Site Characterisation Delivery Partner

SCDP PA23 Pre-Market Engagement Summary

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Abbreviations and Definitions

|  |  |
| --- | --- |
| BGS | The British Geological Survey  |
| Consultant | Applies to companies or individuals working in the capacity of consultant, contractor or supplier for the Site Characterisation Delivery (SCDP) |
| Client | Nuclear Waste Services |
| DMA | Delivery Model Assessment |
| ECC | Engineering Construction Contract |
| GDPR | General Data Protection Regulation |
| KPI | Key Performance Indicator |
| LADD | Liquidated and Ascertained Damages for Delay  |
| NAGRA | National Cooperative for the Disposal of Radioactive Waste (Swiss Waste Management Organisation) |
| NEC | New Engineering Contract |
| NEC4 PSC | New Engineering Contract – Professional Services Contract |
| NWS | Nuclear Waste Services |
| PCG | Parent Company Guarantee  |
| PCSC | Post Closure Safety Case |
| PSC | Professional Services Contract |
| SCDP | Site Characterisation Delivery Partner |
| SDM | Site Descriptive Model |
| SFI | Self-Funded Incentive |
| SME | Subject Matter Expert |
| T's&C's | Terms & Conditions |
| TLIs | Task Level Indicators  |

SCDP Market Engagements

The purpose of this document is to summarise the four Market Engagements relating to the Site Characterisation Delivery Partner (SCDP) contract opportunity that took that place between Nuclear Waste Services Limited (the Client or NWS) and interested organisations. The document focuses particularly on the feedback obtained from the market on the proposed delivery models, contractual principles, scope and other matters and how this feedback was incorporated into evolving SCDP commercial strategy.

Each of the engagements has provided feedback to NWS and helped NWS shape the strategy for the procurement and the contract. The intention is to continue market engagement, sharing the latest versions of documents for comment and feedback. There will be an opportunity for all suppliers looking to bid to have a 1:1 half day session with NWS, this is currently pencilled in for the week commencing 8th September (further details will be posted on our web page).

NWS shall continue to develop the tender and contract documents including but not limited to the scope, draft technical questions (both for Invitation to Participate (ITP) and Invitation to Tender (ITT) stages) scoring criteria (both for ITP and ITT stages), guidance documents, and shall make these available on our web page up to the point of issuing the Tender Notice.

Please note: the positions set out within the document are subject to change following market engagement and internal discussions.

Market Engagement: 1-2-1 Engagement Sessions 2023

Date of Market Engagement: between July 2023 and October 2023

Location of Market Engagement: Harwell

NWS Attendees: Andrew Batstone, Chris Eldred, Owen David, Piotr Bednarski, Fiona McEvoy, Robert McLaverty, Jason Canning

How organisations were invited: PIN Notice ref: 2023-910047

Documents circulated prior to the meetings:

* Prior Information Notice (PIN) - SCDP Services and Works - Issue version - 4.4.23
* Site Characterisation Delivery Partner Market Engagement – Briefing Document
* SCDP PIN Supplier Communications Register - Issue version to supply chain

| **Market Engagement Discussion Topic** | **Market Feedback** |
| --- | --- |
| Market Dynamics, Capacity and Capability to deliver the works | Statements where their expertise sits and which role they are interested to take on (leading or supporting). Overall market believed that a few consortia are likely to emerge for SCDP. |
| Gaps and threats to project delivery, Technical Challenges and Resourcing | Some of the challenges mentioned included: * clearly defining integrations and dependencies
* use of capabilities from different industries
* availability of resources security aspects regarding international expertise
* preservation and processing a significant volume of data
* variability in the drilling rig market
 |
| Working as part of an Alliance, threats and Opportunities | In general, market was supportive of the Alliance model. As opportunities increased collaboration, consistency, long term relationship and alignment were stated. Threats included lack of clarity and accountability of each partner, share of risks (general for all parties or party specific), lack of clear governance, inequality in cost benefits rations. |
| Overall structure of SC delivery, NWS prime and SCDP core capability and supply chain | The market emphasised a need for having governance structure with levels of delegated authority and approval procedures.  |
| Contract packaging strategy, volume of contracts, lotting strategy | The market supported the proposed contract packaging strategy and were in favour of the Client appointing Drilling Contractor. It was also suggested that some of the services (e.g. casing, coring) may be better placed with Drilling Contractor. More clarity on rules regarding self-delivery and need for competition.  |
| Aligning NEC Alliance Contract with supply chain standard contracting practice | Gap analysis between Logic style contract used in Oil and Gas industry was proposed. More clarity around flow down of risks and risk ownership. |
| Contract / Delivery risk management, lead in times and critical path issues ownership and mitigation strategies | A formal risk registers to be released as part of a tender process was suggested with assigned owner e.g. ‘reputation’ and ‘politics’ to be retained by the Client.  |
| The competitive dialogue public sector procurement process strategy - risks and benefits | The market stated lots of advantages competitive dialogue including possibility to optimise the bids. Among disadvantages high cost, long timescales and higher risk of legal challenges were mentioned. |
| Co-location of the Alliance supply chain and critical SC suppliers | Clarifications around co-location requirements to be provided from the tender stage to enable to schedule and price the team mobilisation accordingly. It was suggested that the sensible approach should be taken in terms of co-location, considering carbon impact and choices to allow recruitment of the best talent. |
| Digital strategy and embedding digital technologies | The inclusion of Common Data Environment (CDE) was suggested to be included in SCDP scope. Issues around data security, access requirements, and need for access to live data be considered. |
| Social value, sustainability, environmental and SME initiatives | A community based social value strategy based on local needs analysis should be developed. Monetised and non-monetised SROI should be calculated and reported on. Suppliers suggested to keep social value at high level as if it is broken down into delivery of small work packages, there are often limited things the suppliers can do with a small budget. |

