This procurement receives funding under the European Union's Horizon 2020 research and innovation programme under the grant agreement No 883751. The EU is however not participating as a contracting authority in this procurement.

Tender Document TD01: Request for Tenders

Submission deadline:
01 October 2021
at 12:00 (BST) / 13:00 (CEST)

This Request for Tenders, designated as tender document TD01, should be read in conjunction with other documents related to this Pre-Commercial Procurement (PCP), listed hereunder:

Tender document TD02: Specification – PCP Challenge (including Annexes)

Tender document TD03: Terms and Conditions – Framework Agreement

Tender document TD04: Terms and Conditions – Phase Call-off Contract (Phase 1) (including Annexes)

Tender document TD05: Technical Offer (including Annexes)

Tender document TD06: Financial Offer and Cost Breakdown

Tender document TD07: Tender Forms

Tender document TD08: Market Consultation – Questions and Answers

Tender document TD09: Documentation Checklist

All documents are available from the Public Contracts Scotland portal (www.publiccontractsscotland.gov.uk).

Preface

This Request for Tenders invites all interested parties to present their offers to design, develop, and demonstrate wave energy converter systems.

EuropeWave is a research & development (R&D) project, which takes the form of a pre-commercial procurement (PCP).

Section 1 describes the PCP approach and how it differs from traditional procurement.

Section 2 provides a general introduction of the parties involved in the EuropeWave PCP, their roles and responsibilities.

Section 3 introduces the overall challenge this PCP must address, and the preparatory activities undertaken.

Section 4 provides an overview of the contracting approach, the budget and timeline for the PCP.

Section 5 presents the approach to Intellectual Property Right (IPR) management.

Section 6 explains the preconditions for submitting your tender, an overview of the criteria to be used in the evaluation of the tenders, and the process for the evaluation of the tenders.

Section 7 sets out the submission process, including submission deadline, the content and format requirements of the tender.

Section 8 presents the approach for implementing the contracts, including the monitoring process, results evaluation, and payment conditions

Section 9 presents other miscellaneous information concerning the tendering process.

This Request for Tenders (TD01) should be read jointly with other documents prepared for this PCP:

Tender Documents (TD)	
TD01	Request for Tenders
TD02	Specification – PCP Challenge (including Annexes)
TD03	Terms and Conditions – Framework Agreement
TD04	Terms and Conditions – Phase call-off contract (including Annexes)
TD05	Technical Offer (including Annexes)
TD06	Financial Offer & Cost Breakdown [Excel Workbook]
TD07	Tender Forms Form 1. General Declaration Form 1 Annex A. Power of Attorney (Consortium) Form 1 Annex B. Subcontractor Declaration Form 1 Annex C. Project Team Details [Excel Workbook] Form 2. Exclusion Criteria Declaration Form 3. Selection Criteria Declaration Form 4. Compliance Criteria Declaration (including Annexes) Form 5. Form of Tender – Phase 1
TD08	Market Consultation – Questions and Answers
TD09	Documentation Checklist

This PCP is being managed using the Public Contracts Scotland (PCS) portal [1]. PCS is the Lead Procurer's national public procurement portal providing details of public sector tender opportunities in Scotland. It's free to use and free to register as a supplier. All documentation relating to this request for tenders will be freely available for download from the PCS portal to any registered supplier that records their interest in the contract notice.

[1] https://www.publiccontractsscotland.gov.uk

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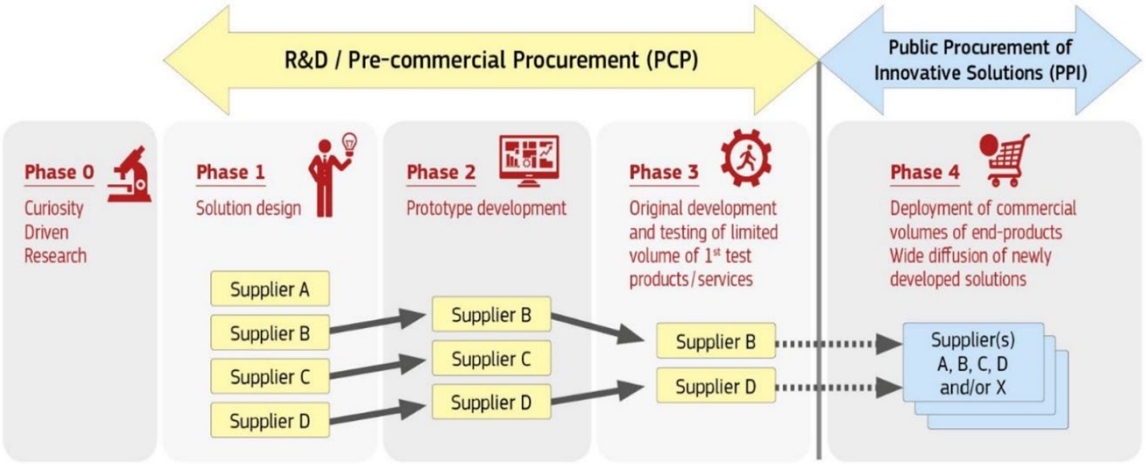
1 General context

