



Llywodraeth Cymru
Welsh Government

Mutual Investment Model (MIM)

Guidance in respect of the use of Contract Notices for MIM projects in Wales

September 2017 (Version 1)

Guidance in respect of the use of Contract Notices for MIM projects in Wales ("Guidance")

Disclaimer

Use of this Guidance is not a substitute for project specific advice and Contracting Authorities must take appropriate legal, financial and technical advice when using this Guidance.

This Guidance does not represent an exhaustive list of project specific matters that need to be considered by each Contracting Authority and its advisors when preparing a Contract Notice.

This Guidance should be read in conjunction with the MIM Guidance on completion of Prior Information Notices (PINs).

Introduction

Subject to limited exceptions, a key principle of the Public Contracts Regulations 2015 ("2015 Regulations") is that Contracting Authorities can only award a public contract if a "call for competition" has been published in accordance with the 2015 Regulations and Directive 2012/24/EU (the "Public Contracts Directive". In terms of regulation 26(8), a "call for completion" to commence a competitive dialogue procedure is made by means of a contract notice. Contract notices should include information such as: details of the Contracting Authority, procurement procedure chosen, scope of the contract, estimated value and timescale for replying to the contract notice.

In terms of regulation 49 of the 2015 Regulations, contract notices are required to contain the information set out in part C of Annex 5 to the Public Contracts Directive and need to be sent for publication in accordance with regulation 51 of the 2015 Regulations (i.e. the notice should be sent electronically to the EU Publications Office.) In Wales, this is required to be achieved by submission of a contract notice via the Sell2Wales portal.

In accordance with regulation 30 of the 2015 Regulations, the minimum time limit for receipt of requests to participate in a competitive dialogue competition is 30 days from the date on which the contract notice is sent. Contracting authorities must set out their "needs and requirements" in the contract notice and Contracting Authorities are required to define those needs and requirements in that contract notice or in a descriptive document, or in both (regulation 30(6)).

It is Welsh Government policy that MIM projects will be procured using the competitive dialogue procedure. This Guidance is provided for use by Contracting Authorities who are procuring a MIM project pursuant to the competitive dialogue procedure.

Completion of a Contract Notice for use in respect of a MIM project procured under the Competitive Dialogue Procedure

Guidance on how to complete a Contract Notice for use in respect of a MIM project procured under the competitive dialogue procedure is set out in the table below. The template Contract Notice is available on www.sell2wales.gov.wales.

In order to complete the template contract notice, first select "SF02 Contract Notice on sell2wales.gov.wales. Create notice – select nature of contract – services and also specify procedure as competitive dialogue". It is likely that MIM projects will be considered as services contracts. This needs to be assessed by each Contracting Authority on a project-by-project basis using the rules on "mixed procurements" set out in regulation 4 of the 2015 Regulations.

