

DOCUMENT 2

ITT DECLARATIONS – Community Ophthalmology Service on behalf of the Clinical Commissioning Groups in south Nottinghamshire (Nottingham North & East, Nottingham West and Rushcliffe) and mid-Nottinghamshire (Mansfield & Ashfield and Newark & Sherwood)

INSTRUCTION TO BIDDERS:

THIS DOCUMENT MUST BE COMPLETED, SIGNED AND ATTACHED WHEN REQUESTED IN QUESTION N 2 OF THE QUALIFICATION QUESTIONS.

In order to complete Document 2 you must print the document, complete all the detail where requested in ball point pen including the requested signatures.

1. Declaration of Submission

On completion of the Invitation to Tender Questionnaire (ITT), please read the declaration below and answer the 'ITT Declarations' (Section N) within the online application.

DECLARATION:

I certify that the information supplied in response to the ITT is accurate to the best of my knowledge and belief and accords with the basic criteria of eligibility as set out in ITT and supporting qualification information (ITT Process Overview Document)

I confirm we have not colluded with other Potential Bidders in the completion of this questionnaire.

I also understand it is a criminal offence, punishable by imprisonment, to give or offer any gift or consideration whatsoever as an inducement or reward to any servant of a public body. Therefore, I hereby certify and undertake that we, and our Connected Persons (as defined below), have not canvassed or solicited nor will in the future canvass or solicit any officer or employee of NHS Arden & Greater East Midlands Commissioning Support Unit (AGCSU) or participating Commissioners or any person acting as an adviser to AGCSU or the Commissioners in connection with the Procurement.

For the purposes of this declaration "Connected Persons" means any person connected with us within the meaning given by section 1122 of the Corporation Tax Act 2010 and any of the respective directors, officers, employees, solicitors, accountants, bankers or other financial or professional advisers of us and/or of our

Connected Persons. Other expressions used in this declaration shall, unless otherwise stated, have the meanings assigned to them in the ITT issued by AGCSU.

I agree that AGCSU and Commissioners, if they wish to do so can clarify and take steps to verify the contents of this ITT response and make inspections of other contracts which the Potential Bidder has been awarded, the details of which will be provided if required by AGCSU.

I hereby declare that I am the authorised by Potential Bidder/ Relevant Organisation to supply the information given above and that, at the date of returning this submission, the information given is a true and accurate record.

Non-collusion certificate:

The essence of the public procurement process is that AGCSU shall receive bona fide competitive tenders from Bidders. In recognition of this principle we hereby certify that this is a bona fide tender, intended to be competitive, and that we have not fixed or adjusted the amount of the tender or the rates or prices quoted by or under or in accordance with any agreement or arrangement with any other Bidder. We have not and insofar as we are aware neither has any other supply chain member:

1. entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made;
2. informed any other person, other than the person calling for this tender, of the detail including but not limited to the amount of the tender, except where the disclosure, in confidence, of the amount of the tender was necessary to obtain quotations necessary for the preparation of the tender for insurance, professional or consultancy advice required for the preparation of the tender;
3. caused or induced any person to enter into such an agreement as is mentioned in paragraphs 1 and 2 above or to inform us of the amount or the approximate amount of any rival tender for the ITT or had the benefit, in the preparation of this tender of any inside information about the intentions of any other Bidder;
4. committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;
5. offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender;

6. contacted any member or officer of, or any person engaged as an adviser by AGCSU or the Commissioners about any aspect of the tender in a manner not permitted by the ITT including (but without limitation) for the purposes of discussing the possibility of their future employment for or engagement by the Bidder.

We also undertake that we shall not procure the doing of any of the acts mentioned in paragraphs 1 to 6 above nor (in the event of the tender being accepted) shall we do so while the resulting contract continues in force between us (or our successors in title) and the Commissioners.

We understand that if we have been involved in the conduct described above and/or falsely complete this certificate and/or we fail to declare any circumstances described above then AGCSU shall be entitled to exclude us and the tender from this procurement process.

In this certificate the word "person" includes any person, body or association, corporate or incorporate and "agreement" includes any arrangement whether formal or informal and whether legally binding or not.

2 Grounds for mandatory exclusion

Important Notice: Although this Procurement is for services which fall within the Light Touch Regime of the Public Contract Regulations 2015 and is therefore not subject to the full scope of those Regulations, AGCSU reserves the right to reject a Potential Bidder if it falls within one of the ineligibility criteria that mirror those set out in regulation 57 of the Regulations which sets out the grounds on which an economic operator must normally be deemed ineligible to tender for, or be awarded, a public contract.

You will be excluded from the procurement process if there is evidence of convictions relating to specific criminal offences including, but not limited to, bribery, corruption, conspiracy, terrorism, fraud and money laundering, or if you have been the subject of a binding legal decision which found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate e.g. only minor amounts involved).