1.1 Pre-commercial procurement

This procurement is a **pre-commercial procurement** (PCP).

PCP means that public procurers challenge innovative players on the market, via an open, transparent and competitive process, to develop new solutions for a technologically demanding mid- to long-term challenge that is in the public interest and requires new R&D services.



PCP is characterised by the following four features:

Competitive development in phases to identify the solutions offering the best value for money

PCP targets situations that require radical innovation or R&D and for which there are typically no solutions on or close to the market yet. Different competing providers may have different ideas for solutions to the problem. As R&D is yet to take place, there is not yet any proof as to which of these potential alternative solutions would best meet customers' needs.

PCP therefore awards R&D contracts to a number of competing contractors at the same time, in order to compare different approaches to solving the problem. It thus offers innovators an opportunity to show how well their solution compares with others. It also allows a first customer test reference to be obtained from countries of the procurers that will test the solutions.

The R&D is split into three phases (typically, solution design, prototyping, original development and testing of a limited set of 'first' products or services). Evaluations after each phase progressively identify the solutions that offer the best value for money and meet the customers' needs. This phased approach allows successful contractors to improve their offers for the next phase based on lessons learnt and feedback from procurers in the previous phase. Using a phased approach with gradually growing contract sizes per phase also makes it easier for smaller companies to participate in the PCP and enables SMEs to grow their business step-by-step with each phase.

Depending on the outcome of the PCP, procurers may or may not decide to follow-up the PCP with a public procurement to deploy the innovative solutions (PPI).

Public procurement of R&D services

PCP addresses mid- to long-term public procurement needs for which either no commercially stable solutions yet exist on the market, or existing solutions exhibit structural shortcomings that require further R&D to resolve. PCP is a way for procurers to trigger the market to develop new solutions that address these shortcomings. PCP focuses on specific identified needs and provides customer feedback

to businesses from the early stages of R&D. This improves the likelihood of commercial exploitation of the newly developed solutions.

PCP is explained in the PCP communication COM/2007/799 [2] and the associated staff working document SEC/2007/1668 [3]. The R&D services can cover research and development activities ranging from solution exploration and design, to prototyping, right through to the original development of a limited set of 'first' products or services in the form of a test series. Original development of a first product or service may include limited production or supply in order to incorporate the results of field-testing and demonstrate that the product or service is suitable for production or supply in quantity to acceptable quality standards. R&D does not include quantity production or supply to establish the commercial viability or to recover R&D costs. It also excludes commercial development activities such as incremental adaptations or routine or periodic changes to existing products, services, production lines, processes or other operations in progress, even if such changes may constitute improvements.

Open, transparent, non-discriminatory approach — No large-scale deployments

PCP is open to all operators on equal terms, regardless of the size, geographical location or governance structure.

Any subsequent public procurement of innovative solutions (PPI), for the supply of commercial volumes of the solutions, will be carried out under a separate procurement procedure. Providers that did not take part in this PCP (or were not chosen to go through as far as the last phase) will thus still be able to compete on an equal basis in any subsequent procurement looking for contractors to provide a solution on a commercial scale.

Sharing of IPR-related risks and benefits under market conditions

PCP procures R&D services at market price, thus providing contractors with a transparent, competitive and reliable source of financing for the early stages of their research and development. Giving each contractor the ownership of the IPRs attached to the results it generates during the PCP means that they can widely exploit the newly developed solutions commercially. In return, the tendered price must contain a financial compensation for keeping the IPR ownership compared to the case where the IPRs would be transferred to the procurers (the tendered price must be the 'non-exclusive development price'). Moreover, the procurers must receive rights to use the R&D results for internal use and licensing rights subject to certain conditions.