Table 1: Market Engagement: 1-2-1 Engagement Sessions Market Feedback 2023

Market Engagement: 1-2-1 Engagement Sessions 2024

Date of Market Engagement: March and April 2024

Location of Market Engagement: Birmingham and Warrington

NWS Attendees: Andrew Batstone, Chris Eldred, Owen David, Piotr Bednarski, David McDonagh, Emma Hedges

How organisations were invited: PIN Notice ref: 2024-910050

Documents circulated prior to the meetings:

* SCDP Contracting and Competition Principles Document V1
* Presentation slides with more details about the Core Team and Incentivisation

| **Market Engagement Discussion Topic** | **Market Feedback** |
| --- | --- |
| Core delivery Team: Discussion regarding key staff members and partners who NWS would want to be included and assessed in the SCDP bids | The market was concerned about the need to ‘lock’ proposed key team for the period between tender submission and contract award. Also, replacement of key people with only someone with equal or greater experience and qualifications was challenged. An idea to be able to propose more than one person that could fulfil each key job role was also raised. A suggestion to expand the key roles and include some additional ones was raised. Clarity on NWS organisation structure, core team scope vs task orders, forecast spend to size initial level of investment, level of effort and location needed to enable 1 year commitment were also requested. The change mechanism in terms of core delivery team should also be established. Some comments advised to avoid core delivery team to be too rigid and prescriptive which may discourage people from applying. |
| Procurement of key Sub Consultants post award | More clarity on rules around sub-consultants being able to fulfil the key roles and arrangement between the consultant and sub-consultants. The market emphasised having a full control over Drilling Contractor. Clarifications were requested about the requirements to flow down commercial terms including joint and several liability / insurances and quality requirements, certification, compliance etc. |
| Procurement of Sub Contractors and using a mini-Delivery Model Assessment (DMA) for sub-contracts post award | More clarity requested also regarding rules for award of scope on sole source basis particularly financial threshold and application of subcontractor mark-up fee. Clear understanding on what can / cannot be 'negotiated' in the T's&C's to allow for specialist suppliers. Clarity on information security requirements, travel expenses, qualifications equivalence in regard to international resources were also requested.  |
| Incentive models, KPIs/Balance Score Card – split into task and framework level  | Questions how the SFI model will work for lump sum or target cost tasks and how risk is considered / priced were raised. Concerns about milestone payments resulting in cashflow challenges especially for SMEs were also mentioned.  |
| Incentive models at programme level. Joint incentivisation with Architect Engineer and Integration Partner | The market stressed the need for joint incentivisation to be same for everybody, each partner needs to put something at risk and Leadership Board to manage that. It was also suggested to incentivise around the technical integration needs (e.g. Design – PCSC – SDM).  |
| Use of individual rate tables and supporting calculations | The market requested more clarity around what is considered Defined Cost and what is included within Schedule of Cost Components. The rates must also accommodate overseas rates and currency fluctuations. Rates to be individual, recognising real increases in cost. Margin expectations can also vary down in the supply chain. Subcontracting overheads, audit costs, bonuses, salary increases need also be considered. Overhead is likely to be variable on work location and phases. Enhanced rates for those working offshore was also proposed.  |
| Social Benefits | Suggestion that for some suppliers, delivery of social value might be more difficult due to type of work they are doing, hence social value and sustainability could be merged. An importance to select the social value tool across the whole programme early, for consistency was also emphasised. |
| Use of and inclusion of Environmental Protection Insurance | The market requested more clarity regarding potential coverage of Environmental Protection Insurance. Also, the environmental requirements will change over time and insurance needs to recognise that.  |
| Colocation  | The need for colocation requirements to be specified from the tender stage to schedule, staff and price the team mobilisation accordingly. When defining a location a few matters should be considered including scenario planning for major incidents, carbon footprint and wellbeing. The need to provide a long-term vision that will encourage mobility to site.  |