If you have answered "yes" to question 2.2 on the non-payment of taxes or social security contributions, and have not paid or entered into a binding arrangement to pay the full amount, you may still avoid exclusion if only minor tax or social security contributions are unpaid or if you have not yet had time to fulfil your obligations since learning of the exact amount due. If your organisation is in that position please provide details using Appendix 1. You may contact the authority for advice before completing this form.

2.1 Within the past five years, has your organisation (or any member of your proposed consortium, if applicable), Directors or partner or any other person who has powers of representation, decision or control been convicted of any of the following offences?	Please indicate your answer by marking 'X' in the relevant box.	
	Yes	No
(a) conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime;		
(b) corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;		
(c) the common law offence of bribery;		
(d) bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010; or section 113 of the Representation of the People Act 1983;		
(e) any of the following offences, where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities:		
(i) the offence of cheating the Revenue;		
(ii) the offence of conspiracy to defraud;		
(iii) fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978;		
(iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006;		
(v) fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994;		

(vi) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;		
(vii) destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969;		
(viii) fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006; or		
(ix) the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act;		
(f) any offence listed—		
(i) in section 41 of the Counter Terrorism Act 2008; or		
(ii) in Schedule 2 to that Act where the court has determined that there is a terrorist connection;		
(g) any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by subparagraph (f);		
(h) money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002;		
(i) an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996;		
(j) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004;		
(k) an offence under section 59A of the Sexual Offences Act 2003;		
(l) an offence under section 71 of the Coroners and Justice Act 2009		
(m) an offence in connection with the proceeds of drug		

trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994; or		
(n) any other offence within the meaning of Article 57(1) of the Public Contracts Directive—		
(i) as defined by the law of any jurisdiction outside England and Wales and Northern Ireland; or		
(ii) created, after the day on which these Regulations were made, in the law of England and Wales or Northern Ireland.		
<p><u>Non-payment of taxes</u></p> <p>2.2 Has it been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which your organisation is established (if outside the UK), that your organisation is in breach of obligations related to the payment of tax or social security contributions?</p> <p>If you have answered Yes to this question, please use Appendix 1 to provide further details. Please also use this Appendix 1 to confirm whether you have paid, or have entered into a binding arrangement with a view to paying, including, where applicable, any accrued interest and/or fines?</p>		

3. Grounds for discretionary exclusion – Part 1

The authority may exclude any Supplier who answers 'Yes' in any of the following situations set out in paragraphs (a) to (i);

3.1 Within the past three years, please indicate if any of the following situations have applied, or currently apply, to your organisation.	Please indicate your answer by marking 'X' in the relevant box.	
	Yes	No
(a) your organisation has violated applicable obligations referred to in regulation 56 (2) of the Public Contracts Regulations 2015 in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive as amended from time to time;		
(b) your organisation is bankrupt or is the subject of insolvency or winding-up proceedings, where your assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;		
(c) your organisation is guilty of grave professional misconduct, which renders its integrity questionable;		
(d) your organisation has entered into agreements with other economic operators aimed at distorting competition;		
(e) your organisation has a conflict of interest within the meaning of regulation 24 of the Public Contracts Regulations 2015 that cannot be effectively remedied by other, less intrusive, measures;		
(f) the prior involvement of your organisation in the preparation of the procurement procedure has resulted in a distortion of competition, as referred to in regulation 41, that cannot be remedied by other, less intrusive, measures;		
(g) your organisation has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;		
(h) your organisation— (i) has been guilty of serious misrepresentation in supplying the information required for the verification of the		

absence of grounds for exclusion or the fulfilment of the selection criteria; or (ii) has withheld such information or is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015; or		
(i) your organisation has undertaken to		
(aa) unduly influence the decision-making process of the contracting authority, or		
(bb) obtain confidential information that may confer upon your organisation undue advantages in the procurement procedure; or		
(j) your organisation has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.		

Conflicts of interest

In accordance with question 3.1 (e), the authority may exclude the Supplier if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Supplier to inform the authority, detailing the conflict in the section on this form. Provided that it has been carried out in a transparent manner, routine pre-market engagement carried out by the authority should not represent a conflict of interest for the Supplier.

Taking Account of Bidders' Past Performance

In accordance with question (g), the authority may assess the past performance of a Supplier (through a Certificate of Performance provided by a Customer or other means of evidence). The authority may take into account any failure to discharge obligations under the previous principal relevant contracts of the Supplier completing this ITT. The authority may also assess whether specified minimum standards for reliability for such contracts are met.