Section	Guidance for completion																												
I: Contracting authority																													
I.1: Name and addresses	In this section, identify the Contracting Authority responsible for the procedure. Name, address, contact person, telephone, email, fax, internet address and national registration number (if applicable) should be completed. In addition, a NUTS code should be inserted which relates to where the Contracting Authority is located. "NUTS" refers to Nomenclature of Territorial Units for Statistics, which was established by Eurostat in order to provide a single uniform breakdown of territorial units for the production of regional statistics for the European Union. For each EU member country, there is a hierarchy of three NUTS levels; the subdivisions in some levels do not necessarily correspond to administrative divisions within the country. The NUTS codes for Wales are: <table> <tr> <td>UKL</td><td>WALES</td></tr> <tr> <td>UKL1</td><td>West Wales and The Valleys</td></tr> <tr> <td>UKL11</td><td>Isle of Anglesey</td></tr> <tr> <td>UKL12</td><td>Gwynedd</td></tr> <tr> <td>UKL13</td><td>Conwy and Denbighshire</td></tr> <tr> <td>UKL14</td><td>South West Wales</td></tr> <tr> <td>UKL15</td><td>Central Valleys</td></tr> <tr> <td>UKL16</td><td>Gwent Valleys</td></tr> <tr> <td>UKL17</td><td>Bridgend and Neath Port Talbot</td></tr> <tr> <td>UKL18</td><td>Swansea</td></tr> <tr> <td>UKL2</td><td>East Wales</td></tr> <tr> <td>UKL21</td><td>Monmouthshire and Newport</td></tr> <tr> <td>UKL22</td><td>Cardiff and Vale of Glamorgan</td></tr> <tr> <td>UKL23</td><td>Flintshire and Wrexham</td></tr> </table>	UKL	WALES	UKL1	West Wales and The Valleys	UKL11	Isle of Anglesey	UKL12	Gwynedd	UKL13	Conwy and Denbighshire	UKL14	South West Wales	UKL15	Central Valleys	UKL16	Gwent Valleys	UKL17	Bridgend and Neath Port Talbot	UKL18	Swansea	UKL2	East Wales	UKL21	Monmouthshire and Newport	UKL22	Cardiff and Vale of Glamorgan	UKL23	Flintshire and Wrexham
UKL	WALES																												
UKL1	West Wales and The Valleys																												
UKL11	Isle of Anglesey																												
UKL12	Gwynedd																												
UKL13	Conwy and Denbighshire																												
UKL14	South West Wales																												
UKL15	Central Valleys																												
UKL16	Gwent Valleys																												
UKL17	Bridgend and Neath Port Talbot																												
UKL18	Swansea																												
UKL2	East Wales																												
UKL21	Monmouthshire and Newport																												
UKL22	Cardiff and Vale of Glamorgan																												
UKL23	Flintshire and Wrexham																												

Section	Guidance for completion
	UKL24 Powys
I.2: Joint procurement	If the procurement of the MIM project will be carried out on a joint procurement basis or the contract will be awarded by a central purchasing body, then this should be reflected here. Seek advice in respect of any joint procurement.
I.3: Communication	It is Welsh Government policy that Contracting Authorities should confirm that all information is available electronically on an unrestricted basis, and that requests to participate and tenders should be electronically submitted. Therefore, select "The procurement documents are available for unrestricted and full direct access free of charge" Complete the "Additional information" question and confirm whether additional information is available from another address or the address included in Section I.1. Select "Tenders or requests to participate must be submitted electronically" and insert url. Leave blank "Electronic communication requires use of tools and devices that are not generally available."
I.4: Type of the Contracting Authority	Regulation 2 of the 2015 Regulations defines a Contracting Authority as <i>"the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include Her Majesty in her private capacity"</i>. Select the appropriate type which relates to the Contracting Authority.
I.5: Main Activity	To be completed. Select the activity which relates to the Contracting Authority.
Select "Add Object"	
II: Object	
II.1: Scope of the procurement	
II.1.1: Title	Insert the title of the MIM project and include a reference number (if applicable).
II.1.2: Main CPV code	The CPV (Common Procurement Vocabulary) establishes a single classification system for public procurement aimed at standardising the references used by Contracting Authorities to describe the subject of procurement contracts. The use of the CPV is mandatory in the European Union as from 1 February

