



Non Domestic Energy Efficiency (NDEE) sub £1 Million Projects

SP-019-042

**Buyer's Guide
Version 2.0**

Version Issue

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1. Foreword and Acknowledgements

Scottish Procurement aims to deliver benefits to the people of Scotland through improved value for money for taxpayers, improved goods and services for all our citizens and economic opportunities for Scotland. This is achievable through effective collaboration throughout the procurement cycle. Scottish Procurement would like to acknowledge the work, support and contribution from all sector representatives.

2. Introduction

This document has been developed to provide guidance for public and third sector bodies (“Authorities”) who are considering or intending establishing an Energy Performance Contract (“EnPC”) using the Non Domestic Energy Efficiency sub £1 Million projects Framework.

It is not a definitive, technical or legal document and Authorities should always seek their own professional technical and legal guidance and advice. However, we advise strongly that buyers speak to Scottish Procurement about this framework **before** preparing any mini-competition documentation and before engaging any separate advice. The process for placing Call-off Contracts under this collaborative framework differs significantly from other frameworks and is more complicated than is usually the case. Additional time, resource and expertise will be required, relative to more 'standard' procurements.

3. Framework Overview

3.1 Framework Title

Non Domestic Energy Efficiency sub £1 Million projects Framework Ref No SP-019-042.

3.2 Framework Period

The Framework period from 01 October 2020 to 30 September 2023 with the option to extend by a further 12 months. Call-off contracts can be significantly longer (see below).

3.3 Number of Lots

There is only one lot under this Framework. There is a separate framework for NDEE above £1 Million projects.

3.4 Entitlement to use the Framework

It is the responsibility of any buying organisation wishing to use the Framework Agreement to satisfy itself that it is eligible to do so. Entitlement can be established from the terms of the OJEU advert (OJEU reference number 2020/S 177-428779: Sections I.4 and V.1.3 of the advert refer. Link as follows: [OJEU 2020/S 177-428779](#) . Guidance on this can be found in Annex A of [Scottish Government Guidance on Framework Agreements](#). If there is any doubt, legal advice should be sought.

3.5 Framework Benefits

The benefits for Authorities using the Framework are as follows:

3.6 Public and Third Sectors – Climate Emergency

Sustainability

- Improve the environmental comfort of buildings
- Increasing sustainable economic growth through promoting the transition to a low carbon economy
- Community Benefits
- Support delivery of The Climate Change (Scotland) Act 2009, (Section 63, Energy Performance of Non Domestic Buildings), Scotland's Energy Strategy and the EES Programme by reducing CO2 output and make savings in carbon reduction commitments (CRC) for Authorities

- NDEE Framework will look to support and deliver:
 - by 2030 the equivalent of 50% of the energy for Scotland’s heat, transport and electricity consumption to be supplied from renewable sources;
 - increase the productivity of energy use across the Scottish economy by 30% by 2030;
 - By 2032 where technically feasible, all buildings – both in the residential and services sectors – will be insulated to the maximum appropriate level;
 - By 2032 70% of heat and cooling for non-domestic buildings will be supplied using low carbon heat technologies;
 - improvements to the building fabric of Scotland’s buildings will result in a 20% reduction in non-residential heat demand.

3.7 Public and Third Sectors – Commercial

- Reduced costs to the public and third sector
- Savings in energy and maintenance costs;
- Self-funding (i.e. the costs saved pay for the assets installed)
- Support delivery of The Climate Change (Scotland) Act 2009, (Section 63, Energy Performance of Non Domestic Buildings), Scotland’s Energy Strategy and the EES Programme by reducing CO2 output and make savings in carbon reduction commitments (CRC) for Authorities
- Placement of financial risk where it is most appropriately managed

3.8 Scottish Procurement Point of Contact

Billy Lawson

Senior Portfolio Specialist | The Scottish Government
 Scottish Procurement and Property Directorate (SPPD)
 7th Floor, 4 Atlantic Quay, 70 York Street, Glasgow G2 8EA

Mobile: 07465 699 654

Billy.lawson@gov.scot

3.9 Insurance

Clause 36 of the Framework Agreement states that the Contractor must effect and maintain public liability insurance in the sum of not less than £10 million, professional indemnity insurance in the sum of not less than £10 million employers liability insurance in the sum of not less than £10 million and third party motor vehicle liability insurance not less than £5 million. Public and third sector bodies can choose to amend these levels to reflect more closely the level required under their call-off contract.

3.10 Scots Law

The Framework terms and conditions are subject to Scots Law.

3.11 Contract Management Provisions

The Framework will be managed overall by Scottish Procurement – supported by the Non Domestic Energy Efficiency (NDEE) Project Support Unit (PSU) - who will be responsible for regular Framework Contractor review meetings covering escalated issues, KPIs, benchmarking and innovation. On expiry of the Framework, Scottish Procurement will review ongoing support provision. Throughout the Framework period and following Framework expiry, Authorities will be required to manage the day-to-day operational aspects of their call off contract with the Framework Contractor.

3.12 Management Information to be Provided by the Framework Contractors

Management Information will be provided by the Framework Contractors throughout the lifetime of the agreement. Management Information will be provided by Framework Contractors to both the Authorities and Scottish Procurement on a quarterly basis or as specified.

4. NDEE Project Support Unit (PSU)

The PSU is a separate contract designed to guide customers through the varying energy efficiency measures they may be presented with through the NDEE sub £1 Million project framework. THE PSU can be used to provide support for NDEE Call Off Contracts (only).

This function is currently provided by Mott MacDonald, whose contact details can be found below:

Name	Role	Email	Tel. No.
Andrew Wholley	Consultant	andrew.wholley@mottmac.com	+44 (0)141 222 4500

Where public bodies engage services through the PSU, the Low Carbon Unit may offer funding of up to £50,000 to customers. Where successful in applying for this funding it is used to pay for the PSU's time and resource up to the value of the received funding (Note: Public Bodies are also able to fund the PSU using their own financial resource). The PSU will work with each customer, depending on their resource and available in-house skills, to maximise their time within this value. The PSU will help scope the project, assist with the tendering and evaluating of Mini Competitions under the framework and ensure the measure and verification (M&V) is clear to all parties. Works or services provided by the PSU which extend beyond any funding provided by the Low Carbon Unit will be required to be funded by the customer. The M&V element is carried out by a separate company, but within the delivery of PSU's role.

5. Call-off Contracts

5.1 Mini-Competition

Authorities must invite **all** Framework Contractors to mini-competition. It will be for the Framework Contractors to de-select themselves from the competition at any of the stages.

5.2 Call-off Contract Period

Call-off Contracts under the Framework are not limited to the period. Typically a call-off Contract can be anything from 1 to 25 years depending on the financing option taken by the public or third sector body. The call-off contact period will be determined at mini-competition.

