



Education & Skills  
Funding Agency



**INVITATION TO TENDER  
APPRENTICESHIP TRAINING DELIVERY  
FOR EMPLOYERS NOT USING THE DIGITAL ACCOUNT (NON-LEVY)**

**REFERENCE NUMBER**

**ITT 30232**

**ATTACHMENT 1**

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## 1. DOCUMENTS IN THIS PROCUREMENT

ATTACHMENT 1	INVITATION TO TENDER (THIS DOCUMENT)
ATTACHMENT 2	EVALUATION GUIDANCE AND SCORING MATRIX
ATTACHMENT 3	SPECIFICATION QUESTIONNAIRE
ATTACHMENT 4	VOLUMES AND VALUES
ATTACHMENT 5	SUBCONTRACTING PROFORMA
ATTACHMENT 6	CONTRACT (TERMS AND CONDITIONS)
ATTACHMENT 7	FUNDING RULES(PERFORMANCE MANAGEMENT RULES)
ATTACHMENT 8	RESPONSE DOCUMENT AND DECLARATION
ATTACHMENT 9	BRAVO USER GUIDE

## **2. INTRODUCTION**

- 2.1 Welcome to this Procurement. The contracting authority is the Department for Education, acting through the Education and Skills Funding Agency (the “Agency”). The Agency is an executive agency of the Department for Education, exercising functions to fund adult education and skills. In this Invitation to Tender (“ITT”) you, along with other organisations participating in this Procurement, are referred to in the second person and as Potential Providers. This Procurement will establish a network of Contractors who will deliver apprenticeship training to employers who do not pay the Apprenticeship Levy.
- 2.2 This ITT and the Attachments contain information and instructions that will facilitate your submission of a compliant Tender. Words in this ITT and its Attachments which are capitalised have definitions either in that paragraph, in the glossary at paragraph 14 or in Clause 1 (Definitions) of the Contract.
- 2.3 Please read the information and instructions carefully because non-compliance with the instructions may result in disqualification of your Tender from this Procurement.
- 2.4 If you are participating in this Procurement and plan to use subcontractors, please read the guidance in paragraph 11.
- 2.5 The Agency is using the e-Sourcing Suite “Bravo” to manage this Procurement and to communicate with you. No hard copy documents will be issued and all communications with the Agency (including the submission of Tenders) will be conducted via Bravo. To ensure all communications relating to this Procurement are received, you must ensure that the point of contact you nominate in Bravo is accurate at all times as the Agency will not be under any obligation to contact any other point of contact apart from the one that you have named in Bravo. Guidance on how to use Bravo can be found at Attachment 9.
- 2.6 Your responses to the Specification Questionnaire (Attachment 3) should be completed in Bravo. You are welcome to ask questions or seek clarification regarding this Procurement. See paragraph 12 for details on how to do so. You must read all the information contained within this ITT and the Attachments on Bravo thoroughly so that questions or clarifications are not raised unnecessarily.
- 2.7 The Agency is managing this Procurement in accordance with its general obligations under the Public Contracts Regulations 2015 (“the Regulations”). The Procurement is being conducted in accordance with Regulations 74 to 77, the “light touch regime” and in a moderated form of restricted procedure.
- 2.8 The moderated form of restricted procedure reflects that there is a pre-qualification requirement for eligibility for Potential Providers to submit tenders. That requirement is that Potential Providers are registered on the “Main Route” on the Register of Apprenticeship Training Providers (“the RoATP”) as set out in paragraph 3.5 below.

## **3. BACKGROUND**

- 3.1 In October 2016 the Agency launched a procurement for apprenticeship training delivery for small and medium sized (SME) employers who do not pay the Apprenticeship Levy and have not registered an account on the apprenticeship service (“non-levy paying employers”). The procurement was substantially oversubscribed and the outcomes of that competition would not have delivered the diverse market sought whilst giving the sector as a whole stability in the transition to the apprenticeship service. That procurement is now closed and no awards will be made under it. It is therefore essential that those Potential Providers who submitted

tenders in the previous procurement and who continue to wish to be considered for delivery of the Services, respond to this new procurement in accordance with the terms set out in this ITT (Attachment 1) and the accompanying Attachments.

- 3.2 This new procurement has been designed to ensure that government can better meet its objectives, and deliver high quality apprenticeship training to support the growth and success of SMEs that play such a vital role in our economy.
- 3.3 It will do this by seeking to deliver a stable transition between now and April 2019, when we aim to bring all employers, including those who do not pay the levy, onto the apprenticeship service. Through this procurement the Agency is seeking to award contracts for an Initial Contract Period of 15 months, starting 1 January 2018 and ending on 31 March 2019. The total value of contract awards for new starts and performance management in this period is anticipated to be between £440m and £650m. For further detail, please see section 5 (Contract Value).
- 3.4 This new competition contains a number of key differences to the previous one and therefore this specification must be read carefully and in full. The most critical differences include (but are not limited to):
  - 3.4.1 New Tender Caps and contract award limits.
  - 3.4.2 Awards in line with current levels of geographical delivery in the nine English regions.
  - 3.4.3 Questions and evaluation methodology
  - 3.4.4 Performance management arrangements will allow providers to grow above the Tender Caps, if they are delivering in line with their tender, subject to affordability and programme priorities being met. Please refer to the Funding Rules (and performance management rules) which are included as Attachment 7.
- 3.5 Registration on the 'Main Route' of the Register of Apprenticeship Training Providers ("RoATP") is a pre-requisite for participation in this competition. Potential Providers must therefore be registered on the RoATP in order to submit a tender. All providers on the 'Main Route' of the Register have been invited to tender in this procurement competition.