Section	Guidance for completion
	2006. The CPV, adopted by Regulation (EC) No. 213/2008 is the current CPV version which should be used to complete this Contract Notice. The CPV consists of a main vocabulary for defining the subject of a contract, and a supplementary vocabulary for adding further qualitative information. The main vocabulary is based on a tree structure comprising codes of up to 9 digits (an 8 digit code plus a check digit) associated with a wording that describes the type of supplies, works or services forming the subject of the contract. Contracting authorities should find the code that suits the MIM project as accurately as possible and use this as the "Main CPV Code". Additional CPV codes should be included in Section II.2.2. Expert advice should be sought in respect of the selection of the appropriate Codes. An appropriate balance should be achieved between the used of Generic and Specific Codes. For further information on CPV codes and a link to current CPV Regulation, see http://simap.ted.europa.eu/web/simap/cpv
II.1.4: Short description	The short description of the MIM project should be drafted with precision and accuracy. See comments below in Section II.2.4.
II.1.5: Estimated total value	Complete with the estimated total value. Valuation rules are set out in regulation 6 of the 2015 Regulations.
II.1.6: Information about lots	It is not currently envisaged that any of the MIM projects will be procured on the basis of lots. It is likely that if separate procurements of, for example, equipment, consultancy services, ground investigation or other enabling works are required, then such procurements will be advertised separately. Therefore, select "no".
II.2: Description	
II.2.1: Title	This field is automatically completed as per the information entered in II.1.1. Lot No: N/A
II.2.2: Additional CPV code(s)	See comments in Section II.1.2.
II.2.3: Place of performance	Insert NUTS code which relates to the place of performance. See comments in I.1.
II.2.4: Description of the procurement	Expand the short description in II.1.4. The description of the MIM project should be drafted fully with precision and accuracy and Contracting Authorities should set out their "needs and requirements" (regulation 30(6) of the 2015 Regulations). If those needs and requirements include additional works, services or

Section	Guidance for completion
	supplies which the authority is considering as part of the MIM project, then that such be set out in this Section. A Contracting Authority's needs and requirements may be defined in the contract notice or the descriptive document. It is, therefore, important to comply with the 2015 Regulations and to be as specific as possible to indicate to economic operators what is being procured so as to encourage appropriate economic operators with the correct experience to respond to the contract notice. Also, the description is important as if there are any future modifications to the MIM project, the description in the contract notice could be examined to conclude if the particular modification was contemplated in the contract notice (see, for example, regulations 72(1)(a), (e) and (8). Another reason why a Contracting Authority's needs and requirements must be set out fully, precisely and accurately is that final tenders received in a competitive dialogue procedure may be <i>"clarified, specified and optimised at the request of the contracting authority...but such clarifications, specification or optimisation, or any additional information, may not involve changes to the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect"</i> (regulation 30 (17) and (18) of the 2015 Regulations. In addition, the Contracting Authority is permitted to engage in limited negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio in accordance with regulation 67 in order to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract, provided this (a) does not have the effect of materially modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, and (b) does not risk distorting competition or causing discrimination. This is a further reason why a Contracting Authority's needs and requirements must be set out fully, precisely and accurately.
II.2.5: Award criteria	Select "Price is not the only award criterion and all criteria are stated only in the procurement documents".
II.2.6: Estimated value	Complete as per II.1.5
II.2.7: Duration of the contract, framework agreement or dynamic purchasing system	Duration in months to be completed by each Contracting Authority on a project by project basis. The MIM contract will not be subject to renewal, so select "no".
II.2.9: Information about the limits on the number of candidates to be invited	Insert "3" (sell2wales accepts numerical entries only). Insert the objective criteria for choosing the limited number of candidates from the descriptive document and prequalification

Section	Guidance for completion
	questionnaire for the MIM project. In terms of regulation 65 of the 2015 Regulations, Contracting Authorities may limit the number of candidates meeting the selection criteria that they will invite to conduct a dialogue, provided that the minimum number of qualified candidates is available. Contracting authorities must indicate in the contract notice the objective and non-discriminatory criteria or rules they intend to apply and the minimum number of candidates they intend to invite. In the competitive dialogue procedure, the minimum number of candidates who must be invited is three. In any event the number of candidates invited must be "sufficient to ensure genuine competition. Where the number of candidates meeting the selection criteria and the minimum levels of ability as referred to in sections III.1.2 and III.1.3 is below that minimum number, the Contracting Authority may continue the procedure by inviting the candidates with the required capabilities. Contracting authorities shall not include economic operators who did not request to participate, or candidates that do not have the required capabilities.
II.2.10: Information about variants	The acceptance of variant tenders introduces complexity into the evaluation process. If a Contracting Authority wishes to accept variant tenders, then this should be discussed and agreed in advance with the Welsh Government.
II.2.11: Information about options	To be completed by each Contracting Authority on a project by project basis. However, it is unlikely that there will be any options, and in this instance, "no" should be selected.
II.2.12: Information about electronic catalogues	Leave blank as this is not applicable.
II.2.13: Information about European Union Funds	To be completed by each Contracting Authority on a project by project basis.
II.2.14: Additional information	Insert here any additional information pertinent to the description of the MIM project which has not been included in this Section II.
III: Legal, economic, financial and technical information	
III.1: Conditions for participation	
III.1.1: Sustainability to pursue the professional activity, including requirements relating to enrolment on professional or trade registers	This is not applicable. Insert "N/A".
III.1.2: Economic and financial	Check box to indicate that the selection criteria will be stated in