1.2 Exemption from EU procurement directives, the WTO government procurement agreement (GPA) and EU state aid rules

PCP procurements are exempted from the **EU public procurement directives**, and the national laws that implement them, because the procurers do not retain all the benefits of the R&D (the IPR ownership stays with the contractors) [4].

It is also exempted from the **WTO Government Procurement Agreement (GPA)** because this Agreement does not cover R&D services [5] (the PCP being limited to such services — and any subsequent PPI procurements relating to commercial-scale supply of such solutions not being part of the PCP procurement).

PCP procurements do not constitute state aid under the **EU state aid rules** [6] if they are implemented as defined in the PCP communication [7], namely by following an open, transparent, competitive

[2] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0799:FIN:EN:PDF
[3] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007SC1668:EN:HTML
[4] See Article 16(f) of Directive 2004/18/EC (Article 14 of Directive 2014/24/EU), Article 24(e) of Directive 2004/17/EC (Article 32 of Directive 2014/25/EU) and Article 13(f)(j) of Directive 2009/81/EC.
[5] See the EU's Annex IV of Appendix I to the WTO GPA.
[6] See Point 33 of the Commission Communication on a framework for state aid for research and development and innovation (C(2014) 3282).
[7] Commission Communication COM(2007) 799 and PCP staff working document SEC(2007)1668.

procedure with risk- and benefit-sharing at market price. (The division of all rights and obligations (*including IPRs*) and the selection and award criteria for all phases must be published at the outset; the PCP must be limited to R&D services and clearly separated from any potential follow-up PPI procurements; PCP contractors are not given any preferential treatment in a subsequent procurement for provision of the final products or services on a commercial scale.)

1.3 EU funding

This PCP procurement is part of a project funded by the European Union's Horizon 2020 Research and Innovation Programme, under grant agreement No 883751 — EuropeWave, www.europewave.eu.

The procurement must therefore comply with the rules imposed by the EU Horizon 2020 grant agreement.

The EU is not participating as a contracting authority in this procurement.

2 Procurer and other parties involved in the PCP

2.1 The buyers group

This procurement is a joint PCP involving a buyers group formed of two contracting authorities:

Wave Energy Scotland, An Lochran, 10 Inverness Campus, Inverness, IV2 5NA, Scotland, UK (Company number SC493764);

Ente Vasco de la Energía, Alameda de Urquijo 36 1º, Bilbao 48011, Basque Country, Spain (Company number Q5150001E).

The buyers group are beneficiaries of the EU grant that forms the group of procurers contributing to the PCP procurement budget.

Wave Energy Scotland (WES) and Ente Vasco de la Energía (EVE) have agreed to perform this PCP jointly and are jointly responsible for its implementation. WES has been appointed as the Lead Procurer to manage the procedure, and to sign and award the framework agreement and the phase call-off contracts for all phases of the PCP, acting on its own behalf and on behalf of EVE. References in the tender documentation to 'contracting authority' shall mean WES and EVE acting jointly, or where the context so requires, it shall mean WES, acting on its own behalf and on behalf of EVE.

BUYERS GROUP	RESPONSIBILITIES
Wave Energy Scotland (Lead Procurer)	Preparation of the procurement Procurement publication Proposal evaluation Payments Phase evaluations
Ente Vasco de la Energía	Preparation of the procurement Proposal evaluation PCP Technical Implementation Manager Phase evaluations

The procurers in the buyers group have the following background/ profile/ responsibilities in their respective countries.

2.1.1 Wave Energy Scotland

Wave Energy Scotland Ltd (WES) was formed in 2014 and is a subsidiary of Highlands and Islands Enterprise (HIE) which is the Scottish Government's economic and community development agency for the Highlands and Islands region of Scotland.

WES's remit is to drive the search for innovative solutions to the technical challenges facing the wave energy sector and produce reliable technology which will result in cost effective wave energy generation.

WES has supported five programmes using pre-commercial procurement, focussing on the key systems and sub-systems for wave energy converters: power take-off; novel wave energy converter (prime mover); structural materials; control systems; and, most recently, quick connection systems.

2.1.2 Ente Vasco de la Energia

Ente Vasco de la Energía (EVE) is the Basque Government's energy agency. Its mission is to propose energy strategies for the Basque Country, based on criteria of supply security, cost competitiveness, sustainability and technological development and to participate in developing these strategies and contribute to meeting the targets established therein.