#### **4. CONTRACTS**

- 4.1 This Procurement will result in the conclusion of Contracts with successful Potential Providers. Once the Contracts have been completed those successful Potential Providers will become Contractors.
- 4.2 The Initial Contract Period will be 15 months, anticipated to be from 1 January 2018 to 31 March 2019. During this period Contractors will start and train new Apprentices.
- 4.3 The Agency reserves the right, as set out in clause 2 of the Contract, to exercise its discretion to extend the Contract, following the Initial Contract Period as follows;
  - 4.3.1 On any number of occasions up to a maximum period of 12 months in order to ensure continuity of delivery of the Services, in any circumstances in which the Agency consider this to be necessary; and/or
  - 4.3.2 For such a period or periods as may be necessary for Apprentices started by the Contractor, during the Initial Contract Period (and as extended as set out in 4.3.1), to complete their Apprenticeships.

- 4.4 The Contract terms and conditions are available at Attachment 6, on Bravo. Please review the Contract terms and conditions carefully to understand the rights and obligations that they confer on the parties.
- 4.5 The Contract terms and conditions are non-negotiable, whether during the Procurement or post award. However, you may seek clarification of any points of ambiguity or apparent error in relation to them throughout the clarification period (see paragraph 12).
- 4.6 Following the Agency's decision to conclude the Contracts, they will be updated to incorporate the relevant aspects of the Potential Provider's Tender including (but not limited to) the Potential Provider's response to the Specification Questionnaire (Attachment 3).
- 4.7 Any description in your Tender of a service that you will provide under the Contract must be within the scope of the Services.
- 4.8 The Agency will manage the overall performance of the Contract in accordance with the Funding Rules (and performance management rules) (Attachment 7).

## **5. CONTRACT VALUE**

- 5.1 The overall anticipated value for the Contracts is set within the OJEU Notice, and is £865m to £3,115m. Please note the contract values set out in this procurement are based on the best information available to the Agency at this time. Potential Providers should note that these contract values are not in any way guaranteed and can be anticipated to vary in accordance with the Government's overall spending priorities.
- 5.2 This figure reflects the total range in contract value that the Agency *may* deploy as a result of this competition including possible contract extensions.
- 5.3 Successful Providers will be allocated an element of the overall Contract value at the commencement of their Contract, in accordance with the Evaluation Guidance set out at Attachment 2. Thereafter a Provider may also receive increases to their Contractor's Allocation in accordance with the Funding Rules (and performance management rules) (Attachment 7), during the contract period. Providers should note that the contract value stated in the OJEU has been assessed as set out below and does not put and should not be interpreted as putting the Agency under any obligation to award Contracts up to this or any value.
- 5.4 Providers should be aware that the range specified in the OJEU Notice anticipates three specific sets of circumstances. These are as follows:
- 5.5 The ESFA expects to allocate for New Starts and make performance management adjustments within the Initial Contract Period of 1 January 2018 to 31 March 2019 from the contract value range set out in paragraph 3.3 which is £440m to £650m. The new start element for Apprentices during the Initial Contract Period will be the initial "Contractor Allocations" as set out above and as defined within the Contract Appendix 1. The Initial Contractor's Allocation is to cover the costs of learning for those new starts during the Initial Contract Period. As set out in the Funding Rules (and performance management rules) (Attachment 7) Providers will be able to apply, at the performance management points, within the Initial Contract Period, for an increase in their Contractor's Allocation. The Agency will consider all such applications in accordance with the Funding Rules (and performance management rules) (Attachment 7), and having done so may increase the Contractor's Allocation during the Initial Contract Period as a performance management adjustment. The contract value within the OJEU Notice allows for some growth during the Initial

Contract Period which it is anticipated will result from the implementation of the performance management process.

## 5.6 Carry-In

5.6.1 The Apprentices who start their Apprenticeships during the Initial Contract Period, may not have completed it by 31 March 2019. The Agency remains committed, subject to the application of the Funding Rules (and performance management rules) (Attachment 7), and overall affordability to ensuring that Apprentices who have commenced their Apprenticeships within the Initial Contract Period are able to complete them and the Agency has allocated funding to make this possible.

5.6.2 An element of the contract value as set out in the OJEU Notice is therefore to cover the estimated costs of supporting those Apprentices that commence learning in the Initial Contract Period, but who will conclude their learning at some point thereafter.

5.6.3 The procurement has been structured and the Contract drafted to allow the Agency to enter into extensions with Providers to enable them to continue to deliver training after the Initial Contract Period, to those Apprenticeships that have still to complete their training.

5.6.4 The necessary carry-in costs, for each Provider, will be calculated in accordance with the Funding Rules (and performance management rules) Attachment 7.