Section	Guidance for completion
standing	the procurement documents. Include brief details of each selection criterion based on what has been included in the descriptive document and prequalification questionnaire which have been prepared by the Contracting Authority in respect of the MIM project. Also, include information on any minimum requirements which have been set in the descriptive document and prequalification questionnaire. In terms of Regulation 58(19) of the 2015 Regulations, minimum levels of ability need to be set out in the Contract Notice: <i>"(19) Contracting authorities shall indicate the requirements for participation, which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest."</i>
III.1.3: Technical and professional ability	Check box to indicate that the selection criteria will be stated in the procurement documents. Include brief details of each selection criterion based on what has been included in the descriptive document and prequalification questionnaire which have been prepared by the Contracting Authority in respect of the MIM project. Also, include information on any minimum requirements which have been set in the descriptive document and prequalification questionnaire. In terms of Regulation 58(19) of the 2015 Regulations, minimum levels of ability need to be set out in the Contract Notice. See Section III.1.2.
III.1.5: Information about reserved contracts	Leave blank as this is not applicable.
III.2: Conditions related to the contract	
III.2.1: Information about a particular profession	This only relates to services contracts. Leave blank as the MIM contract is not reserved to a particular profession in terms of law, regulation or administrative provision.
III.2.2: Contract performance conditions	In terms of regulation 70 of the 2015 Regulations, Contracting Authorities may lay down special conditions relating to the performance of a contract, provided that they are (a) linked to the subject-matter of the contract within the meaning of regulation 67(5), and (b) indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation-related, environmental, social or employment-related considerations. Contracting authorities should consider the Wales Procurement Policy Statement and the specific nature of the project. Given the value, duration and scope of MIM projects, community benefits

Section	Guidance for completion
	will be expected to form part of the contract performance conditions.
III.2.3: Information about staff responsible for the performance of the contract	Check this box as economic operators will be required to provide CV details for certain staff who will perform this MIM Contract.
IV: Procedure	
IV.1: Description	
IV.1.3: Information about the framework agreement or a dynamic purchasing system	Leave blank as this is not applicable.
IV.1.4: Information about reduction of the number of solutions or tenders during negotiation or dialogue	Check the box as it is intended that there will be a reduction of the number of solutions during dialogue. In terms of regulation 30(12) of the 2015 Regulations, competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria set out in the contract notice or in the descriptive document. Completion of this section IV.1.4, is required as Contracting Authorities must indicate, in accordance with regulation 30 (13) of the 2015 Regulations, that they intend to structure the dialogue in successive stages. To note that in the final stage of dialogue, there must be "genuine competition in so far as there are enough solutions left in the competition (regulation 66(2) of the 2015 Regulations).
IV.1.6: Information about electronic auction	Leave blank as this is not applicable.
IV.1.8: Information about the Government Procurement Agreement (GPA)	The application of the GPA is complex. The GPA does not automatically apply to all government procurement of parties to the GPA. Annex 1 to the GPA sets out those Contracting Authorities within each signatory state (in our case the European Union) who are bound by the Agreement. Annexes 1-3 of that Appendix specify the central and sub-central government entities as well as other entities, such as public utilities, that each party has committed to complying with the Agreement. Each party's Appendix I Annex also specifies the threshold value above which individual procurements are covered by the Agreement. As a general rule, all goods are covered by the GPA, while Annexes 4 and 5 to Appendix I specify each party's covered services and construction services. Appendix I also includes Notes and General Notes qualifying the coverage accorded under the Agreement. Each Contracting Authority should complete this Section on a project by project basis, but it is likely that the GPA will apply. Ensure this is consistent with the information contained within the