5.3 Framework Contractors

This is a multi-contractor framework with 5 Framework Contractors.

Full contact information is detailed as follows:

Contractor Title and Registered Address	Companies House Registration Number	NDEE Framework Operational Address and contractor contact details
Ameresco Limited Wesley House 5 Wesley Street Castleford West Yorkshire WF10 1JG https://beta.companieshouse.gov.uk/company/06614239	06614239	11-13 Crosswall London, EC3N 2JY, UK Austen Bamford a bamford@ameresco.com 07769 170 626
Everwarm Limited 3 Inchcorse Place Bathgate West Lothian EH48 2EE https://beta.companieshouse.gov.uk/company/SC390210	SC390210	Everwarm Limited 3 Inchcorse Place Bathgate West Lothian EH48 2EE Robert Sterling Managing Director Tel: : 01506 638 600 extension 606 Mob: 07584 014 545 robert.stirling@everwarmgroup.com
FES Support Services Ltd Forth House Pirnhall Business Park Stirling FK7 8HW https://beta.companieshouse.gov.uk/company/SC387816	SC053848	Forth House Pirnhall Business Park Stirling FK7 8HW James Reid Divisional Manager Mob: 07825399442 jreid@fes-group.co.uk

<p>Veolia ES (UK) Limited 210 Pentonville Road London England N1 9JY</p> <p>https://beta.companieshouse.gov.uk/company/02481991</p>	<p>02481991</p>	<p>Veolia ES (UK) Limited 210 Pentonville Road London England N1 9JY</p> <p>Heather Foster - Business Development Manager Mob: 07825 263252</p> <p>heather.foster@veolia.com</p> <p>vesbidteam.vesuk@veolia.com</p>
<p>Vital Energi Utilities Ltd Century House Roman Road Blackburn Lancashire BB1 2LD</p> <p>https://beta.companieshouse.gov.uk/company/04050190</p>	<p>04050190</p>	<p>Office G8 Duart House, 3 Finch Way Strathclyde Business Park Bellshill Glasgow & Strathclyde ML4 3PR</p> <p>Scott Lutton – Operations Manager Mob: 07341563454</p> <p>Scott.lutton@vitalenergi.co.uk</p>

5.4 Financial Considerations

Authorities should consider the financial and legal aspects on signing an Energy Performance Contract.

5.5 Voluntary Standstill Period for Call-off Contracts

Scottish Procurement Policy Notice 3/2010 dated 24 February 2010 referred to guidance on changes to standstill period. Whist standstill periods are not required for Call-off Contracts Authorities should consider the implications if they do not. Below is an abstract from [SPPN 3/2010](#):

“Voluntary standstill - above threshold Call-off Contracts

6.25 As stated above, public bodies do not have to follow the standstill rules when awarding a call-off contract under a framework agreement or dynamic purchasing system.

6.26 However, they may choose to follow the standstill rules on a voluntary basis when awarding a call-off contract under a framework agreement or dynamic purchasing system by notifying all parties to the framework agreement or dynamic purchasing system of the contract award decision.

6.27 If the award of an above threshold call-off contract is challenged in court on the basis that the public body has breached the rules governing the award of

contracts under a framework agreement by mini-competition or the rules governing the award of contracts under a dynamic purchasing system, the court may render the call-off contract ineffective 5. However, if a public body has followed the standstill rules on a voluntary basis (i.e. by informing tenderers in writing of its decision in relation to the award of the contract and providing a summary of the reasons why the tenderer was unsuccessful), the court cannot declare the call-off contract ineffective and the only remedy available to the challenger will be damages. Public bodies can therefore protect themselves from an ineffectiveness order in these circumstances by following the standstill rules on a voluntary basis”

5.6 Award of Call-off Contracts

Buyers are reminded of the obligations contained in the [Procurement Reform \(Scotland\) Act 2014](#) in relation to the award of contracts valued equal to or greater than £50,000 including those awarded as a result of a framework call-off/mini competition.

In particular, Buyers should note that in accordance with [Section 23\(2\)](#) the award of contracts must be publicised on the Public Contracts Scotland website and in accordance with [Section 35](#) contracts must be registered in the contracting authority’s “contracts register”.

- [Scottish Procurement Policy Notice webpage for reference](#)

6. Additional Recommended Reading

Scottish Government “[Public sector procurement in Scotland](#)” – website for information on public procurement in Scotland including, information for buyers, and policy and legislation.

7. Frequently Asked Questions

Note: A Glossary of Terms used is annexed (Appendix 1)

7.1 What is an NDEE project and why should an Authority carry out an NDEE project?

A non domestic energy efficiency project retrofits public sector and third sector buildings with energy efficiency assets. These may include for example prefabricated energy centres; combined heat and power units; energy efficient boilers; communal heating; voltage management units; controls outstations; luminaires, lighting controllers and other lighting assets

These projects save energy and maintenance costs; they are self-funding (i.e. the costs saved pay for the assets installed); they reduce carbon emissions and improve the environmental comfort of the buildings.

The projects are of particular relevance to The Climate Change (Scotland) Act 2009, (Section 63, Energy Performance of Non Domestic Buildings). The Climate Change (Scotland) Act 2009 sets legally binding targets in relation to greenhouse gas emissions reduction (42% by 2020, based on a 1990 baseline) and places various duties

on public bodies. To support this there are linked ambitions; an energy efficiency target to reduce total final energy consumption in Scotland by 12% (against baseline of average consumption in 2005-07) and delivery of 11% of non-electrical heat demand by renewable sources.

In addition, new regulations for non-domestic buildings will come into force in June 2016 affecting the public sector and third sector estate and requiring energy performance to be improved.

Increasing sustainable economic growth is a key driver of economic growth and promoting the transition to a low carbon economy is seen as a strategic priority within this.

7.2 What is a NDEE Framework?

The NDEE Framework is a framework agreement within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2012. It is a framework of pre-selected Contractors that Authorities can use for a range of retrofit energy efficiency works and services

An Authority runs a mini competition amongst the Contractors who are party to the Framework Agreement (described in more detail in response to question 7.13). Having chosen the Contractor with the most economically advantageous tender in response to the mini competition, the Authority enters into an Energy Performance Contract ("EnPC") or Call-Off Contract under the Framework.

7.3 What is an Energy Performance Contract ("EnPC")?

An EnPC has the following key elements:

- A Contractor proposes, designs and installs energy conservation measures in a building.
- The Contractor guarantees the level of energy consumption savings that the measures and any associated services will achieve
- The energy conservation measures reduce operating costs
- Upfront investments in energy conservation measures are recovered over time through costs saving
- Any shortfall between the agreed level of energy consumption savings and those achieved as determined through an internationally agreed approach to measurement and verification is deducted from payment otherwise due to be made to the Contractor

7.4 Who can procure NDEE projects through the NDEE Framework?

A wide range of Scottish Authorities may use the Framework. These include Scottish Government departments and agencies, police, fire and rescue and ambulance, all

health boards, all local authorities, social landlords, universities and colleges and a range of other public bodies and charities.