## 5.7 Contingency

5.7.1 Finally, the Agency has included a contingency figure. This is to enable the Agency to extend the period for the delivery of the Services, to include further new starts, for up to 12 months from 1 April 2019. Providers should note that, at the time of this procurement the Agency is not anticipating a need to exercise these rights of extension, but they are included in case they are necessary.

5.8 Overall, Potential Providers should therefore note that the elements of the contract value that relate to Carry in and to Contingency will not be included in the Contractor Allocations as they are determined on award, for the Initial Contract Period;

5.8.1 the element related to Carry-in will be calculated for each successful Provider, in accordance with the Funding Rules (and performance management rules) (Attachment 7), and will be made available as an amendment to the Contractor Value for such periods after 31 March 2019 as are necessary to enable all the new starts to complete their training; and

5.8.2 the element of the contract value that relates to Contingency may or may not, at the Agency's absolute discretion, be utilised through the Contracts awarded under this competition. These amounts are therefore not guaranteed.

## 6. TENDER SUBMISSION REQUIREMENTS

6.1 This procurement is being run under the "light touch regime" (Regulation 74) and falls within Section 7 of the Public Contracts Regulations 2015 in a moderated form of the restricted procedure. As such, the Agency has established procedures which are sufficiently transparent and allow fair and objective treatment of Potential Providers based on their experience of delivery of the services.

- 6.2 As set out in the background section of this document we are seeking to maintain stability of quality provision as we transition to when we bring all employers, including those who do not pay the levy, onto the apprenticeship service. This will be a very competitive exercise and so to mitigate significant oversubscription, speculative bidding and to support market stability, the Agency has set Tender Caps that take into account the experience and potential capacity of prospective tenderers.
- 6.3 These Tender Caps are tender submission limits and are set according to Potential Providers' experience in delivering Apprenticeships and are therefore are categorised into 3 groups, as shown in the table below:

**Table: 1**

<b>Provider Class</b>	<b>Description</b>
New Provider	An organisation that, at 1 July 2017, <u>did not have</u> a contractual arrangement to deliver non-levy apprenticeship provision and/ has not held one since 1 August 2015.
Subcontractor	Any organisation contracted as a subcontractor through a main contractor provider to deliver apprenticeship off-the-job training, English or maths or planned on-programme assessment, and has been declared as a subcontractor by the main contractor provider through the Agency's subcontractor declaration process since 1 August 2015.  This excludes apprentice assessment organisations and subcontractors used for different services, including help with marketing or data management or training that is in addition to the apprenticeship and not funded through the apprenticeship route.
Existing Apprenticeship Provider	Any organisation that, at 1 July 2017, has a contractual agreement with the Agency to deliver non levy Apprenticeships training and/or has held a contract since 1 August 2015.

- 6.4 The tender submission limits for all Potential Providers is shown in the table below. Potential Providers are asked to state the category of Tender Cap under which they are submitting their tender and the value of turnover and their non-levy historical delivery on the Volumes and Values spreadsheet (Attachment 4). Please note this information will be subject to validation checks by the Agency.
- 6.5 The approach seeks to balance how the Agency provides opportunity for growth, ensures stability of provision and encourages Potential Providers to submit realistic and deliverable proposals within the amount of funding available for award, taking into account factors such as non-levy historic delivery and experience in delivering all aspects of a contracted service.
- 6.6 Successful Potential Providers will have opportunities to increase their contract award in year through the performance management approach as set out in the Funding Rules (and performance management rules) (Attachment 7).

- 6.7 The Tender Caps will be derived from the annual figure, as set out, adjusted to reflect that the Initial Contract Period is a 15-month term (1.25 years). The annual figure will be multiplied by a factor of 1.25 to calculate the relevant Tender Cap for each Potential Provider. Potential Providers are referred to the Volumes and Values Spreadsheet (Attachment 4) for more further detail on how this calculation is made.
- 6.8 In the event that the validation checks reveal discrepancies between the information provided by the Potential Provider and the information held by the Agency such that the Potential Provider appears to have submitted a tender that is in excess of the Tender Cap then the Potential Provider will be notified. As set out in the Evaluation Guidance (Attachment 2), the Potential Provider will be given a single opportunity to resubmit their tender to ensure compliance with the Tender Cap. Where any tender resubmitted in accordance with this provision and the Agency considers that it still in excess of the Tender Cap the Agency reserves the right to treat such tenders as non-compliant and to exclude them from further evaluation and any potential award.
- 6.9 Potential Providers should particularly note that, in all cases, the lowest value contract value that the Agency will award for the Initial Contract Period is £200,000. If the award modelling results in a contract value of less than £200,000 for the Initial Contract Period, then the Agency will not make an award to the Potential Provider. Potential Providers are referred to the Evaluation Guidance (Attachment 3) for full details on the evaluation criteria and scoring mechanism.