In addition, the authority may re-assess reliability based on past performance at key stages in the procurement process (i.e. Supplier selection, tender evaluation, contract award stage etc.). Suppliers may also be asked to update the evidence they provide in this section to reflect more recent performance on new or existing contracts (or to confirm that nothing has changed).

'Self-cleaning'

Any Supplier that answers 'Yes' to questions 2.1, 2.2 and 3.1 should provide sufficient evidence, in Appendix 1, that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively "self cleans" the situation referred to in that question. The

Supplier has to demonstrate it has taken such remedial action, to the satisfaction of the authority in each case.

If such evidence is considered by the authority (whose decision will be final) as sufficient, the economic operator concerned shall be allowed to continue in the procurement process.

In order for the evidence referred to above to be sufficient, the Supplier shall, as a minimum, prove that it has;

- paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;
- clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
- taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the Supplier shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered by the authority to be insufficient, the Supplier shall be given a statement of the reasons for that decision.

4. Grounds for discretionary exclusion – Part 2

The authority reserves the right to use its discretion to exclude a Supplier where it can demonstrate the Supplier's non-payment of taxes/social security contributions where no binding legal decision has been taken.

Please note that Section 4 relating to tax compliance only applies where the authority has indicated that the contract is over £5million in value, and the authority is a Central Government Department (including their Executive Agencies and Non-Departmental Public Bodies).

"Occasion of Tax Non-Compliance" means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
 1. a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 2. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a penalty for civil fraud or evasion

From 1 April 2013 onwards, have any of your company's tax returns submitted on or after 1 October 2012; (Please indicate your answer by marking 'X' in the relevant box).

4.1	Given rise to a criminal conviction for tax related offences which is unspent, or to a civil penalty for fraud or evasion;	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2	Been found to be incorrect as a result of: <ul style="list-style-type: none"> ▪ HMRC successfully challenging it under the General Anti-Abuse Rule (GAAR) or the "Halifax" abuse principle; or ▪ A Tax Authority in a jurisdiction in which the legal entity is established successfully challenging it under any tax rules or legislation that have an effect equivalent or similar to the GAAR or the "Halifax" abuse principle; or ▪ the failure of an avoidance scheme which the Supplier was involved in and which was, or should have been, notified under the Disclosure of Tax Avoidance Scheme (DOTAS) or any equivalent or similar regime in a jurisdiction in which the Supplier is established. 	<input type="checkbox"/> Yes <input type="checkbox"/> No

If answering "Yes" to either 4.1 or 4.2 above, the Supplier may provide details of any mitigating factors that it considers relevant and that it wishes the authority to take into consideration. This could include, for example:

- Corrective action undertaken by the Supplier to date;
- Planned corrective action to be taken;
- Changes in personnel or ownership since the Occasion of Non-Compliance (OONC); or
- Changes in financial, accounting, audit or management procedures since the OONC.

In order that the authority can consider any factors raised by the Supplier, the following information should be provided:

- A brief description of the occasion, the tax to which it applied, and the type of "non-compliance" e.g. whether HMRC or the foreign Tax Authority has challenged pursuant to the GAAR, the "Halifax" abuse principle etc.
- Where the OONC relates to a DOTAS, the number of the relevant scheme.
- The date of the original "non-compliance" and the date of any judgement against the Supplier, or date when the return was amended.
- The level of any penalty or criminal conviction applied.

5. Form of Offer

Dear AGCSU,

Form of Offer:

We submit this Offer in response to the ITT issued on **14 March 2017** by NHS Arden and Greater East Midlands Commissioning Support Unit (AGCSU), for the:

Provision for Community Ophthalmology Service as more specifically described herein and in the ITT Process Overview Document

We have completed all questions asked in the Technical response envelopes within the GEM Bravo Solutions e-procurement portal at the ITT stage and also provided the attachments requested, in each case as described in and in accordance with the requirements of the ITT.

Undertakings

We undertake, jointly and severally, that, if selected by the Commissioners as the Preferred Bidder:

- (a) we shall satisfy all other conditions pursuant to the award of the Contract; and
- (b) we shall perform the obligations set forth in the ITT and the Contract, including compliance with all commitments contained in this Offer.