Table 2: Market Engagement: 1-2-1 Engagement Sessions Market Feedback 2024

SCDP Contracting and Competition Principles Document

| **Topic Area** | **Market Feedback** |
| --- | --- |
| Form of Contract | The market suggested considering ECC as a primary contract (instead of NEC PSC) with elements of PSC. Also, a suggestion to consider mix of contract main options e.g. Option C as main but some option A items could be brought onto Option C. |
| Style of Contract | The market was concerned about the inclusion of obligation to accept all Task Orders considering lack of scope clarity. It was proposed to make this subject to agreement or alternatively making the obligation subject to a bounding set of scope parameters, with anything else beyond this subject to agreement. |
| Control Estimate and Schedule | The market suggested defining “repeat” or “routine” task orders, which by default will be priced in accordance with a previously agreed basis. Also, a clarification if the cost of administering the framework agreement, will be an allowable cost was requested. |
| Nuclear Liability | The market stated that they will need an early sight of anticipated treatment of Nuclear Liabilities. |
| Insurances & Indemnities | The market suggested to include insurance costs as Direct Costs rather than being incorporated into an Overhead or Fee percentage. The market also highlighted the difference between the Client and Consultant taking the insurance. A proposal for the insured losses to be capped at the level of insurance stated in the contract was also raised.  |
| Plant Performance and Functionality | The market requested some examples of the value transition point for plant.  |
| Limit of Liability | The market believed that 5 x Task Order value is excessive given expected sums and may be an issue for their corporate governance. It was also suggested to carve out for insurances including PI. It was highlighted that liabilities should be proportionate to the Consultant’s fee.  |
| Exclusion of Consequential Loss | The market requested to provide “standard NWS flow-downs regarding recoverable NWS losses” for their review and feedback. |
| Liquidated and Ascertained Damages for Delay (LADD) | The market requested to provide principles that will be used to determine when LADDs will be applied and the level at which they will be set, so they know how to price the risk associated with potential LADDs into the fee. Clarifications how delays by others will be managed re costs and delivery of the scope.  |
| Key Contractor Staff | The market believed that the requirement for 3 months of full-time parallel working during transition seems excessive and should rather match the employment basis of the person being replaced. |
| Defects Date | No feedback from the market.  |
| Parent Company Guarantee (PCG) | More clarity around the method to assess the financial strength of Parent or Ultimate Parent Company was requested. |
| Performance Bond | The market requested more clarity on circumstances when the PB will be required, the level at which it would be set (or the principles to calculate this) and the pricing approach for its provision. |
| Payment Terms | No feedback from the market. |
| Delivery Model Assessment (DMA) / Make or Buy | The market raised some concerns over fee rules when sole sourcing non-core scope to contractor affiliates e.g. to allow a discounted “subcontractor mark-up fee” when engaging affiliates on a sole source basis. |
| Method of Reimbursement | The market requested sharing with them the proposed schedule(s) of cost components and information on how overheads will be recovered on Direct Cost. It was also raised that  |
| KPIs | The market requested more clarity on how fee will be related to performance. Also, it was proposed to defer any payment of the element of fee attributable to the overdue KPI report until it is submitted rather than scoring red.  |
| Task Orders | The need to enable establishment of project resources by initial task order or via payment in head contract for defined scope was raised by the market.  |
| Completion Date | Confirmation was requested whether framework KPIs continue until the completion of the final Task Order.  |
| Long Lead Plant & Equipment Procured by NWS | A full detail of the plant ownership that is intended to be novated/transferred to the Consultant was requested by the market. Possibilities to object to a novation on grounds of e.g. financial strength or insurance levels were also proposed.  |
| Termination | The market requested standard condition regarding grounds for termination to be shared.  |
| Site | The market raised some concerns that if they do not have an overall control of the site, they cannot be responsible other parties working on the Site and interfaces between them and the Consultant. Request to confirm if interfaces include also public parties e.g. fishing industry was raised.  |
| Collateral Warranties | The market requested to specify the circumstances when the Collateral Warranty will be required and its beneficiaries. |
| Dispute Resolution Rules | No feedback from the market. |
| Key NWS Obligations | The market highlighted the need for the Client to warrant the accuracy of any site/design data they provide to the Consultant or at least absolve the Consultant from responsibility for defects/delays/costs caused by inaccuracies. |
| Key SCDP Contractor Obligations | The market proposed the entitlement for Compensation Event where the other Client’s contracts impact Consultant’s time and cost. The market also wanted to know Client’s expectations for the Make / Buy split for the scope.  |
| Consortium or JV formation | No feedback from the market. |
| Procurement Procedure under Public Contracts Regulations | No feedback from the market. |
| Market Engagement | The market believed that the further market engagements should take place and ensure there is no inconsistency between various documents.  |
| Supplier Questionnaire (SQ) | The market asked if the case studies that relate to overseas projects will be acceptable. Also, the market wanted to know if they will be requested as a part of SQ to provide evidence of their proposed supply chain having performed or having the ability to perform characterisation works. |
| Contract Award Criteria  | The market asked for more clarity on how the ‘Rates, Overhead & Fee’ element will be evaluated. Also, confirmation was requested if procurement process will include an interview / presentation and if so, how much of the evaluation criteria weighting will be allocated to it. A suggestion to include Collaborative Behaviour Assessment in addition to the interviews.  |