In order to achieve this mission, the agency provides a service to the Basque Government's Department of Infrastructures in matters related to energy and geological and mining resources. It also participates in projects, involving private companies and government institutions. It works to disseminate the values and messages underpinning its strategies amongst society at large.

EVE has been active in the field of marine energy in the past years. The main projects are:

BiMEP – Biscay Marine Energy Platform is an infrastructure operating in real sea conditions for the research, demonstration and operation of marine energy devices. BiMEP is formed by EVE (75%) and IDAE – Spanish Energy Agency (25%).

Mutriku wave power plant. July 2011 saw the official opening of Mutriku wave power plant. The plant consists of 16 oscillating water columns, each one connected to a turbine with a nominal power output of 18.5kW.

Mutriku – Test site. Though the facilities at Mutriku have been set up as a commercial plant to generate electricity, BiMEP welcomes proposals for R&D projects that may be conducted and developed in the Mutriku plant. In particular, the plant is able to host new concepts of air turbines, electrical generators or control systems.

Pre-commercial Public Procurement. In November 2014, EVE launched a PCP tender for the development of a floating wave energy converter suitable for the Basque coast. This €2.5 million contract enabled OCEANTEC to progress to TRL 6-7 after a 1-year testing period of a low power prototype connected to the grid at BiMEP.

3 Description of Services to be procured

3.1 PCP challenge

This procurement is for R&D services to develop and test solutions that address the following overarching challenge: the design, development, and demonstration of cost-effective wave energy converter (WEC) systems for electrical power production that can survive in the harsh and unpredictable ocean environment.

Within this overarching challenge, the EuropeWave PCP challenge is to advance the most promising designs for wave energy converter systems to a level from which they can be developed to commercial exploitation through other national/regional programmes and/or private sector investment, designs

which have been validated through physical model testing and ultimately deployment of scaled whole-system prototypes at the open-water facilities of the Biscay Marine Energy Platform (BiMEP) in the Basque Country and the European Marine Energy Centre (EMEC) in Scotland.

The motivation for this precommercial procurement, the common challenge it addresses, and, the scope and expected outcomes of the R&D services to be procured are described in tender document TD02 [Specification – PCP Challenge].

3.2 Preparation for the PCP

In preparation of the PCP call for tender, an open dialogue with potential tenderers and other interested parties was held to establish the views of the market about the intended R&D scope. The results of this open market consultation (OMC) were duly taken into account to fine-tune the tender specifications, so that the gap between state-of-the art industry development and the procurement needs justifies the need to procure R&D services.

3.2.1 Market analysis

The European Technology and Innovation Platform for Ocean Energy's (ETIP Ocean's) 2016 research agenda for ocean energy [8] argued that open sea deployments of scaled and full-scale prototypes are key to understanding device behaviour and improving operational logistics.

ETIP Ocean's 2019 summary of the state-of-the-art for ocean energy technologies [9] highlighted the need to 'pull' the most promising wave energy technologies forward to a TRL 6-8 and thus bridge the gap between publicly funded R&D&I and commercial investment. To achieve this requires the deployment of prototype 'whole-systems' of a substantial scale in representative and operational wave climates.

The same study identified the market for ocean energy could see 337GW of installed capacity by 2050 and that Europe is a global leader in the sector and could dominate a future market forecast to be worth €53bn per annum with the potential to create 400,000 new jobs.

3.2.2 Prior information notice (PIN)

The prior information notice (PIN) for the open market consultation was promoted and advertised widely using the TED Supplement to the Official Journal of the European Union (OJEU), the Public Contracts Scotland (PCS) portal [10], the Find a Tender portal, the Public Contract Basque Country [11], the national public procurement portal of the Basque Country, the EuropeWave project website, the websites of the EuropeWave consortium partners, the mailing lists of the EuropeWave consortium partners and various social media channels.

The purpose of this PIN was to:

- Create awareness and knowledge about the project among relevant tenderers;
- Allow the buyers group to gain better insights on the market, such as the state-of-the-art technology and future developments;
- Engage the market stakeholders in the procurement preparation phase in order to increase the probability of a successful procurement procedure.