**Table 2**

<b>Provider Class</b>	<b>Tender Cap</b>
New Provider	UKPRN registered entities turnover 2015-2016 financial year multiplied by 1.25 or £750,000; whichever is lower,
Subcontractor	UKPRN registered entities turnover 2015-2016 financial year multiplied by 1.25 or £1.5m; whichever is lower,
Existing Apprenticeship Provider with non-levy historical delivery <b>at or below</b> £1.5m for 2015-2016	UKPRN registered entities turnover 2015-2016 financial year multiplied by 1.25 or £1.5m; whichever is lower,
Existing Apprenticeship Provider with non-levy historical delivery <b>above</b> £1.5m for 2015-2016	UKPRN registered entities 110% of non-levy historical delivery for 2015/2016 funding year (1 <sup>st</sup> August 2015 – 31 <sup>st</sup> July 2016), multiplied by 1.25

- 6.10 Successful new Potential Providers who have no prior experience of delivering Apprenticeship training for the Agency either through a direct contract or as a subcontractor should note that they will be required to have attended, and have been recorded as having attended, an Apprenticeships workshop prior to commencing to deliver the Services. The purpose of the workshops is to familiarise new providers on working with the Agency in order to ensure that delivery of Services will commence smoothly and effectively. Exact details in relation to workshops will be notified to

Potential Providers in due course. Potential Providers should note that it is anticipated that workshops held week commencing 4 December 2017.

- 6.11 Failure to attend a workshop may result in a notice of an Award being withdrawn or a Contract that has been entered into being terminated.

## **7. SERVICE REQUIREMENTS**

- 7.1 The government's objective is for all employers in England to access apprenticeship training providers through the apprenticeship service digital account before 2020. Employers who will not be using the apprenticeship service digital account will be able to select from provision procured through this ITT from 1 January 2018.
- 7.2 This procurement is for the delivery of apprenticeship training and assessment of all levels of Apprenticeships, including higher and degree Apprenticeships. It is for apprenticeship standards and where these are not yet in place, Apprenticeship frameworks. At the end of this process the Agency intends to award Contracts to ensure that non-levy paying employers throughout England have access to a full range of Apprenticeships.
- 7.3 Apprenticeships that start on or after the 1 January 2018 are in scope for this procurement. Apprenticeships which start before 1 January 2018 are not eligible for funding via this competition. The funding awarded under this procurement cannot be used for any other costs other than direct delivery of training and assessment for Apprenticeships. This funding can only be spent on eligible apprentices, employers and training which complies with the Agency's current Funding Rules (and performance management rules). The Funding Rules (and performance management rules) can be found by following the link provided in paragraph 16 and at Attachment 7.
- 7.4 If there are delays in moving all employers to the apprenticeship service by April 2019 the Agency may extend the Contracts as set out in paragraph 4.3.1, up to a further 12 months, subject to budget availability and performance. Any extended contract would incorporate funding for apprentices who had already started apprenticeship training that commenced in the Initial Contract Period as well as funding for further new apprenticeship starts.
- 7.5 Maintaining the current geographical distribution of the apprenticeship provision is a key objective of this procurement. To achieve this objective and therefore maintain provision stability across England, each of the 9 geographical regions in England will have separate budgets, split also by age group (16-18 and 19+). The proportional distribution of these budgets reflect the most recent historic delivery pattern. Potential Providers are required to specify the volume/value of delivery in each region that they anticipate delivering (by age group) in the Volumes and Values spreadsheet (see Attachment 4), as part of their Tender Responses. The tender value is derived from the aggregate value of the regional amounts specified. Potential Providers must therefore ensure that they comply with the Tender Caps set out at paragraph 6. The table below is rounded up for ease:

**Table 3**

<b>Tender Region</b>	<b>% 16-18 Funding</b>		<b>% 19+ Funding</b>
East Midlands	10.6%		9.7%
East of England	10.6%		9.5%
London	7.4%		9.1%
North East	7.3%		8.0%
North West	16.2%		16.9%
South East	12.7%		13.1%
South West	10.7%		10.2%
West Midlands	11.5%		11.8%
Yorkshire and The Humber	13.1%		11.8%
Total	100.0%		100.0%

7.6 The Agency will evaluate the eligible awards in accordance with the Evaluation Guidance and Scoring Matrix (Attachment 2) to ensure that the appropriate balance of provision has been achieved across all of the 9 geographical regions and sectors/subject areas (as inserted on the Volumes and Values spreadsheets (Attachment 4). Following the initial allocation of the funding in accordance with the evaluation criteria set out in Evaluation Guidance and Scoring Matrix (Attachment 2) if an appropriate balance is not achieved and results in significant provision gaps either geographically or because of significant under provision in a particular sector, the Agency reserves the right to use funding for the purposes of a targeted procurement at a future date or for a targeted award through the performance management process.