Table 3: SCDP Contracting and Competition Principles Document Market Feedback

Market Engagement: Online Engagement Sessions

Date of Market Engagement: July 2024

Location of Market Engagement: via Microsoft Teams

NWS Attendees: Andrew Batstone, Chris Eldred, Owen David

How organisations were invited: online invitations to all previous companies who had participated in previous market engagement.

Documents circulated prior to the meetings:

* NWS Site Characterisation Supply Chain Presentation Updated Model
* Presentation slides showing the split of the organisation and the responsibilities of the SCDP

The purpose of those short sessions was primarily to update the market on the Delivery Model, Scope and Contracting Structure, Incentive Models, Route to Market and Evaluation Criteria and Weighting. No individual formal feedback was captured from the sessions.

The market felt that there were clearer lines between the SCDP gaining full responsibility for their own work and the management responsibility for the other contracts. The model presented was also a reflection of how a Professional Services Contract (PSC) rather than a primarily PSC but with elements of Engineering Construction Contract (ECC). This methodology is more recognised by the market and would improve the quality being delivered. The NWS presentation also reflected a change from carrying out mini-Delivery Model Assessments to a Procurement Service, the market liked this flexibility within the contract. A simplified incentive pyramid was shown and discussed, which was well received by the market and thought would bring greater clarity. Clarity on the Procurement Act 2023 changes and draft evaluation criteria were presented to update the market on how changes to procurement legislation would be managed.

Market Engagement: 1-2-1 Engagement Sessions Nov 2024

Date of Market Engagement: 4th – 8th November 2024

Location of Market Engagement: London DLA Piper offices

NWS Attendees: Andrew Batstone, Chris Eldred, Owen David, Piotr Bednarski

How organisations were invited: PIN Notice ref: 2024-910232

Documents circulated prior to the meetings:

* SCDP Contracting and Competition Principles Document V2
* Self-Funded Incentive (SFI) Handbook