7.5 Who are the Contractors on the NDEE Framework?

The full list of framework contractors is as follows:

Ameresco Limited
Everwarm Limited
FES Support Services Limited
Vital Energi Utilities Limited
Veolia ES (UK) Limited

7.6 How is an NDEE project funded and financed?

Procuring Authorities can either pay for the project at the time of installation or pay for it over the course of the contract. In the latter instance the Contractor will organise finance to pay for the installation and the monthly charges will cover this financing cost as well as the cost of providing energy efficiency services.

Delivery of services by way of Call-Off Contract under the Framework will be based upon an EnPC with a performance guarantee capable of delivering:

- (i) design and build;
- (ii) design, build and operate;
- (iii) design, build, operate, finance; or
- (iv) design, build, operate, finance and maintain

Authorities will have the option of requiring a Contractor to provide on-going services such as elements of ongoing maintenance. It is anticipated that in the case of revenue funded projects, Authorities will require a Contractor to provide significant on-going services.

7.7 What energy conservation measures does an Energy Performance Contract cover? Does it cover other low and zero carbon (“LZC”) technologies (e.g. District Heating, Combined Heat and Power Units or Renewables)?

The EnPC will include the delivery of a wide range of energy efficiency assets, from efficient boilers and chillers to heat emitters, meters and controllers. The following is a list of some of the Energy Conservation Measure (“ECM”) categories that may be delivered as part of an EnPC, listed in an order to promote energy management hierarchy and facilitate transparency of interactive effects:

- Automatic Metering Reading (“AMR”) assets including meters, loggers, communication devices and reporting software.

- Solar shading devices, natural ventilation grilles and other passive renewable energy assets.
- Insulation panels, mats etc. and other items to improve the thermal performance of the building envelope.
- Heating, ventilation and air conditioning (“HVAC”) energy efficiency assets, such as efficient boilers, fans, chillers and heat emitters etc.
- Building energy management systems and other HVAC controllers.
- Lighting and lighting controllers, including internal and external lighting inventories.
- Electrical Equipment and Distribution assets, such as efficient motors, drives and other equipment and voltage management units
- Low and Zero Carbon plant and equipment, such as biomass boilers, solar thermal collectors, heat pumps, photovoltaic panels, combined heat and power units, etc.
- Energy efficiency retrofit equipment to specialist systems, e.g. swimming pool covers, lift motors, catering equipment controls, variable speed drives for process equipment, etc.)
- Devices to manage water use through outlets such as taps, WC cisterns, urinals etc.
- Other energy efficiency assets to improve building energy performance.

These Energy Conservation Measures are supported, where necessary, by the delivery of particular Energy Conservation Services (“ECS”) and are underpinned by an energy performance guarantee. Energy Conservation Services may include Measurement and Verification, bureau service, maintenance of installed assets, lifecycle and behaviour change.

Low and zero carbon technologies e.g. district heating, combined heat and power units or renewables) (“LZC”) measures can all be included as part of larger projects, but for projects in which NDEE measures are a small proportion of total value and LZC measures are significant other Frameworks and contracts may be better suited than the NDEE Framework and its associated EnPC.

7.8 How is the Contractor paid?

Payment following installation of works under a Design and Build Energy Performance Contract

Unlike other construction projects, the Contractor is not paid regular amounts during construction/installation. Instead the Contractor is paid a Contract Sum which comprises of milestone payments. A milestone payment is made at practical completion of the works. A further milestone payment which amounts to the balance of the Contract Sum will be paid on satisfactory completion of the testing of Guaranteed Energy Cost Performance.

The milestone amounts will be set by the Authority as part of the mini competition award procedure. It is expected that the ‘balance’ milestone payment will be reflective of the annual guaranteed savings. The Measurement and Verification Savings Report

will establish whether the guaranteed energy saving has been achieved. If it has not been achieved, and any defect rectification and/or retesting which may be carried out does not indicate that the saving has subsequently been achieved, the final milestone payment will be reduced to zero.

Payment across the contract term under a Design, Build, Finance and Maintain Contract

Where an Authority decides to pay for the services over the duration of the contract, an Annual Payment is made in monthly instalments. Deductions from the monthly payments are made if the Contractor fails to deliver the Energy Conservation Services to the required standard or fails to meet the guaranteed energy saving.

7.9 How does a Contractor demonstrate that Guaranteed Energy Cost Performance has been achieved?

The Contractor will provide impartial and independent measurement and verification of the energy performance delivery of the ECMs in the form of a Measurement & Verification Service.

The Contractor will use a Measurement and Verification Plan (“M&V Plan”) to demonstrate the project’s achievement of its goals of improving energy efficiency and saving money.

The M&V Plan will identify the actions and reporting required of the Contractor in the delivery of the Measurement and Verification Service. The Measurement and Verification approach follows that laid out by the International Performance Measurement and Verification Protocol.

7.10 What resources are required to develop and deliver an NDEE project?

A project manager should be appointed.

In addition an Authority may require external specialist technical, financial and legal adviser support to assist it to develop a business case for the project, to prepare the project brief and/or to run a mini competition. Whilst the majority of Authorities appointing such external specialist advisers will pay for their services when they are delivered, there is a deferred payment option available whereby the Authority pays its external advisers on signature of the EnPC, and receives a contemporaneous reimbursement from the Contractor at that stage. The reimbursed payment will be recouped by the Contractor through the Contract Sum or Annual Payment. This payment will be a pass through cost, not subject to either overhead and profit additions.

7.11 What support is available to Authorities to develop and deliver an NDEE project?

Non Domestic Energy Efficiency projects can be supported by the aforementioned PSU. The PSU is provided by Mott MacDonald Ltd.