## 8. PROCUREMENT TIMETABLE

8.1 The timetable for this Procurement is set out in the following table:

**Table 4**

<b>DATE</b>	<b>ACTIVITY</b>
26/07/2017	OJEU Contract Notice
28/07/2017 15:30	ITT opens
28/07/2017 15:30	Clarification period opens
22/08/2017 17:00	Deadline for the submission of Tender Clarification questions ("Tender Clarifications Deadline")
29/08/2017 17:00	Deadline for the responses to Tender Clarification questions

DATE	ACTIVITY
04/09/2017 23:59	Deadline for submission of Tenders to the Agency (“ <b>Tender Submission Deadline</b> ”)
21/11/2017 17:00	Intention to award notification issued to successful and unsuccessful Potential Providers.
22/11/2017 – 01/12/2017	Minimum 10 calendar day Standstill Period (in accordance with Regulation 87 of the Regulations)
11/12/2017	Planned date for appointment of Contractors to Contracts
01/01/2018	Expected Service Commencement Date

8.2 This timetable may be changed by the Agency at any time. Changes to any of the dates will be made in accordance with the Regulations (where applicable). You will be informed through Bravo if the Agency makes changes to this timetable.

## 9. COMPLETING AND SUBMITTING A TENDER

9.1 To participate in this Procurement, you must be a main route provider on the RoATP on the date by which Tenders must be submitted (shown above).

9.2 You are strongly advised to read through this invitation to tender (ITT) and the Attachments first to ensure that you understand the Agency’s requirements in order to facilitate your submission of a compliant Tender.

9.3 The Agency utilises Bravo to provide governance around the sourcing process. Your response to this ITT must be managed through this tool. You are advised of the following:

9.3.1 It is your responsibility to ensure that you have submitted a fully compliant Tender.

9.3.2 You should ensure that you are referring to the latest versions of the ITT and the Attachments, as this documentation may be updated from time to time on Bravo.

9.3.3 Any incomplete or incorrectly completed Tender submission may be deemed non-compliant, and as a result you may be unable to proceed further in the procurement process.

9.3.4 Allow plenty of time for the entering of responses in relation to your Tender into Bravo. It is advised that this activity commences as soon as possible and is not left until the day of the Tender Submission Deadline.

9.4 For technical guidance on how to complete questions and Tender Fields, and how to upload any requested attachments, please see Attachment 9 – Bravo User Guide.

### **Additional Materials, Documents and Attachments**

9.5 You must adhere to the following instructions;

9.5.1 No additional attachments should be submitted with a Tender unless specifically requested by the Agency.

9.5.2 Any additional documents requested by the Agency must only be attached in Bravo using a relevant file name as specified by the Agency. Any

documents must be submitted in the format requested by the Agency, failure to do this will result in a tender being deemed non-compliant.

### **Data Entry**

- 9.6 The following instructions must be adhered to in relation to the entry of responses as part of your Tender:
- 9.6.1 All answers in the Tender must be inserted into the relevant answer box located beneath the relevant question, unless an attachment is permitted. Only information entered into the relevant answer box or as an attachment supplied in accordance with the Agency's instructions will be taken into consideration for the purposes of evaluating a Tender.
  - 9.6.2 The Tender must be submitted in the English (UK) language.
  - 9.6.3 You must answer all questions accurately and precisely and comply with all the requirements stated by the Agency.
  - 9.6.4 Where a number of options are offered as a response to a question, you must select the relevant option from the drop down list.
  - 9.6.5 You must not answer questions by cross referring to other answers or to other materials (e.g. annual company reports located on a web site). Each question answered must be complete in its own right.
  - 9.6.6 The Agency will disregard any part of a response to a question which exceeds the specified character limit (i.e. the excess will be disregarded, not the whole response). Any stated character limit is assumed to include spaces and punctuation.

### **Deadline for the submission of Tenders**

- 9.7 All Tenders must be received by the Agency before the Tender Submission Deadline (see the Procurement Timetable in section 8 for details).
- 9.8 Tenders received on or after the Tender Submission Deadline may be rejected by the Agency. The Agency has the sole and absolute right to decide whether to reject a Tender received after the Tender Submission Deadline.

### **Uploading and submitting a Tender**

- 9.9 You are responsible for ensuring that your Tender has been successfully completed in Bravo prior to the Tender Submission Deadline.
- 9.10 All Tenders must be submitted to the Agency using Bravo. Tenders submitted by any other means will not be accepted.
- 9.11 You may open and/or submit elements of your Tender and attachments as required, at any time before the Tender Submission Deadline using Bravo. Instructions explaining how to formally submit the Tender to the Agency are located in the Bravo User Guide (Attachment 9).
- 9.12 You may modify and resubmit your Tender at any time prior to the Tender Submission Deadline. Before the Tender Submission Deadline, you must satisfy yourself that you have submitted all responses and attached any attachments as requested through Bravo. Tenders cannot be modified by you after the Tender Submission Deadline.
- 9.13 You may withdraw from this Procurement by choosing not to submit a Tender by the Tender Submission Deadline.

- 9.14 Your Tender must remain valid and capable of acceptance by the Agency for a period of 180 calendar days following the Tender Submission Deadline. Where you submit a Tender with a shorter validity period, this may lead to the rejection of your Tender.
- 9.15 The Agency may disseminate to other Potential Providers, information provided by a Potential Provider that is materially relevant to the Procurement subject to:
- 9.15.1 any procedures described in the Procurement Documentation for raising questions and/or seeking clarifications; and
  - 9.15.2 any obligation of confidentiality on the part of the Agency in relation to the information contained within a Tender unless such an obligation is overridden by a requirement for disclosure under the Freedom of Information Act 2000 (as amended), or the [UK Government's policy on transparency](#).