Contracting and Competition Principles Document

| **Topic Area** | **Issue** | **Market Feedback** |
| --- | --- | --- |
| Contract Terms  | 1. Form of Contract
 | The market acknowledged the removal of the ECC provisions from the Form of Contract, and confirmation SCDP services shall not include site works. It was proposed that contract should be based on NEC and amended rather than bespoke.  |
| 1. Scope of Contract
 | The market requested to include more clarifications around: * Data management (standards, expectations, quality assurance, ownership etc).
* Self-Delivery of Contracted Services.
* Acceptance of all tasks orders when price and risk share not agreed.
* Role and influence of SCDP in selection of Drilling Contractor.
* SCDP and MPDP (responsibilities, influence, what permitting for SCDP).
* Number and scope of Task Orders.
* Management of NAGRA and BGS.
* Audit requirements (scope, cycle, escalation procedure, supply chain audits).
* Governance and decision making for SCDP contract.
* SME contract requirement to flow down.
* Role of SCDP under CDM, application of CDM for marine works.
* Digital Strategy.
* Arrangement of performance, risk and liability between NWS, the SCDP and drilling / sub-contractors.
* Management of minor permissions.
* Interfaces with other Strategic Partners (e.g. commencement of relationship).
* Delegation of Authority levels for the SCDP.
* Task Order vs Head Contract.
* Design changes approval process;
* R&D requirements.
* Clear definition of SCDP scope end.
* Performance, risk and liability arrangements between NWS, the SCDP and the providers of NWS Contracted Services.
 |
| 1. Anticipated Contract Value
 | The market requested to confirm what the updated figure include (e.g. indexation, risk allowance).  |
| 1. Minimum Contract Value
 | The market requested to provide annual value of ‘Task Zero Services’ and the likely total value of the Initial Task Order.A proposal to include different fee for ‘Task Zero Services’ vs. other task orders, as employees engaged in ‘Task Zero Services’ will be working on a full time/permanent basis whereas those engaged to deliver other task orders are more likely to work on a short term/consultancy basis (with differing overhead costs).  |
| 1. [Task Zero Services] and Initial Task Order
 | The market requested clarification on the following:* Confirmation if mobilisation is likely to be concurrent with procurement of drilling contractor.
* Agreement process for Task Orders (approving stakeholders, timeframes etc).
* Confirmation if Task Zero Services will include for enduring costs such as those associated with offices/facilities/working areas and insurance costs.
 |
| 1. Insurances
 | The market requested to provide more clarity on insurance levels (e.g. cap or each and every claim). Also, the market proposed insurances to be recoverable within allowable Defined Costs and recovered as part of the ‘Task Zero Services’ since they are not linked to specific task orders. More clarification was requested in regards to procured site contractor’s insurance.  |
| 1. Limit of Liability
 | The market highlighted some confusion in regard to limit of liability. In their view they are open ended and unlimited since the liability is linked to insurances that are unlimited. In addition, the market considered inappropriate to set a £1m minimum task order limit of liability, as this should be scaled solely in relation to the value of the task order, or for low value task orders it will be disproportionate. Also, the 2.5x Task Order Value limit was considered too high and maximum of 1.0x Task Order Value was propose instead.There were also concerns raised about the lack of cap at each task order. It was also suggested to excluded GDPR data loss rather than data loss in general from limits on SCDP’s liability. The market also believed that it is not appropriate to set annual aggregate liability of £100m since there is no certainty as to the minimum annual value of the contract.  |
| 1. Exclusion of Consequential Loss
 | No feedback from the market. |
| 1. LADD
 | No feedback from the market. |
| 1. Key Contractor Staff
 | The market proposed additional roles to be included as part of "Key Contractor Staff" e.g. Digital Lead, Mobilisation Lead, SV Lead etc. Also comments were raised about distinction between technical specifiers and technical delivery individuals and how to articulate the need for succession planning for those 2 technical roles. More details were also requested about mobilisation and transition principles. Clarity around decision making of the key roles and how will delegation of Client’s authority be achieved for them. There were also concerns raised regarding the length of key role replacement transition period and need for SCDP to bear that cost e.g. it was proposed that a minimum service period curtails the 3-month transition and it should not apply where staff leave on compassionate / health etc grounds.It was also proposed that replacement staff should be required to meet or exceed the minimum qualifications and experience required for the Key roles, not have equal or greater qualifications and experience. They were also comments raised that it is unreasonable to require key staff to be available at the point of contract award but rather recommended to requiring that Key Contractor Staff to be in place no later than 6 months from full execution of the Task Zero Services task order.  |
| 1. Parent Company Guarantee (PCG)
 | The market requested to share as part of the market engagement process the method that the Client will use to measure the financial strength of the bidders as well as their Parent / Ultimate Parent, together with the threshold score.  |
| 1. Performance Bond
 | No feedback from the market. |
| 1. Payment Terms
 | The market believed that the proposed approach would expose the SCDP to a two-month working capital requirement. It was suggested to adopt the NEC4 PSC approach whereby the Service Manager assesses payment on the basis of forecast costs in the period. |
| 1. Nuclear Indemnities
 | No feedback from the market. |
| 1. Pricing mechanisms
 | The market was concerned if overhead and profit percentages as ,bid back’ should be a single percentage for each tender recognising different models between contractors and consultants subcontract costs. It was also requested to provide more details about the types of work that will be undertaken against the three different mechanisms. Also, a concern was raised that in terms of overheads, the proposed team might be a mixture of consultants and contractors and will have different salary, overhead and fee build up, hence it was proposed to separate for each member of the team. A query regarding the update on the salary baselines was raised e.g. frequency, based on an index or on a case-by-case basis. It was also suggested that the Client needs to consider different models between companies particularly not UK based e.g. how will tax and expenses for international staff will be dealt with.The requests to define schedule of cost components, Defined Cost and overhead were raised. Clarifications how overtime, and shift work, as well as project uplift arrangements will be accommodated.  |