The PIN was published in the TED Supplement to the OJEU on 1 March 2021 under the publication number 2021/S 041-102591. A Corrigendum Notice was also published in the TED Supplement to the

[8] Strategic Research Agenda for Ocean Energy, TPOcean, 2016.
[9] ETIP Ocean (2019), Powering Homes Today, Powering Nations Tomorrow.
[10] https://www.publiccontractsscotland.gov.uk/search/show/search_view.aspx?ID=FEB408104
[11] https://www.contratacion.euskadi.eus/w32-kpeperfi/es/contenidos/anuncio_contratacion/expapjaso411/es_doc/es_arch_expapjaso411.html?ruta=/w32-kpeperfi/es/v79aWar/comunJSP/v79aSubmitBuscarAnuncioFiltro.do?estado=AP&origenSubHome=busquedaPersonalizada

OJEU on 31 March 2021 under the publication number 2021/S 063-160938.

3.2.3 Webinar

Interested operators were invited to participate in a webinar that provided an overview of the procurement challenge and objectives, the PCP process, the main clauses of the contract, and, the EuropeWave consortium's view of the anticipated R&D scope.

The webinar was organized to inform the target sector of the forthcoming request for tenders, to provide an overview of the PCP procedure, to collect insights regarding the anticipated R&D scope which could be used to refine the specification, and, to provide an opportunity for operators to engage with the project.

Feedback was sought and received through questions raised during the webinar and a question and answer facility on the PCS portal both prior to and after the webinar.

The webinar was held on 26 April 2021 hosted by consortium partner Ocean Energy Europe. A recording of the webinar and the slide pack is available on the project website (www.europewave.eu).

3.2.4 Request for information (RFI)

A survey was undertaken immediately following the webinar to provide insight into the state of technology development in the wave energy sector and the market's reaction to the proposed R&D scope.

3.2.5 Business to business networking

A business to business matchmaking facility to encourage and facilitate networking between potential consortium partners is available until 20 July 2021. Interested parties may register at https://europewave.b2match.io/.

3.2.6 Information webinar

An information webinar will be held at 10:30 (BST)/11:30 (CEST) on Tuesday 13 July 2021. Please refer to www.europewave.eu/events. The Q&A will be available via the Contract Notice on PCS as well as the EuropeWave website. The slides and the recording of the webinar will be accessible on the EuropeWave website (www.europewave.eu/videos).

3.2.7 Questions and answers

Responses to queries raised during the OMC activities are provided in tender document TD08. The document is also available on the project website (www.europewave.eu).

4 Overview: contracting, budget and schedule

4.1 Contracting approach

The PCP will be implemented by means of a framework agreement with call-offs for specific contracts for each of the R&D phases (altogether 'PCP contracts').

The framework agreement sets the terms and conditions for the duration of the PCP. There will be no renegotiation. The framework agreement remains binding for the duration of all phases for which contractors remain in the PCP. A tenderer that is awarded a framework agreement will also be awarded a call-off contract for Phase 1 (evaluation of tenders for the framework agreement and Phase 1 are combined). The EuropeWave PCP framework agreement and call-off contract template are provided in tender documents TD03 and TD04, respectively.

Following the tendering stage, a framework agreement and a call-off contract for Phase 1 are expected to be awarded to seven (7) contractors with a minimum of five (5) contractors.

The request for tenders may be cancelled should the minimum number of call-off contracts for Phase 1 not be achieved.

A call-off competition will be organised for Phase 2, with the aim of awarding five (5) Phase 2 call-off contracts with a minimum of four (4). Only offers from contractors that successfully completed Phase 1 will be eligible for Phase 2.

A second call-off competition will be organised for Phase 3, with the aim of awarding a minimum of three (3) Phase 3 call-off contracts. Only offers from contractors that successfully completed Phase 2 will be eligible for Phase 3.

Offers for the next phase will be requested together with the end-of-phase deliverables for each phase. Thus, all contractors in the preceding phase will be invited to make offers for the next phase. Successful completion of the previous phase will be evaluated before evaluating the offers for the next phase, to determine which offers are eligible to be evaluated for the next phase.

Phase 3 will see scaled whole-system prototypes deployed and tested at the sites operated by the Biscay Marine Energy Platform (BiMEP) in Spain and the European Marine Energy Centre (EMEC) in Scotland. Two prototypes will be deployed at BiMEP and one prototype will be deployed at EMEC. Details of the process for allocating the sites are provided in tender document TD02 [Specification – PCP Challenge].

A tenderer is asked not only to submit their detailed offer for Phase 1 in their tender, but also to state their goals, and to outline their plans for phases 2 and 3, and provide details of the steps that would lead to commercial exploitation of the R&D results.

The Lead Procurer will sign the framework agreement and call-off contracts in the name and on behalf of the buyers group.