## **10. RESPONSE DOCUMENT AND THE TENDER**

- 10.1 With this ITT Prospective Providers are provided with a Response Document at Attachment 8 for completion as part of your Tender. The Response Document comprises the following documents:
- 10.1.1 Form of Tender (Section 1);
  - 10.1.2 Anti-Collusion Certificate (Section 2);
  - 10.1.3 Confidential Information (Section 3);
  - 10.1.4 RoATP (Section 4);
  - 10.1.5 Compliance Table (Section 5);
  - 10.1.6 Organsiation Table (Section 6);
- 10.2 Potential Providers must also complete and submit:
- 10.2.1 Specification Questionnaire (Attachment 3);
  - 10.2.2 Volumes and Values Spreadsheet (Attachment 4);
  - 10.2.3 Subcontractor proforma (Attachment 5); and
  - 10.2.4 Submission details through browser based "Award".

## **11. CONTRACTING ARRANGEMENTS (SUBCONTRACTORS AND CONSORTIA)**

- 11.1 Potential Providers should note that the use of subcontractors must be in compliance with the Funding Rules (and performance management rules) (Attachment 7)
- <https://www.gov.uk/government/publications/apprenticeship-funding-and-performance-management-rules-2017-to-2018>
- 11.2 This includes that you must not agree the use of any subcontractor where this would require you to subcontract apprenticeship training and/or on-programme assessment to a second level. All of your delivery subcontractors must be contracted directly by you.
- 11.3 The restriction on the level of subcontracting is in place to ensure: (i) that lead providers retain clear and transparent accountability for the quality of training provision; (ii) that proper and appropriate controls are in place to manage the learner experience; and (iii) that value for money is achieved by mitigating funding being utilised for multiple tiers of subcontractor management.

- 11.4 With the exception of Subcontractors, no organisation other than the Potential Provider will be able to provide the Services, whether group company, subsidiary, parent company, holding company, associated company, franchise or, fellow franchisee, strategic partner or any other organisation in any other relationship with the Potential Provider. For the avoidance of doubt, the use of any kind of group companies associated with the Potential Provider for the delivery of the Services can be only as Subcontractors.

### **Subcontracting proposals**

- 11.4.1 If you need to rely on the capability and/or experience of one or more subcontractors in your Tender in order to demonstrate your ability to provide the Services in accordance with the requirements of a relevant Specification Question and the Contract, you must inform the Agency of this in your Tender by declaring that subcontractor(s) in the Volumes and Values spreadsheet (Attachment 4), Subcontractor tab.
- 11.4.2 Potential Providers should note that the use of subcontractors must be in compliance with the details set out in the Funding Rules (and performance management rules) (Attachment 7). Please note that the Agency does not require all subcontractors to be disclosed. It only requires a Potential Provider to disclose those subcontractors who directly contribute to the Potential Provider's ability to meet its obligations under the Contract. There is no need to specify those subcontractors providing general services to the Potential Provider (such as window cleaners, lawyers, desktop software providers etc.) that indirectly enable the Potential Provider to perform the Contract. For example, if the Agency requires a Supplier to hold a particular licence – then the Potential Provider may indicate that 'XYZ Co' holds the licence and indicate that any of the Services covered by the scope of this licence will only be performed by its subcontractor 'XYZ Co'.
- 11.4.3 It is complex for these instructions to deal with all potential subcontracting scenarios. If you are unsure how to classify and communicate your contracting arrangements in your Tender, then you should contact the Agency at the earliest opportunity in accordance with paragraph 12 ("Questions and Clarifications").

## **12. QUESTIONS AND CLARIFICATIONS**

- 12.1 You may raise questions or seek clarification regarding any aspect of this Procurement at any time prior to the Tender Clarifications Deadline (see the Procurement Timetable set out in section 8). Questions must be submitted using the messaging facility provided within Bravo.
- 12.2 Save where the Agency has a legal obligation of confidentiality to you, the Agency will not enter into exclusive discussions with you regarding this Procurement.
- 12.3 To ensure that all Potential Providers have equal access to information regarding this Procurement, the Agency will publish all its responses to questions raised.
- 12.4 All responses to your questions will be published by the Agency in a "Questions and Answers" document, which will be available in the "Attachments" section of Bravo.
- 12.5 Responses to questions will not identify the originator of the question and will be answered in batches, rather than one at a time, with updates appearing at regular (approximately two to three working days: a "working day" being any day of the week from Monday to Friday save for bank holidays in the UK) intervals. The Agency will

endeavour to publish responses to all questions outstanding at the end of the clarification period, as set out in the timetable.

- 12.6 If you wish to ask a question or seek clarification without the Agency revealing the question and the answer on Bravo, then you must notify the Agency and provide your justification for wishing to withhold the question and any response. If the Agency does not consider, taking into account the Freedom of Information Act 2000 (as amended) and Central Government's transparency policy, that there is sufficient justification for withholding the question and the corresponding response, the Agency will invite you to decide whether:
- 12.6.1 the question/clarification and the response should in fact be published; or
  - 12.6.2 you wish to withdraw the question/clarification.
- 12.7 The Agency may contact you at any time, both during the Procurement and following the conclusion of the Contracts with information, or with directions which require your action.
- 12.8 You are responsible for monitoring Bravo and the 'Questions and Answers' document in particular, for any responses to questions, general clarifications or other information issued by the Agency. Answers to such questions may contain important information that may affect how you complete your Tender.