| 1. Incentivisation
 | The market believed that 3 different levels with sub-divisions seem complicated and should be simplified. |
|  | 1. Self-Funded Incentive Model/SFI (Level 1): Overview
 | A proposal to refine 10% of all sums payable to only apply to overhead and profit, excluding T1 subcontractor costs since it can be a challenge when one of the invoices has a large subcontractor element to it. It was also proposed to use rather ‘upside’ and / or profit at risk incentive arrangement since 10% retention has a substantial impact on cashflow and therefore cost. Definition of the profit was also requested to be provided and concerns around why profit is pre- defined were raised. A catch-up mechanism for instance if the start of a year has been difficult, were also suggested. Clarifications were also raised if the SFI model will flow down to Tier 1 / Key subcontractors. |
| 1. SFI: Milestones
 | The market was concerned if milestone delivery is incentivised twice (5% milestone fraction of the SFI and the "Variance of Schedule" within the 2.5% KPI fraction). In addition, a suggestion was raised that 20-day delivery threshold for the task milestone payout should not be fixed all task orders and should depend on complexity and/or duration of the task. The cash flow risk was also raised in regard to release of funds and quarterly release instead of annual was proposed. Clarifications on the length of time from SCDP applying for payment against an achieved milestone to receiving payment were also raised. |
| 1. SFI: Performance - Key Performance Indicators (KPIs)
 | No feedback from the market. |
|  | 1. SFI: Performance - Incentivised Performance Group and Task Level Indicators (TLIs)
 | The market believed that he gap between the payout for Green and High Amber seemed too high. |
| 1. SFI: Social Value
 | The market requested more details on social value scoring model and method of measurement. It was suggested to investigate if the social value scoring can be gamed. In addition, they believed Pass/Fail for 25% of SFI may not drive the best behaviours or intentions to maximised SV outcomes. The risk of SCDP abandoning any further investments in SV delivery once they forecast that they will not be able to deliver 100% of their commitments was also highlighted. Clarifications about responsibility of social value delivery in case of e.g. consortia and location for delivery of social value initiatives were also raised. More details on funding of social value delivery e.g. how costs that are directly linked to the delivery of a Task Order or Performance KPI, which also achieve a social value commitment will be treated. The market also emphasised the need for the right mechanism to be delivered that will manage longer term changes to social value requirements |
| 1. Joint incentivisation (Level 2)
 | The market asked how this differs from the Performance Group KPI. Also, further details were requested to understand the shared objectives and output-based programme wide milestones and how this relates to the SCDP scope / programme. Further, the market also wanted to know how the ‘additional profit’, will be calculated and agreed and will this figure be harmonised across all programme-wide partners. |
| 1. Savings share mechanism (Level 3)
 | The market requested more clarity on how the baseline is agreed against which to assess savings.In addition, it was suggested to Develop Level 3 beyond just a cost savings share model e.g. consideration of something of better quality but cost more or time savings/acceleration. A worked examples were requested to understand how this mechanism is intended to work. |
| 1. Collaboration
 | The market believed that SCDP should be involved in identifying and agreeing the objectives of the collaborative relationship. Also, the need for consistency among other contracts was emphasised.  |
| 1. Term
 | No feedback from the market. |
| 1. Conflicts of Interest
 | The market requested guidance on how they can factor into the tenders the capability to deliver some of the NWS Contracted Scope since this could be part of the value proposition within the tenders, but SCDP is not permitted to tender for NWS Contracted Scope. They requested to confirm the principles of the evaluation criteria.The market also requested to provide definitions for SCDP Contractor, tier 1 contractor and consortium member. Also, it was not clear if the bidding restriction is limited to the SCDP contractor that this mean any party named in the SCDP contract with the Client or extends to include other members of the SCDP Contractor supply chain.  |
| 1. Termination
 | A comment was raised by the market that the balance of in-year SFI with-held by the Client on works and services delivered up to the date of termination for convenience by the Client should be paid to the SCDP where the Client terminates for convenience. |
| 1. Project Site(s)
 | In terms of Project Sites, the market requested specification as to which party will be holding overall ownership of them, will have overall control of them, will be responsible for safety and will be managing the interfaces between the works undertaken by the SCDP and other parties working on the Sites. Liability for damage caused by others, as well as theft, vandalism etc. at each Project Site will also need to be defined. |
| 1. NWS Obligations
 | The market requested more clarity in regard to SCDP delegated powers to ensure performance of contractors. |
|  | 1. Dispute Resolution
 | No feedback from the market. |
| Delivery Model Assessment (DMA) / Make or Buy | The market requested to share a draft DMA template. |
| Long Lead Plant & Equipment Procured by NWS | No feedback from the market. |
| Procurement Strategy | 1. Consortium or JV formation
 | No feedback from the market. |
| 1. Procurement Procedure under Procurement Act 2023
 | No feedback from the market. |
| 1. Conditions of Participation
 | No feedback from the market. |
| 1. Contract Award Criteria
 | The market requested to provide list of non-negotiable contract terms. There were also concerns raised that inclusion of salaries in the commercial assessment, will cause that that the lowest paid (least experienced/capable) core team will achieve the highest score.  |
| 1. Test of Financial Standing
 | The market requested the Client to provide draft Initial Task Order and Task Zero Services requirement as part of the SQ pack to have basis on which to determine likely workshare in advance of the Test of Financial Standing. The market also requested to set out the principles of liabilities that Key Subcontractors will owe the Client since Key Subcontractors are included in the Test of Financial Standing. |