Section	Guidance for completion
	PIN.
IV.2: Administrative Information	
IV.2.1: Previous publication concerning this procedure	Insert PIN reference details.
IV.2.2: Time limit for receipt of tenders or requests to participate	In the context of a competitive dialogue procedure, this refers to the date for submission of completed prequalification questionnaires. The minimum time period for "receipt of requests to participate" is 30 days under competitive dialogue procedure (regulation 30(2) of the 2015 Regulations). This time limit should be agreed with Welsh Government.
IV.2.3: Estimated date of dispatch of invitations to tender or to participate to selected candidates	To be completed by each Contracting Authority on a project by project basis. This refers to the date of issue of the Invitation to Participate in Dialogue.
IV.2.4: Languages in which tenders or requests to participate may be submitted	Tenders or requests to participate can be submitted in English or Welsh. Contracting authorities need to demonstrate that Welsh language has been considered. Exemption has been secured for tender documentation where subject matter of the contract is not Welsh and the contract is unlikely to be of interest to Welsh suppliers who would wish to converse in Welsh.
IV.2.6: Minimum time frame during which the tenderer must maintain the tender	Complete the minimum timeframe during which the tenderer must keep its tender open. In a scheme of this complexity with external financing, this is a key issue and needs to be agreed with Welsh Government
IV.2.7: Conditions for opening of tenders	Leave blank as not applicable.
VI: Complementary Information	
VI.1: Information about recurrence	Select "no" as the procurement of a MIM project is not a recurrent procurement.
VI.2: Information about electronic workflows	To be completed by each Contracting Authority on a project by project basis. However, leave "electronic ordering" blank as this is not relevant for MIM projects. The Welsh Government is still formulating its policy position on invoicing in advance of the e-invoicing directive. Electronic payment is expected.
VI.3: Additional Information	In this Section, the following types of information should be included: Clarification on any of the responses to the other sections of the contract notice (e.g. where there is no ability to

Section	Guidance for completion
	insert free text in the response box); • Information on any bidders' conference which is to be held after the publication of the contract notice. Any bidders' conference should be held not less than two weeks after the publication of the Contract Notice; • Confirmation that the Contracting Authority is not responsible for any costs arising out of an economic operator responding to the contract notice; • Clarification on any aspect of the procurement timetable; and • Any other relevant information about the procurement which has not already been covered in another section of the contract notice. • State that tenders or requests to participate can be submitted in English or Welsh. NB There is a character limit on sell2wales.
VI.4: Procedures for review	
VI.4.1: Review body	To be completed.
VI.4.2: Body responsible for mediation procedures	To be completed.
VI.4.3: Review procedure	To be completed.
VI.4.4: Service from which information about the review procedure may be obtained	To be completed.
VI.5: Date of dispatch of this notice	This will be inserted automatically.

Glossary and Acronyms

2015 Regulations means the Public Contracts Regulations 2015.

Contract Notice means the notice published by a Contracting Authority in the OJEU in relation to the Procurement Process.

Contracting Authority means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include Her Majesty in her private capacity.

day means a calendar day.

EU means European Union.

EU Publications Office means the Publications Office of the European Union.

GPA means the Agreement on Government Procurement between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended.

OJEU means the Official Journal of the European Union.

Procurement Process means the competitive dialogue procedure adopted by the Contracting Authority for the procurement of a project.

Wales Procurement Policy Statement means the Welsh Government's statement on Welsh Procurement Policy (the latest version at the time of this Guidance being dated 9th June 2015).