### **13. AWARD EXCLUSIONS AND AGENCY RIGHTS**

- 13.1 The Agency will not award a Contract where any of the criteria set out in Regulation 57 of the Public Contracts Regulations 2015 apply to the Potential Provider.
- 13.2 The Agency reserves the right not to award a Contract where any of the following criteria apply to the Potential Provider:
- 13.2.1 previous activities that have resulted in significant repayment of Agency or Government funding (£100,000 or 5% of contract value, whichever is the higher) within the last two years, this includes funding paid to a subcontractor to deliver education and training funded by the Agency;
  - 13.2.2 failure to repay funding due to the Agency or other government body;
  - 13.2.3 failure to repay funding due under a subcontract to deliver education and training funded by the Agency;
  - 13.2.4 information from awarding bodies identifying significant irregularities in the award of qualifications;
  - 13.2.5 two or more instances where the Agency's staff or agent have audited the provision of the provider and identified issues of non-compliance with conditions of funding within the last 2 years;
  - 13.2.6 on-going investigation relating to suspicion of fraud or irregularity or possible failure to comply with conditions of funding under an existing funding agreement or subcontract;
  - 13.2.7 early termination of a funding agreement or a subcontract to deliver education and training funded by the Agency;
  - 13.2.8 withdrawal of funding following the failure to comply with a withdrawal of Funding or failure to remedy a serious breach of contract;
  - 13.2.9 or where the Potential Provider has a director, or governor, or a senior employee, or shareholder who was previously a director, or governor, or a

senior employee, or shareholder, in another provider where one or more of the above criteria apply.

- 13.3 The Agency reserves the right not to award a contract where the Prospective Provider has a director who was previously employed by the Agency or a predecessor body, or other Government body, and who was dismissed for gross misconduct, or who resigned whilst suspended from employment and subject to a disciplinary investigation concerning allegations of gross misconduct.
- 13.4 The Agency reserves the right not to award a Contract for a particular geographical region or sector if it does not receive sufficient tenders of the required quality during this procurement exercise.
- 13.5 The Agency reserves the right not to award a Contract where information it already holds about the Potential Provider, it obtains from other Government bodies, or is already in the public domain causes the decision to award to be called into question.
- 13.6 The Agency will only award a contract to a Contractor listed on the Main Route of the RoATP at the time of submission of Tenders.
- 13.7 If you consider that the Agency has not followed the published process or the decision made is unreasonable, you are able to make a complaint under the Agency's complaints procedure which can be accessed at:  
<https://www.gov.uk/government/organisations/skills-funding-Agency/about/complaints-procedure>
- 13.8 It should be noted, however, that the complaints procedure is neither the forum for discussing the winning tenderers' ability to deliver the service nor can it be used to consider an unreasonable decision to award to another organisation. Use of the complaints procedure must be confined to the treatment your organisation has received throughout the process.
- 13.9 Any complaint received outside the Agency's complaints procedure will be treated as a normal message or letter and responded to in that format and timeline (if applicable). Following the evaluation of Tenders in accordance with the evaluation process set out in this ITT, the Agency will inform those Potential Providers who meet the cap of its intention to conclude a Contract with them.
- 13.10 Should one of the Potential Providers who have been offered an award decline to enter into a Contract with the Agency, then the Agency can do one of these two things:
- 13.10.1 re-profile the intended award to be allocated to the remaining Potential Provider(s) who have submitted compliant tenders and reached the threshold for award (provided that an award to an individual Potential Provider shall not exceed the Tender Cap for the Potential Provider (See section 6), and/or
- 13.10.2 retain the intended award for future allocation through management in accordance with the Funding Rules (and performance management rules) (Attachment 7).
- 13.11 Following a Standstill Period of a minimum of ten (10) calendar days and subject to there being no substantive challenge to the Agency's intention to award the Contracts, they will be entered into with the successful Potential Providers.
- 13.12 The procedure for the Standstill Period is set out in Regulation 32A of the Regulations. The Agency cannot provide advice to unsuccessful Potential Providers of the steps they should take to remedy any grievances that they may have and, if

they have not already done so, Potential Providers should always seek independent legal advice, where appropriate.

#### 14. COSTS FOR POTENTIAL PROVIDERS' OWN ACCOUNT

14.1 Potential Providers are entirely responsible for the costs and expenses which they incur in participating in this procurement. The Agency will in no way be liable to Potential Providers for the costs including professional adviser fees or any other expenses that they will incur through participation in this procurement.