Table 4: Contracting and Competition Principles Document Market Feedback

SFI Handbook

| **Topic Area** | **Issue** | **Market Feedback** |
| --- | --- | --- |
| SFI Handbook | Overview of the SFI/ What is the SFI (page 5) | The market recommended aligning the annual assessment with either a calendar or financial year (April – March) and using a simplified milestone approach for the first and last part years (related to mobilisation and demobilisation/handover respectively). It was also proposed that the SCDP should have full relief from any third parties which impact the delivery of milestones or achievement of SCDP KPIs/tasks. |
| SFI Handbook | Definition: Milestone | The market requested the definition of Milestone and clarity on process how the Milestones will be agreed between the Client and SCDP. Also, the query was raised how the SCDP will be reimbursed and compensated where a milestone is delayed or missed through the omission, delay or fault of others. |
| SFI Handbook | How will the funding work for the SFI (page 6) | It was proposed by the market to consider a 6 month rather than 12-month performance period to reduce negative impact on the SCDP, and/or increase the proportion of the SFI that is paid against milestones. Also, if a 12-month retention period is used, the market requested clarity on method how the SCDP’s SFI payment at the end of this will be indexed.  |
| SFI Handbook | Which costs is the SFI deduction applicable to?(page 6) | The market requested to clarify whether the SFI will apply to the Task Zero Services and the Initial Task Order and to define tier 1 subcontractors, management fee referenced in relation to tier 1 subcontractor costs and tier 2 subcontractors. |
| SFI Handbook | Pricing mechanisms will be used to support the assessment of subcontractor rates.  | The market requested to set out what is included in overhead costs as this will determine whether or not overheads should be recoverable against subcontractor costs. |
| SFI Handbook | The Performance KPI / Examples of incentivised TLIs which could be applied (page 8) | The market commented that the outcome tolerances set in order to achieve a Green RAG Score/full Points Score and hence no SFI deduction appear to be scaled to a low-risk low uncertainty SoR, rather than first of a kind subsurface site characterisation requirement with significant uncertainty. |
| SFI Handbook | Example TLI: Quality of output, Schedule Variance, Accuracy of Forecasting, H&S Lost Time Accident (LTA), H&S Near Misses (NM), Cyber Security Data Breaches (DB) | It was recommended by the market to consider different TLIs for Task Zero Services and different for other Task Orders as e.g. some TLIs (e.g. Quality of output) do not seem applicable to Task Zero Services, others (Cyber Security) seem more appropriate to Task Zero Services.The market also requested clarification whether if there were no H&S near misses and cyber security data breaches during the period, none will be reported and no corrective actions will be needed, that would mean that this will automatically fall in the green category’.  |
| SFI Handbook | Example TLI: Quality of output (page 8) | The market suggested that minor typographic and grammatical errors should not constitute a ‘partial re-write’ that triggers a reduction in TLI points score. It was also requested to define what is considered "minor errors" and "major errors", as there a risk that this may be subjective. |
| SFI Handbook | Outcome: Works requiring complete rework Associated RAG score: Red | The market believed that there should be no deduction where the SCDP has used ‘reasonable care’ and undertaken work in accordance with a specification/design agreed with NWS, if the work does not provide the anticipated information and has to be re-done. |
| SFI Handbook | Example TLI: Schedule Variance (page 8) | The market requested clarification whether a delay to the completion of a Task Order will trigger deductions for the same delay against both KPI and Milestone Performance measures. |
| SFI Handbook | Outcome: Up to and equal to 2 weeks behind schedule | The market believed that given unusual nature of works the lack of any tolerance of minor delays around schedule dates does not seem appropriate. In addition, it was highlighted that threshold of 2 weeks behind schedule has wildly different implications for a 2-month activity and 2-year activity. |
| SFI Handbook | Example TLI: Accuracy of Forecasting | The market believed that given uncertainties in geological, environmental, sea and weather conditions it seems inappropriate to penalise budgets that are within 5%. It was also highlighted that there will likely be a discrepancy between the forecasted value of the services vs the budget (based on the Task Order price + implemented CEs) and that the description of this TLI should be reviewed and revised. |