7.12 What guidance and tools are available to Authorities to develop and deliver an NDEE project?

The following guidance is available:

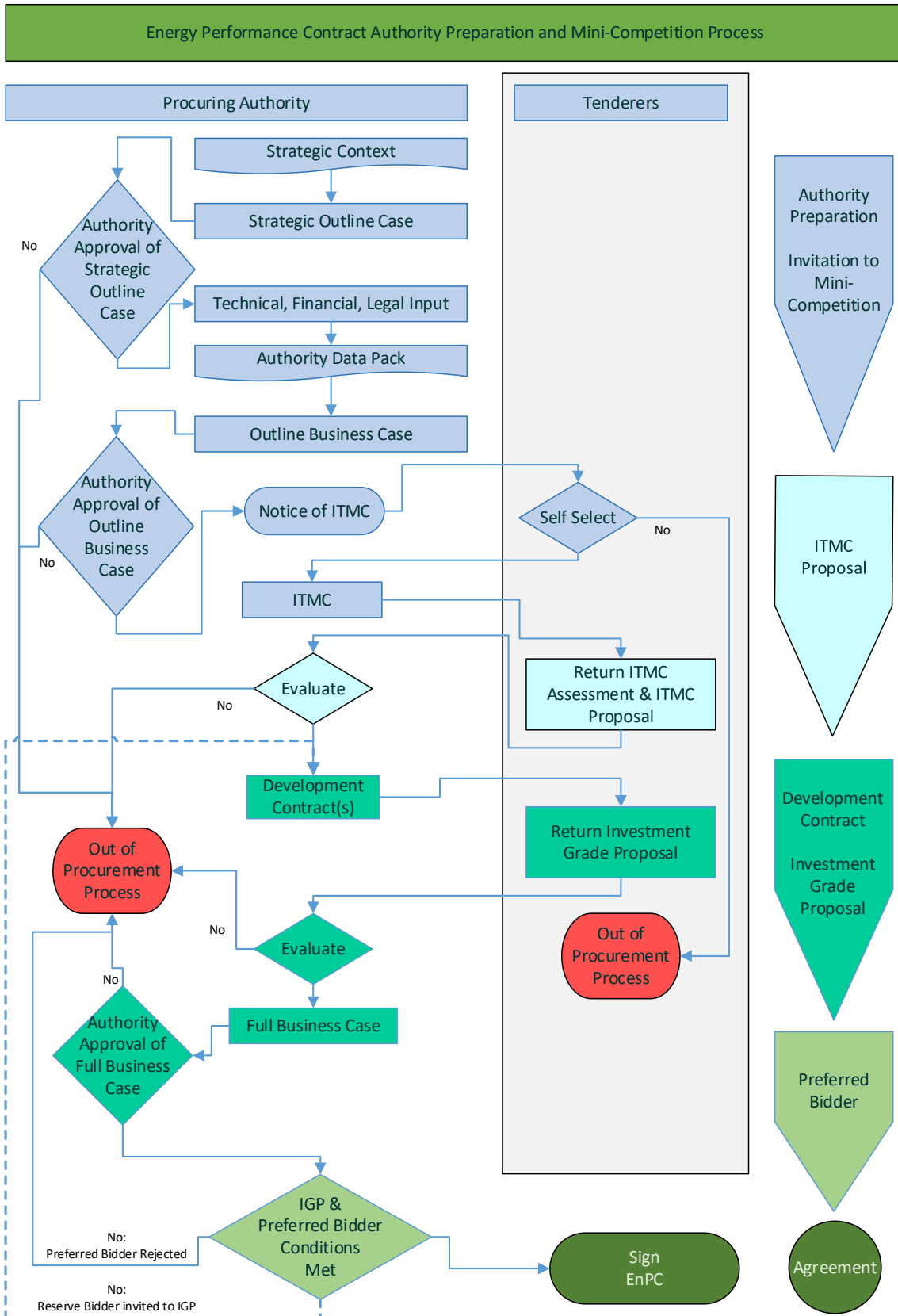
- Guidance Development Contract Investment Grade Audit Report Shadow Assessment
- Guidance EnPC Shadow Assessment Cover Note
- Guidance EnPC DB Measurement and Verification Note
- Guidance EnPC DBFM Measurement and Verification Note
- Guidance EnPC DBFM Measurement and Verification Shadow Assessment
- Guidance EnPC DBFM Operational Verification Testing Requirements Shadow Assessment
- Guidance EnPC DBFM Example Savings Report Shadow Assessment
- Guidance EnPC Service Level Specification Shadow assessment

There are footnotes within and explanatory notes at the beginning of the template EnPC(s) which form part of the Framework Agreement.

7.13 How does the mini competition process work?

The following flow diagram gives an overview of the two options for the mini-competition process.

Mini-Competition Process Flow Chart – Option 1 (Standard Mini Competition)



Mini-Competition Process – Option 1 (Standard Mini Competition) Description



Invitation to Mini-Competition

Authority Preparation: The Authority prepares an Invitation to Mini-Competition (ITMC) Pack, securing appropriate governance approvals, such as a Strategic Outline Case.

Notice of ITMC: Authorities send out a Notice to Framework Contractors of an intention to issue an ITMC, outlining scope and capability requirements. Bidders will respond, confirming their capability of meeting the requirements, or self-deselect.

ITMC: The Authority will issue an ITMC Pack, detailing its minimum requirements and instructing Bidders on what is required by way of tender response. Authorities will have flexibility as to the make-up of the ITMC Pack. Examples of documents it is envisaged they would include are listed in Appendix 1 Glossary of Terms [for information at this stage](#)



ITMC Proposal

ITMC Proposal: Bidders respond to the ITMC with an ITMC Proposal. It is envisaged that this will comprise an ITMC Assessment and a commercial offer that must meet or exceed the minimum requirements set out in the ITMC for a Bidder to proceed.

ITMC Assessment: The ITMC Assessment is the Bidder's presentation of their technical analysis supporting their commercial offer. It will include a range of Energy Conservation Measures from which they may select to develop their technical solution under their Investment Grade Proposal.

Shortlisted Bidder(s): ITMC Proposals are then evaluated to identify the Most Economically Advantageous Tender (MEAT), leading to selection of (a) Shortlisted Bidder(s). (It is envisaged that an Authority may designate (a) Reserve Bidder(s)).



Development Contract(s)

Investment Grade Proposal: The Shortlisted Bidder(s) then enter into a Development Contract (see Schedule 5(a) of the Framework Agreement) to produce Investment Grade Proposal(s), comprising Investment Grade Audit(s), accompanied by Measurement and Verification Plan(s) and detailed commercial offer(s) which equals or improves upon the position set out in its ITMC Proposal. The Shortlisted Bidder with the best MEAT may be identified as the Preferred Bidder. The Authority may also designate a Reserve Bidder.

Investment Grade Audit: The IGA is a Bidder's detailed technical solution. It states the Energy Conservation Measures a Bidder intends to implement, its installation and operation methodologies, programme plan etc.



Preferred Bidder

If the Development Contract is successfully completed, an Authority may proceed, with the Bidder to populate the Technical Schedule Parts of the EnPC-D&B / EnPC-DBFM Contract in accordance with its IGA (see Schedule 5(b) and 5(c) of the Framework Agreement).

Where the Bidder is unable to complete the Technical Schedule Parts in support of its IGP, a Reserve Bidder may be identified as the Preferred Bidder.

On completion of the Schedule Parts, both parties will sign the EnPC-D&B / EnPC-DBFM Contract and the Preferred Bidder will be appointed as the Contractor.

Level of Detail Required by the Authority

Bidders should note that the level of detail an Authority provides to Bidders at ITMC will be at the Authority's discretion.