#### 15. GLOSSARY/DEFINED TERMS

<b>Prospective Provider</b>	the organisation making an application in response to the Invitation to Tender for the apprenticeship training delivery for employers not using the digital account on the apprenticeship service
<b>Apprentice</b>	means any apprentice to whom the Contractor is required to deliver any of the Service
<b>Apprenticeship</b>	means the training and (where applicable) end point assessment for an employee as part of a job with an accompanying skills development programme
<b>Apprenticeship Levy</b>	the funding collected from employers whose payroll is £3 million or over
<b>Apprenticeship framework</b>	An apprenticeship framework is a definition of requirements for an apprenticeship programme
<b>Apprenticeship standard</b>	Apprenticeship standards show what an apprentice will be doing and the skills required of them, by job role. Standards are developed by employer groups
<b>Award Decision Notice</b>	the notification that will be issued to applicants who have responded to the ITT
<b>Contract</b>	means the Contract between the successful provider and the Agency consisting of these Terms and Conditions, the specification and any other documents (or parts thereof) specified in the Contract and any variations to the Contract agreed in writing and signed by both Parties
<b>Compliant tenders</b>	responses submitted by organisations which meet the application requirements set out in the ITT

<b>Contracting authority</b>	Secretary of State for Education acting through the Education and Skills Funding Agency (Agency)
<b>Declaration of subcontractors' form</b>	document for completion by applicants who will be using subcontractors to deliver the Services
<b>Initial Contract Period</b>	1st January 2018 to 31st March 2019
<b>Apprenticeship Service</b>	the digital interface to services designed to support the uptake of Apprenticeships
<b>Eligibility</b>	describes which organisations can respond to the ITT
<b>e-tendering portal (Bravo)</b>	web based electronic tendering system used as communication tool between the Agency and the applicants
<b>FOIA</b>	means the Freedom of Information Act 2000 and all regulations made there from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA
<b>Funding bands</b>	sets out the maximum Government funding or co-investment contribution available to fund apprenticeship standards and apprenticeship frameworks
<b>Funding Rules</b>	means the documents which set out the detailed requirements with which the Contractor must comply in respect of each Apprenticeship delivered under this Contract as may be amended by the ESFA from time to time and which incorporate the performance management rules; as follows.  Non-Levy Apprenticeships <a href="https://www.gov.uk/government/publications/apprenticeship-funding-and-performance-management-rules-2017-to-2018">https://www.gov.uk/government/publications/apprenticeship-funding-and-performance-management-rules-2017-to-2018</a>
<b>Funding volumes and values spreadsheet</b>	excel document for completion by applicants providing information on the volume, sector area, level and geography of the proposed apprenticeship training delivery and the required funding
<b>Funding costs</b>	value of the delivery of the service
<b>Geographic area</b>	one or more of nine regions in England
<b>Online message board (Bravo)</b>	web based board where applicants can message the Agency
<b>OFSTED</b>	means the Office for Standards in Education, Children's Services and Skills

<b>Organisation</b>	we use the term 'organisation' to include companies, charities, bodies, colleges, universities, sole traders and other types of legal entity, including those who are in the same group as, or are associated with, the main provider. The term 'organisation' excludes individuals who are self-employed or supplied by an employment Agency and who are working under the main provider's or employer-provider's direction and control, in the same way as an employee
<b>Provider Class</b>	means the classes of provider as set out in the tables at paragraphs 6.3 and 6.9
<b>Subcontractors</b>	organisations who are chosen by an applicant in association with an employer, to assist in delivering the Service
<b>Specification</b>	means the documents setting out the ESFA's requirements for the Services to be provided under this Contract.
<b>Tender Cap</b>	means the financial limit to which Provider Classes may submit their tenders, as set out in paragraph 6.7 and the table at 6.9
<b>UKPRN</b>	UK Provider Reference Number
<b>UKRLP</b>	The UK Register of Learning Providers is a 'one-stop' portal used by government departments, agencies, learners, and employers to share key information about learning providers. The UKRLP allows providers to update their information in one place and share this across agencies

## 16. USEFUL INFORMATION

- Apprenticeship funding in England from May 2017 (the policy guidance paper):  
<https://www.gov.uk/government/publications/apprenticeship-funding-from-may-2017>
- Funding bands for frameworks (spreadsheet):  
<https://www.gov.uk/government/publications/apprenticeship-funding-from-may-2017>
- Funding bands for standards (spreadsheet):  
<https://www.gov.uk/government/publications/apprenticeship-funding-from-may-2017>
- Update on how it works page (HTML) -  
<https://www.gov.uk/government/publications/apprenticeship-levy-how-it-will-work>
- Apprenticeship standards 'in development' but not 'approved for delivery'  
<https://www.gov.uk/government/publications/apprenticeship-standards-in-development>
- The ESFA 'Hub' - see the Learning Aims tab  
<https://hub.imservices.org.uk/Pages/default.aspx>
- General guide to higher and degree Apprenticeships  
<https://www.gov.uk/government/publications/higher-and-degree-apprenticeships>
- Skills Funding Agency Funding Rules for Providers and Performance Management Rules  
<https://www.gov.uk/government/publications/apprenticeship-funding-and-performance-management-rules-2017-to-2018>
- Skills Funding Agency higher-risk organisations and subcontractors' policy  
<https://www.gov.uk/government/publications/sfa-financial-assurance-higher-risk-providers-and-subcontractors>  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/612159/PROVIDER\\_V3\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612159/PROVIDER_V3_1_.pdf)