Certifications

We certify as follows:

- (a) this Offer is submitted without reservation, qualification, assumption or condition and is subject to all terms of the ITT;
- (b) we have carefully examined, and are fully familiar with all of the provisions of the ITT, have reviewed all information provided by AGCSU, the Commissioners and/or their advisors as part of the Services and AGCSU's responses to questions and are satisfied that the ITT and all related materials and documents provide sufficient detail regarding the obligations to be performed by us, the Bidder Members and/or their advisors do not contain internal inconsistencies;
- (c) we have carefully checked all the words, figures and statements in this Offer and has conducted such field investigations and development as are prudent and reasonable in preparing this Offer;
- (d) we agree and acknowledge that:

- (i) the information has been provided by AGCSU is solely for the convenience of the Bidder and where applicable, the other Bidder Members;
- (ii) AGCSU is making the Data available to the Bidders for the sole purpose of providing information in the possession of AGCSU;
- (iii) AGCSU and/or the Commissioners and their advisors make no representation or guarantee as to the accuracy, completeness, or fitness of the Data and accepts no responsibility for the Data; and
- (iv) the Bidder is responsible for any conclusions it may draw from the Data;
- (e) all statements made in any Offer previously delivered to AGCSU and/or the Commissioners by the Bidder (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Offer;
- (f) the Bidder understands that AGCSU and the Commissioners are not bound to accept the highest-scoring Offer or any Offer which may be received;
- (g) the Bidder further understands that all costs and expenses incurred by it in preparing this Offer and participating in the procurement process will be borne solely by the Bidder;
- (h) we have not (and undertake that we will not) canvassed any member, Director, employee representative or advisor of AGCSU, the Commissioners or their advisors and that no person engaged or employed by us has or will carry out any such act;
- (i) we have not (and undertake that we will not) notified anyone other than AGCSU of the details of our Offer (other than where required for obtaining insurance premiums in the preparation of our Offer), or entered into an agreement with any other third party to prevent them from submitting an Offer or as to the figure set out in their Offer, or offer or make an agreement to pay any money, inducement or consideration (of any value) directly or indirectly to any person or anyone in relation to any act or omission in relation to any other offer.
- (j) this is a bona fide offer intended to be competitive and that we have not made any adjustment to our price following any communication or discussion with any third party;
- (k) this Offer remains open for a period of 120 days, as required by the ITT;
- (l) prices offered will remain firm for the period of the Contract (subject only to any variation provisions already contained in the draft contract documents issued by AGCSU), as required by the ITT; and

- (m) we agree that AGCSU and the Commissioners and their advisors will not be responsible for any errors, omissions, inaccuracies or incomplete statements in this Offer.

This Offer shall be governed by and construed in all respects according to the laws of England.

You must sign below to show agreement and understanding of:

- **1. Declaration of Submission**
- **2. Grounds for Mandatory Exclusion**
- **3. Grounds for discretionary exclusion – Part 1**
- **4. Grounds for discretionary exclusion – Part 2**
- **5. Form of Offer**

I hereby declare that I am the authorised by Potential Bidder/ Relevant Organisation to supply the information given above and that, at the date of returning this submission, the information given is a true and accurate record.

Name: _____ **Signed:** _____

Position: _____ **Date:** _____

Conflict of Interest Declaration

The authorised signatory (person completing and submitting the bid on behalf of the bidding organisation) is required to identify any potential conflicts of interest that could arise if the Bidder were to be identified as the preferred bidder, and how these will be dealt with.

Please identify any potential conflicts of interest that could arise if the Potential Bidder were to be short-listed to proceed to the Invitation to Tender (ITT) stage (taking into account all Relevant Organisation(s)), and how these will be dealt with.

Examples of circumstances in which potential conflicts could arise include (but are not limited to) where:

- a Relevant Organisation, or any person employed or engaged by or otherwise connected with a Relevant Organisation, has in the last six months carried out or is carrying out any work for any Commissioners;
- a Relevant Organisation is providing Services or Goods for more than one Potential Bidder in respect of this Procurement.

A conflict of interest shall not be deemed to arise solely by virtue of a person's employment or engagement by an NHS Trust, CCGs, NHS England or other NHS body (although Potential Bidders are requested to disclose such relationships for information purposes only).

Potential conflicts of interest that are relevant in healthcare include, but are not limited to:

- Partnership (such as in a general practice that will benefit from a proposal) or employment in a professional partnership, such as a limited liability partnership
- Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those dormant companies)
- Ownership or part-ownership of private companies, businesses or consultancies likely or possible seeking to do business with the NHS
- Majority or controlling shareholding in organisations likely or possibly seeking to do business with the NHS
- Where a GP is providing care and deciding where that care takes place, how it is provided and who provides it.

If there **are** actual or potential conflicts, please provide full details, in the box below including:

- A brief description of the nature of any connections creating actual or potential conflicts of interest
- The full name of any organisation, people or bodies whose involvement gives rise to the actual or potential conflicts of interest
- Mark with an * any organisation people or bodies that are, or are connected with, an NHS Body



- How you propose to deal with any conflicts of interest, potential or actual.

Details (Response Required):	

Name: _____ Signed: _____

Position: _____ **Date:** _____

Appendix 1 – Addition Information

Reference - Section	Information/Details
2.1, 2.2 and 3.1	
4.1 and 4.2	