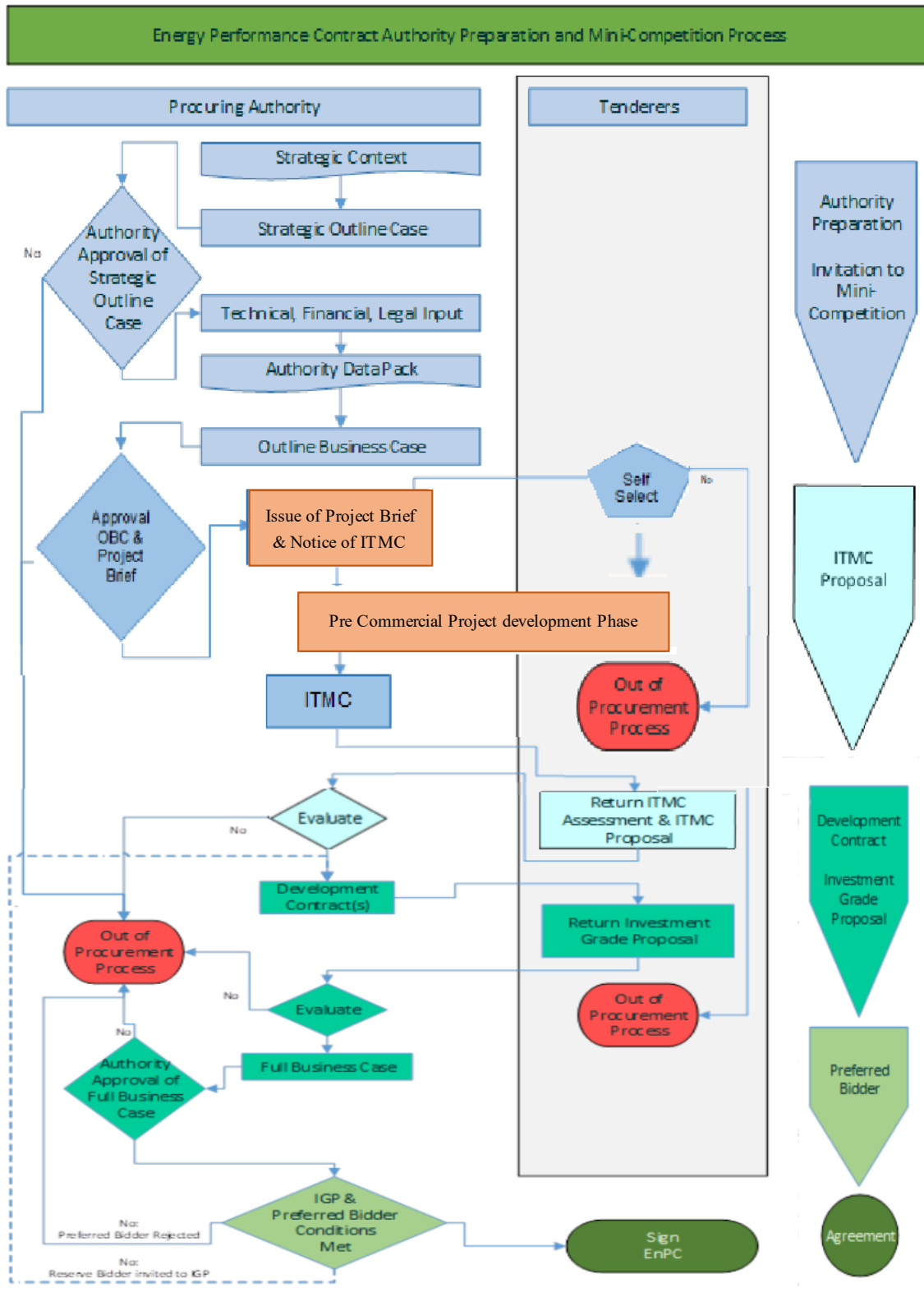
Number of Facilities Included in the Mini-Competition

It is envisaged that the number, location and identity of facilities to be included in the EnPC would be stated by the Authority in the ITMC. However, it may opt to limit the number of buildings subject to the mini-competition to a sample of the portfolio that it intends to include in the EnPC.

Payment for External Technical Advisors

It is anticipated, the majority of Authorities choosing to appoint external technical advisors will pay for their service when it is delivered in accordance with the terms and conditions of their appointment. However, a deferred payment option may also be used, whereby the Authority pays the external advisor on signature of the EnPC-D&B / EnPC-DBFM Contract, receiving a contemporaneous reimbursement from the Bidder at that stage. The reimbursed payment would be recouped by the Bidder through the Contract Sum or Annual Payment. This payment will be a pass through cost, not subject to either overhead and profit additions.

Mini-Competition Process Flow Chart – Option 2 (Mini Competition with Pre Commercial Project Development Phase)



Mini-Competition Process – Option 2 (Mini Competition with Pre Commercial Project Development Phase) Description



Invitation to Mini-Competition

Authority Preparation: The Authority prepares a Project Brief, securing appropriate governance approvals, such as a Strategic Outline Case.

Issue of Project Brief & Notice of ITMC: Authorities send out a Notice to Framework Contractors of an intention to issue an ITMC along with a Project Brief, outlining scope, capability requirements and requesting they provide details of any further information they require and their initial proposals. Bidders will respond, confirming their capability of meeting the requirements, or self-deselect.

Pre Commercial Project Development Phase: Enter into a Pre Commercial Project Brief Development Phase with all of the Framework Contractors, to include site visits – this should last a period of 4 weeks – but may be longer.

N.B. Framework Contractors can remove themselves from the development phase process but no Framework Contractor can be eliminated by the Framework Public Body

ITMC: The Authority will develop and finalise the project brief from the Pre Commercial Project Development Phase and issue an ITMC Pack, detailing its minimum requirements and instructing Bidders on what is required by way of tender response. Authorities will have flexibility as to the make-up of the ITMC Pack. Examples of documents it is envisaged they would include are listed in [Appendix 1 Glossary of Terms for information at this stage](#)

ITMC Proposal

STAGE 1:

ITMC
Proposal

ITMC Proposal: Bidders respond to the ITMC with an ITMC Proposal. It is envisaged that this will comprise an ITMC Assessment and a commercial offer that must meet or exceed the minimum requirements set out in the ITMC for a Bidder to proceed.

ITMC Assessment: The ITMC Assessment is the Bidder's presentation of their technical analysis supporting their commercial offer. It will include a range of Energy Conservation Measures from which they may select to develop their technical solution under their Investment Grade Proposal.

Shortlisted Bidder(s): ITMC Proposals are then evaluated to identify the Most Economically Advantageous Tender (MEAT), leading to selection of (a) Shortlisted Bidder(s). (It is envisaged that an Authority may designate (a) Reserve Bidder(s)).