| SFI Handbook | Description: Budget is based on task order level, actual against forecast, taking into account agreed CE's. | The market requested to clarify whether Accuracy of Forecasting will be measured for each Task on a monthly basis, such that if the cost in one month is lower, and the next month it is higher than the monthly budget, but the total is still within the total budget for the task, there will still be a points loss for the month that was over-budget. |
| SFI Handbook | Example TLI: H&S Lost TimeAccident, H&S Near Misses, Cyber Security Data Breaches (page 8) | The market requested to provide a definition of Loss Time Accident. Clarifications were also raised whether H&S and Cyber Security performance will be measured on company level or Task Order level.  |
| SFI Handbook | Example TLI: H&S Near Misses (page 8) | The market suggested that outcome should be defined as ‘No NM data submitted for NMs that the SCDP should reasonable be or is aware of and/or…’ otherwise the SCDP is penalised for periods of time in which its safety processes have led to no near misses. |
| SFI Handbook | Example TLI: Cyber Security Data Breaches (page 8) | The market suggested that the outcome should be defined as ‘No DB data submitted for DBs that the SCDP should reasonable be or is aware of and/or…’ otherwise the SCDP is penalised for having strong Cyber Security that prevents attempted breaches. |
| SFI Handbook | Example - End of Year Disbursement Thresholds (page 9) | The market believed that the KPI performance outcomes and scoring approach do not appear to reflect the uncertainty and risk inherent in the SCDP requirement. As set out the KPI regime appears designed to avoid payment of the KPI element of the SFI. It was also mentioned that the score range of only 110 – 130 appears narrow given the SFI payout range from 0 to 100%.  |
| SFI Handbook | Which rules will apply to the Performance KPI calculation? /Rule/Criteria table (page 9) | The market believed that these rules seem disproportionate given the risks and uncertainties associated with the programme and are overly complex to administer. It was suggested that this is simplified to requiring a rectification plan where more than a certain % of scores are red, or the same category is repeatedly failed. |
| SFI Handbook | Social Value KPI (page 9) | More clarity was also requested on how it will be determined whether an updated Social Value plan delivers an equivalent or greater Social Value than the previous plan, and question if this will always be possible. |
| SFI Handbook | SCDP will be contractually obliged to deliver / comply with the commitments that it makes in relation to social value during the procurement process at its own cost, and there shall be no reimbursement for social value delivery costs other than the SFI reimbursement (where due). | The market requested more clarity on how the SCDP will recover social value delivery costs. A proposal for including an allowance for social value delivery (as Defined Costs), subject to a cap, in the Task Zero Services, and measuring the achievement of objectives that are proportionate to the amount of social value costs invested. |
| SFI Handbook | How will Social Value KPI scores be assigned?(page 10) | The market requested more clarity regarding the requirement for social value outputs to be at least proportional to the value of the contract. The market also questioned the 100% Pass or 0% Fail for social value KPI regime, stating that it would make no sense for the SCDP to spend any money attempting to achieve Social Value KPIs.  |
| SFI Handbook | Task Milestones (page 10) | The market recommended that deductions for delays to interim milestones are available to be recovered if the final milestone is achieved by its target date, to incentivise the recovery of lost time. |
| SFI Handbook | What happens if poor performance is not the fault of the SCDP? (page 12) | The market requested that a robust and comprehensive set of the Client liability and compensation events need to be put in place where cost increases or delays occur for reasons that are out-with the reasonable control of the SCDP.There should be clear objective means of assessment and the SCDP should not be exposed to the loss of SFI or termination because of the poor performance of the Client or its other contractors, nor where cost and time measures are failed because of weather, seabed or subsurface conditions that could not have reasonably been anticipated.It was also proposed that Interdependency and integration risk should remain with the Client. |
| SFI Handbook | Will the measures/ thresholds/metrics change across the duration of thecontract? (page 12) | The market requested to provide a more defined mechanism to govern changes in performance and SFI measures. |
| SFI Handbook | Appendix A Scenario Example | It was recommended to weight Quarterly and Annual Scores in relation to the value of each task order to avoid perverse outcomes. |

Table 5: SFI Handbook Market Feedback