	means the Participant who has achieved the requisite passes and the highest combined weighted score in the evaluation of the Tenders to establish the Most Economically Advantageous Tender.
<b>T</b>	
<b>Tender</b>	means a Tender for the Contract.
<b>Tender Period</b>	means the period commencing with the issue of the Tender and concluding with the submission of the required Tender.
<b>Tender Period Bulletin</b>	means a communication from Transport Scotland, made in accordance with this Volume 1, to each Participant's Contact Person during the Tender Period.
<b>Tender Query</b>	means a communication from a Participant's Contact Person to Transport Scotland, made in the form identified in Section 5 of Volume 1.
<b>The Public Contracts (Scotland) Regulations 2015</b>	means the statutory requirement for the rules on procedures for the procurement by contracting authorities with respect to, in this case, public contracts.
<b>Timetable</b>	means the preliminary Timetable identified in Section 2 of Volume 1 as may be amended from time to time by Transport Scotland.
<b>Transfer of Undertakings (Protection of Employment)</b>	means when a business changes owner, its employees may be protected under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006.
<b>Transport Scotland's Contact Person</b>	means Ann Paterson Telephone number: 0131 244 9158 Ann.Paterson@transport.gov.scot
<b>TUPE</b>	means Transfer of Undertakings (Protection of Employment)

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## U

No entries

## V

### Value Added Tax

means the tax VAT-registered businesses must pay on their goods and services to HM Revenue and Customs.

### VAT

means Value Added Tax

### Vessels

means the Vessels which meet the Minimum Requirements and which will be provided by Transport Scotland to deliver the Ferry Service.

### Volume 1

means the Northern Isles Ferry Service, Volume 1 – Instructions to Participants, dated 9 January 2019, TS/AMFC/SER/2018/01 issued by Transport Scotland and as may be amended from time to time by Transport Scotland.

### Volume 2

means the Northern Isles Ferry Service, Volume 2 – Specification of Requirements dated 9 January 2019, TS/AMFC/SER/2018/01 issued by Transport Scotland and as may be amended from time to time by Transport Scotland.

### Volume 3

means the Northern Isles Ferry Service, Volume 3 – Draft Contract and Schedules, dated 9 January 2019, TS/AMFC/SER/2018/01 issued by Transport Scotland and as may be amended from time to time by Transport Scotland.

## W

No entries

## X

No entries

## Y

No entries

## Z

No entries

# Annex (v) - Formal Offer

## Formal Offer

### FORMAL OFFER

[To be completed by the Participant on its headed notepaper.]

[ ☐ date ]

For the attention of Alan Malone

Transport Scotland  
Buchanan House  
58 Port Dundas Road  
Glasgow  
G4 0HF

Dear Sirs

#### **NORTHERN ISLE FERRY SERVICE COMPETITION FOR THE CONTRACT FOR THE PROVISION OF SERVICES FORMAL OFFER**

In response to the Competition Documentation, we hereby enclose our Tender to enter into a contract for the Ferry Service which is fully complete and compliant with the requirements of the Competition Documentation and the Invitation to Tender, Instructions to Participants.

We have made a comprehensive study of and understand all materials comprising the Competition Documentation and the procurement information.

We certify that this Tender is made in good faith, and that we have made only ONE Tender.

We certify that our Proposals identified in Packages A and B represent a reasonable response to and shall be delivered to meet the requirements of the Contract.

We hereby offer to carry out the Services required for the NORTHERN ISLES FERRY SERVICE in conformity with the Contract included in our Tender.

We hereby offer to carry out the Services using the staff resources identified in Package B.

We hereby undertake to complete all prior requirements prior to and deliver the Services comprised in the Contract on the date stated in Schedule 1 to this Formal Offer.

Our checklist for the contents of our Tender is included in Schedule 2 to this Formal Offer.

We understand that you are not bound to accept the most economically advantageous offer or Tender that you may receive.

We acknowledge that the Contracting Authority required strict adherence to the Competition Documentation from each Participant and we confirm that we have and that we shall continue to adhere to all of the conditions and requirements expressed in the Competition Documentation.

We acknowledge and agree that it is a condition precedent to the execution of a Contract that if so requested by the Contracting Authority we provide the Parent Company Guarantee in the form required. Commencement of any part of the Services by us shall not constitute a waiver of this condition precedent.

We certify that this is a *bona fide* Formal Offer which will remain open for written acceptance for 9 (nine) months from [insert date], and thereafter subject to any agreement with the Contracting Authority to extend such period. If we are not appointed as the Successful Participant, we agree that we shall keep our Formal Offer for written acceptance until execution of the Contract or expiry of the 9 month period (as may be agreed to be extended).

We confirm that we shall have no conflict of interest if we are awarded the Contract.

Unless otherwise specified, capitalised terms used in this Formal Offer shall have the same meaning as given in Volume One of the Competition Documentation the Contract.

Signed .....

Name .....

Address .....

Title .....

For and on behalf of .....

Date .....

*NB: This must be signed by an authorised signatory of the Participant, giving full name and address as well as the name and title of the signatory. Evidence of the authority of the signatory must be provided in the form of a certified Board Resolution (or equivalent probative document). Absence of said authority will be deemed as non-compliance with the requirements for submission of Tenders.*

<b>Package</b>	<b>Package Section</b>	<b>Included</b>
<b>Formal Offer</b>	Formal offer including schedule 1	
	Checklist (Schedule 2 to Formal offer)	
	Evidence of Authorised Signatories (Schedule 3 to Formal offer)	
<b>Executive Summary</b>	Tender	
	Delivery Plans	
<b>Package A - Operational Services</b>	A1 Vessels Provision	
	A2 Passenger, Vehicles and Freight Demand Management	
	A3 Passenger Facilities Marketing and Engagement Delivery Plan	
	A4 Port and Harbour Logistics A5 Marketing and Sales A6 Customer Care and Accessibility	
<b>Package B – Services Management and Systems</b>	B1 Human Resources, Training and Key Personnel Delivery Plan	
	B2 Mobilisation	
	B3 Operating Management, Health and Safety Management and Environmental Management Systems Delivery Plan	
	B4 Health and Safety B5 Environmental Management B6 Stakeholder and Community Engagement	
<b>Package C -Tender Sum Submission</b>	C2 Schedule of Price Breakdown - Base Case Schedule	
	C3 Tender Sum	
<b>Package D - Certificates</b>	D1 Anti-Collusion Certificate	
	D2 Insurance Requirements	
	D3 Supply and Commitment to execute Parent Company Guarantee	
	D4 Commitment to execute the Contract	
	D5 Certificate of non-involvement in serious organised crime	

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### Submission Checklist

- 1 original paper set (where Delivery Plans shall be in separate folders from the other Packages);
- 2 secure, encrypted memory sticks which shall contain the Formal Offer, Executive Summary and Packages A, B, C and D (where Package C must be on a separate memory stick from Packages A, B and D).