Development Contract(s)

Stage 2:

Development
Contract(s)

Investment
Grade
Proposal(s)

Investment Grade Proposal: The Shortlisted Bidder(s) then enter into a Development Contract (see Schedule 5(a) of the Framework Agreement) to produce Investment Grade Proposal(s), comprising Investment Grade Audit(s), accompanied by Measurement and Verification Plan(s) and detailed commercial offer(s) which equals or improves upon the position set out in its ITMC Proposal. The Shortlisted Bidder with the best MEAT may be identified as the Preferred Bidder. The Authority may also designate a Reserve Bidder.

Investment Grade Audit: The IGA is a Bidder's detailed technical solution. It states the Energy Conservation Measures a Bidder intends to implement, its installation and operation methodologies, programme plan etc.

Preferred Bidder

Agreement

If the Development Contract is successfully completed, an Authority may proceed, with the Bidder to populate the Technical Schedule Parts of the EnPC-D&B / EnPC-DBFM Contract in accordance with its IGA (see Schedule 5(b) and 5(c) of the Framework Agreement).

Where the Bidder is unable to complete the Technical Schedule Parts in support of its IGP, a Reserve Bidder may be identified as the Preferred Bidder.

On completion of the Schedule Parts, both parties will sign the EnPC-D&B / EnPC-DBFM Contract and the Preferred Bidder will be appointed as the Contractor.

Level of Detail Required by the Authority

Bidders should note that the level of detail an Authority provides to Bidders at ITMC will be at the Authority's discretion.

Number of Facilities Included in the Mini-Competition

It is envisaged that the number, location and identity of facilities to be included in the EnPC would be stated by the Authority in the ITMC. However, it may opt to limit the number of buildings subject to the mini-competition to a sample of the portfolio that it intends to include in the EnPC.

Payment for External Technical Advisors

It is anticipated, the majority of Authorities choosing to appoint external technical advisors will pay for their service when it is delivered in accordance with the terms and conditions of their appointment. However, a deferred payment option may also be used, whereby the Authority pays the external advisor on signature of the EnPC-D&B / EnPC-DBFM Contract, receiving a contemporaneous reimbursement from the Bidder at that stage. The reimbursed payment would be recouped by the Bidder through the Contract Sum or Annual Payment. This payment will be a pass through cost, not subject to either overhead and profit additions.

Number of Facilities Included in the Mini-Competition

It is envisaged that the number, location and identity of facilities to be included in the EnPC would be stated by the Authority in the ITMC. However, it may opt to limit the number of buildings subject to the mini-competition to a sample of the portfolio that it intends to include in the EnPC.

Mini competition evaluation criteria

Suggested **mini competition evaluation criteria** are detailed in **Appendix 2**.

7.14 What information does an Authority require to gather before commencing the process?

The level of information an Authority provides to bidders when it issues its Invitation To Mini Competition (“ITMC”) will be at the Authority's discretion. The Invitation to Mini-Competition Pack will include the names, location, scale and function of all facilities to be included in the competition, along with relevant energy and water consumption and cost metrics and the Authority’s minimum requirements for the energy performance improvement and commercial costs and benefits to be delivered by the process. The following list provides an indication of the types of documents that could be included:

- ITMC Letter
- Authority Data Pack
- Project Brief
 - Statement of Requirements
 - Authority Energy Assessment
 - Minimum conditions for Mini-Competition to proceed (e.g. Guaranteed Energy Performance (GEP), Contract Term, Financial Criteria, Carbon Performance Criteria)
 - Authority-Specific Terms and Conditions (e.g. Insurance requirements: public liability insurance, professional indemnity insurance, interface requirements, payment terms termination, policies and other Authority specific requirements)
 - Template Measurement and Verification Specification

- Template Payment Mechanism Requirements and Service Level Specification
- Template Investment Grade Audit Specification
- Template EnPC

7.15 Can life cycle replacement and/or maintenance services be included when a project is being paid for following installation of the works?

Yes. The capital funded variant of the energy performance contract will require to be amended to include these services.

7.16 Who owns the assets installed under an Energy Performance Contract? Can the Contractor remove those assets?

All energy conservation measures installed are owned by the Authority and cannot be removed by the Contractor unless otherwise stated in the EnPC.

7.17 What happens if the Contractor goes out of business?

The EnPC provides for the situation where a Contractor becomes insolvent, and ceases to operate. This is treated as a Contractor event of default which enables Authority to terminate the contract with immediate effect. The EnPC makes provision for payment of compensation.

7.18 How should the impact of an EnPC on Government Accounts be recorded?

An Authority should give early consideration to the classification of assets installed as part of an EnPC in relation to accounting and budgetary treatment. Guidance on how to record the impact of an EnPC on government accounts was issued by Eurostat in August 2015. This guidance is available from:

<http://ec.europa.eu/eurostat/documents/1015035/6934993/EUROSTAT-Guidance-Note-on-Energy-Performance-Contracts-August-2015.pdf/dc5255f7-a5b8-42e5-bc5d-887dbf9434c9>

7.19 Will NDEE projects deliver community and sustainability benefits?

Yes. Authorities will be able to give weight to a broad range of community and sustainability benefits within the criteria that they set for evaluating tenders for their own projects.

Examples of Key Performance Indicators (“KPIs”) that may be developed and expanded upon in mini competitions by Authorities include:

Employment and Training

- Creation/delivery of employment opportunities for young/ unemployed/ persons from within disadvantaged groups;
- Creation/delivery of training/ upskilling outcomes;

Community and Educational

- Creation/delivery of community outcomes for community organisations in which work is being undertaken;
- Creation/delivery of educational initiatives / outcomes with schools;
- Creation/delivery of educational outcomes with higher/further education establishments;

SMEs / Third Sector / Sheltered Workshops

- Commitments to advertisement of contract opportunities
- Creation/delivery of sub-contract opportunities for SMEs / Third Sector / Sheltered Workshops; and
- Creation/delivery of activities aimed at enhancing the ability of SMEs / Third Sector / Sheltered Workshops to form part of supply chains

Compliance Requirements:

- Waste (Scotland) Regulations 2012 – see for example: (<http://www.zerowastescotland.org.uk/content/waste-scotland-regulations>)
- All relevant Producer Responsibility requirements including WEEE;
- Special Waste; (<http://www.sepa.org.uk/regulations/waste/special-waste/>)
- Public Bodies Duties under the Climate Change Act (Scotland) Act 2009; (<http://www.gov.scot/Topics/Environment/climatechange/howyoucanhelp/publicbodies/publicsector>)

Potential / Future Requirements:

- The Scottish Government's Zero Waste Plan; (<http://www.gov.scot/Topics/Environment/waste-and-pollution/Waste1/wastestrategy>) (Opportunities to refer to reporting requirements here too)
- Zero Waste Scotland's Circular Economy programme;
- Procurement Reform (Scotland) Act 2014 and section 36 'Procurement of recycled and recyclable products etc.' as part of Amendment of Climate Change Act;
- Procurement Reform (Scotland) Act 2014 and measures aimed at promoting fairly and ethically traded goods; and
- Climate Change Public Bodies Duties Reporting Requirements.
- Changes to the Scottish Building Standards

Term	Definition
<i>Annual Payment</i>	<i>The annual service charge bid by Bidders in delivering the requirement, including all Framework commitments, covering all costs of provision of assets (including ECMs) and services under the revenue funded EnPC and subject to the rate maxima stated in their Framework Agreement.</i>
<i>Authority's Data Pack (ADP)</i>	<p><i>Information gathered by the Authority (and its External Advisors, if required) describing the facilities to be included in the EnPC. It will be included in the ITMCPack. The extent of completeness of the ADP will vary between Authorities and could include (but will not be limited to) the following:</i></p> <ul style="list-style-type: none"> <i>• energy use, emissions & cost data</i> <i>• building names, addresses, areas, storeys, ages, construction types, functions, occupancy periods, tenure</i> <i>• condition survey reports on buildings and building services</i> <i>• major building services asset registers, including fuel types, capacity ratings, operation and maintenance procedures.</i>
<i>Contract Sum</i>	<i>The total payment due from the Authority to the Contractor in a Design and Build Energy Performance Contract.</i>
<i>Full Business Case</i>	<i>The Full Business case comes directly before the procurement decision under HM Treasury's Green Book and Scottish Capital Investment Manual (SCIM). It is equivalent to Office of Government Commerce's Gateway 3: Investment Decision. In the Green Book methodology it builds upon the Outline Business Case, explaining how the business need will be met, funded, delivered and implemented.</i>
<i>Guaranteed Energy Cost Performance</i>	<i>The reduction in energy cost to be achieved through the installation of the assets (ECMs) and delivery of the services included in and guaranteed under the Energy Performance Contract.</i>
<i>ITMC Proposal</i>	<i>The commercial bid. It will provide sufficient data, analysis and ranges of potential solutions in a format specified in the ITMC to enable the Authority to select the Most Economically Advantageous Tender. This could include the Bidders' high level commercial offers of Guaranteed Energy Cost Performance; Contract Sum; Net Present Value; Project Plan; an outline Measurement and Verification Plan; and the cost of carrying out the Investment Grade Proposal (subject to the maximum fixed fee values agreed under the Framework Agreement) and, in the case of DBFM contracts, the Annual Payment and Contract Term.</i>

<i>Investment Grade Audit (IGA)</i>	<i>The Investment Grade Audit will be a detailed technical report to be submitted by the Shortlisted Bidder(s) at Stage 2 of the mini-competition. It will address all of the facilities included in the mini-competition, covering the technical solution in considerably more detail than the ITMC Proposal, including a specific register of ECMs the Shortlisted Bidder(s) will implement, itemising both costs and annual savings.</i>
<i>Investment Grade Proposal (IGP)</i>	<i>The commercial bid encompassing the Investment Grade Audit (IGA) and all other documents. It will comprise the commercial offer and two key technical documents: the Investment Grade Audit and the Measurement and Verification Plan. The commercial content of the IGP(s) will include similar commercial criteria as the ITMC Proposal, but with greater detail and specificity.</i>
<i>ITMC Pack</i>	<p><i>The Invitation to Mini-Competition Pack will include a more specific description of the proposed project than that provided by the Notice of Invitation to Mini-Competition. It will include the names, location, scale and function of all facilities to be included in the competition, along with relevant energy and water consumption and cost metrics and the Authority's minimum requirements for the energy performance improvement and commercial costs and benefits to be delivered by the process. However, Authorities will have flexibility as to the precise contents to suit their procurement strategy. The following list provides an indication of the types of documents that could be included.</i></p> <ul style="list-style-type: none"> • <i>ITMC Letter</i> • <i>Authority Data Pack</i> • <i>Project Brief</i> <ul style="list-style-type: none"> ○ <i>Statement of Requirements</i> ○ <i>Authority Energy Assessment</i> ○ <i>Minimum conditions for Mini-Competition to proceed, e.g.</i> <ul style="list-style-type: none"> ○ <i>Guaranteed Energy Performance (GEP);</i> ○ <i>Contract Term</i> ○ <i>Financial Criteria</i> ○ <i>Carbon Performance Criteria</i> ○ <i>Authority-Specific Terms and Conditions, e.g.</i> <ul style="list-style-type: none"> ▪ <i>Insurance requirements: public liability insurance, professional indemnity insurance</i> ▪ <i>Interface Requirements</i> ▪ <i>Payment Terms</i> ▪ <i>Termination</i> ▪ <i>Policies</i> ▪ <i>Others authority specific requirements</i> ○ <i>Template Measurement and Verification Specification</i> ○ <i>Template Payment Mechanism Requirements and</i>

Service Level Specification

- *Template Investment Grade Audit Specification*
- *Template development contract*
- *Insurance requirements: public liability insurance, professional indemnity insurance*
- *Interface Requirements*
- *Payment Terms*
- *Termination*
- *Policies*
- *Others Authority-specific requirements*

Measurement and Verification (M&V)

A technical discipline for objectively quantifying energy savings achieved by ECMs. The foremost compliance standard is the International Performance Measurement and Verification Protocol (IPMVP).

Measurement and Verification Plan

The Measurement and Verification Plan will state how the Bidder will measure the performance of its proposed programme of ECMs. It will be fully developed for the duration of the contract, covering Measurement Verification in year one and Operational Verification in year two onwards. It will detail the circumstances under which Measurement Verification may be reverted to under both EnPC-DBFM and EnPC-D&B Contracts. The M&V Plan is to be included in the IGP.

Outline Business Case

Outline Business Case (OBC) is the term used in the Green Book and SCIM for an appraisal that quantifies the business need, identifies options for the solution and homes in on a proposed solution. It is equivalent to OGC's Gateway 2 'Delivery Strategy'. Authorities following their internal approvals procedures are likely to produce an OBC before proceeding to ITMC. The OBC will be informed by the Authority Data Pack.

Partner

A bidder who has been appointed by the Authority through an ITMC process in which the potential for additional sites and works have been included.

Strategic Outline Case

The Strategic Outline Case is an early step in the Green Book business case appraisal methodology, equivalent to OGC's Gateway 1: Business Justification and SCIM's Initial Agreement. It is an Authority internal report seeking appropriate approvals to prepare for mini-competition and specifically the production of ADP. It will be informed by early stage work carried out by the Authority into the case for developing an NDEE programme.

The Framework Public Body will evaluate Framework Contractors on the most economically advantageous basis as set out in its ITMC (this includes potentially altering the criteria and weightings approach for different stages of a multi-stage tender). Key criteria cover some or all of the top level criteria used in this ITT. Framework Public Bodies however have flexibility in defining the evaluation criteria and weightings to help ensure they best reflect what the most economically advantageous basis means for their requirement.

The following provides an outline of the top level criteria that can be used along with potential sub-criteria that may be included under the main criteria (note that this is an example of the areas and is not an exhaustive list):

Quality

- 1 Approach - Proposed ECMs and Ability to Meet and Exceed the Framework Public Body's Preferred Savings Target Level
 - Approach to selecting ECM's in consideration of building and energy consumption
 - How ECM's will maximise cost and carbon emission savings in relation to the capped level of investment identified
 - How contractor will overcome site and project specific risks
 - Providing a clear approach to deliverability of the proposed solution
 - Providing for improved building environmental conditions through implementation of the proposed solutions

- 2 Approach to Operation and Whole Life Costing
 - How whole life costs and benefits of the proposed ECMs have been considered and assessed
 - How the selection and quality of plant and equipment will minimise ongoing costs of the Framework Public Body during the whole life of each ECM
 - Providing evidential proof of quality of proposed materials, plant and equipment
 - Providing commitment to ECMs where persistence factors and useful economic lives exceed the payback period for each ECM and the overall project Simple Payback respectively
 - Makes allowance for redecoration and/or making good costs after works are complete where appropriate

- 3 Compete – approach to response to mini-competition
 - Quality of analysis and range of technical / service solutions
 - Demonstration of deliverability of the proposed solution
 - Proposed emissions reduction (such as absolute reductions or reduction per £)
 - Proposed performance levels versus Framework Public Body requirements
 - Approach to meeting specific Framework Public Body requirements in solution (including prioritised service / building areas)

4. Develop - approach to developing an Investment Grade Proposal

- The approach to gathering and analysing data and developing technical / service solutions
- Developing and presenting IGP outputs in line with the Authority Data Pack and ITMC
- Ensuring the design of your technical solution is developed in line with Good Industry Practice
- Approach to risk and risk reduction. Including how you will manage the risks associated with failure to deliver the works within the project programme constraints or savings not being realised within the Simple Payback period
- Approach to meeting specific Framework Public Body requirements in solution (including prioritised service / building areas)
- Approach to developing the investment grade proposal within complex and challenging operating constraints permitting uninterrupted service delivery on the part of the Framework Public Body

5. Approach to Measurement and Verification

- Approach to developing measurement and verification plan
- Proposed M&V advisor
- How performance under the EnPC will be monitored
- Details of any metering / management / systems installed to underpin M&V
- Your approach to assessing / measuring / verifying baseline data and savings
- The reporting of project performance and impacts of interactions between ECMs (including key performance indicators and success criteria)
- How allowance will be made for wider Authority Works
- Demonstration of a clear and specific commitment to UK and International standards and industry best practice in the approach to M&V

6. Deliver – approach to implementation phase

- Proposed approach to service continuity / minimising service interruption
- How tenderers management and supervisory teams and the professional and technical skills available within your organisation will provide the Framework Public Body with a reliable and effective workforce
- Approach to the measurement and verification of performance levels
- Quality of implementation approach (including appropriateness to building type and use)
- Approach to meeting specific client requirements / policies during implementation phase
- Commissioning and handover approach (including training)
- Sub-contractor procurement and management – including how experience and qualifications will be assessed to ensure framework requirements are met

7. Deliver – Management of Works

- Project management - including stakeholder management, management and vetting of sub-contractors. Approach to managing programme/progress and maintaining the quality of your work and any sub-contractor's work.
- Proposed approach to service continuity / minimising service interruption including how the implementation strategy will be scheduled, managed and co-ordinated to help minimise disruption
- Clear, specific commitment to UK and International standards and industry best practice in the installation (construction phase) of your technical solution, including health and safety standards.
- Approach to meeting specific Authority requirements / policies during the construction phase.
- Methodology for commissioning and handover (including training).
- Approach to active risk management with a brief risk register and strategy for maintaining project programme and ensuring service continuity and minimising Authority services disruption.

8. Perform – approach to whole life cost/service delivery

- Reduction in maintenance costs and/or reduction in backlog maintenance
- Risk and risk reduction (including upgrade / replacement of equipment at risk of failure)
- Approach to the measurement and verification of savings / performance levels
- M&V Plan
- Service continuity / minimising service interruption

9. Other matters – KPIs

- Meeting strategic goals (such as environmental credibility, resources or delivery goals)
- Key performance indicators (proposed levels and confidence in achieving by Contractor and supply chain – including in relation to community benefits, sustainability and workforce matters)

10. Low Carbon Technologies

- How the proposed approach will maximise and the deliver the use of low carbon technologies
- How any non low carbon technology suggested could be future proofed, including related infrastructure, to allow a low carbon technology to be utilised in future

Commercial

1 Pricing (qualitative and quantitative)

- Value for money
- Proposed financial savings (both through the guaranteed savings and wider savings proposed) as per below metric:
 - $\text{Guaranteed Energy Cost Performance Analysis (GECP)} = \text{Tenderers GECP Forecast}^3 / 1000 \times (\text{Authority's set GECP aspiration } p/a \times \text{Tenderer's Total Contract Value})$

- Performance of solution against financial criteria. This may include items such as Annual Payment or Contract Sum, Net Present Value, any anticipated renewables incentives (e.g. FiT and/or RHI), where relevant, and Whole Life Costs (WLC).
- Price of investment grade proposal Financing- may include, but is not limited to:
 - Value for money of financing solution (including risk)

2 Carbon Reduction

- Direct comparison between current vs. guaranteed carbon tonnage as per below metric:
 - Lifetime Carbon Savings (LCS) Metric = $\frac{\text{Tenderers LCS forecast (tonnes)}^3}{(\text{Authority's set LCS aspiration} \times \text{Tenderers Total Contract Value})}$
- Changes to annual carbon emissions as a consequence of each ECM. ECMs which generate a net increase in carbon emissions shall also be included in this evaluation in addition to those which generate net savings.
- Annual carbon emissions before and after the implementation of the ECM shall be clearly stated
- Bidders shall select persistence factors for each ECM and then multiply the annual savings by the selected persistence factor, thereby generating a Lifetime Carbon Saving for each ECM.
- To aid evaluation of the Lifetime Carbon Savings for each Bidder response the following information will likely be required:
 - Energy use prior to implementation of ECM, separated into separate energy types
 - Annual carbon emission prior to implementation of the ECM
 - Energy use after implementation of the ECM, separated into separate energy types
 - Annual carbon emissions after implementation of the ECM
 - Net saving or increase in annual carbon emissions as a result of the ECM
 - Persistence Factor
 - Resultant Lifetime Carbon Saving associated with each ECM
- Bidders shall also indicate the total Lifetime Carbon Savings associated with their package of ECMs.