An overview of the overall timing of the EuropeWave PCP and of the individual phases (including the expected start and finish dates) is presented below:

Phase	Start date	End date	Phase duration	Evaluation duration
1	03 Jan 2022	29 July 2022	7 months	2 months
2	26 Sept 2022	30 June 2023	9 months	2.5 months
3	11 Sep 2023	29 May 2026	33 months	n/a

The Lead Procurer reserves the right to extend the duration of the framework agreement or any of the call-off contracts from it (time extensions only).

4.2 Total budget and budget distribution (per phase)

The total budget for the PCP is €16,333,333 (VAT excluded) or €19,600,000 (VAT included). A breakdown by phase is presented in the table below.

The maximum call-off contract values are based on the available phase budget and the presumption that the anticipated number of call-off contracts are awarded at each phase. If fewer call-off contracts are awarded in Phase 1 (and Phase 2) than anticipated, the unused phase budget may be carried forward and added to the phase budget of subsequent phases. Thus, the phase budget for phases 2 and/or 3 may eventually be higher than stated here. The carried forward budget may be used to expand the scope of work in Phase 2 and/or Phase 3 beyond that anticipated at the time of publishing this request for tenders, and, the maximum call-off contract value for Phase 2 and/or 3 increased accordingly. Any enhancement of the scope of work in Phase 2 and/or Phase 3 would be communicated to all contractors in advance of the preceding phase gate allowing contractors to price their offer for

the subsequent phase accordingly. Possible enhancements to the scope of work may be to request additional testing beyond that currently envisaged.

	Call-off contracts				Phase budget	
	Quantity		Maximum value		Total	
	Minimum	Anticipated	exc. VAT	inc. VAT	exc. VAT	inc. VAT
Phase 1 [Concept Development]	5	7	€291,667	€350,000	€2,041,667	€2,450,000
Phase 2 [FEED and Modelling]	4	5	€608,333	€730,000	€3,041,667	€3,650,000
Phase 3 [Open-water deployment]	3	3	€3,750,000	€4,500,000	€11,250,000	€13,500,000
		Totals	€4,650,000	€5,580,000	€16,333,333	€19,600,000

The applicable VAT regime will be that under which the Lead Procurer operates.

4.3 Time schedule

The planned time schedule for the EuropeWave PCP is:

Date	Activity
First tender procedure (framework agreement and Phase 1 contracts)	
02/07/2021	Contract Notice dispatched for publication via the PCS portal
02/07/2021	Contract Notice published on the PCS portal
09/07/2021	Publication of contract notice in TED (estimated)
13/07/2021	Information webinar
15/09/2021	Deadline for submitting queries about tender documents
21/09/2021	Deadline for procurer to publish replies to queries
01/10/2021	**Deadline for submission of tenders for the framework agreement and Phase 1 1200 hrs (BST) on 01 October 2021**
01/10/2021	Opening of tenders
26/11/2021	Tenderers notified of decision on awarding contracts (estimated)
22/12/2021	Signing of framework agreements and Phase 1 call-off contracts
10/01/2022	Publication of contract award notice in TED (estimated)
Implementation of Phase 1	
03/01/2022	Start of Phase 1
29/07/2022	Deadline for Phase 1 final milestone(s)/final deliverable(s)
29/07/2022	End of Phase 1
Call-off competition for Phase 2	
04/07/2022	Launch call-off for Phase 2
09/08/2022	Deadline for submitting queries on Phase 2 call-off documents
12/08/2022	Deadline for procurer to circulate replies to queries
19/08/2022	Deadline for submitting Phase 2 offers
19/08/2022	Opening of Phase 2 offers

16/09/2022	Contractors notified of decision on awarding Phase 2 contracts
23/09/2022	Signing of Phase 2 specific contracts
Implementation Phase 2	
26/09/2022	Start of Phase 2
30/06/2023	Deadline for submission of Phase 2 final milestone(s)/final deliverable(s)
30/06/2023	End of Phase 2
Call-off competition for Phase 3	
05/06/2023	Launch call-off for Phase 3
18/07/2023	Deadline for submitting queries about Phase 3 call-off documents
21/07/2023	Deadline for lead procurer to circulate replies to queries
28/07/2023	Deadline for submitting Phase 3 offers
28/07/2023	Opening of Phase 3 offers
01/09/2023	Contractors notified of decision to award Phase 3 contracts
08/09/2023	Signing of Phase 3 call-off contracts
Implementation Phase 3	
11/09/2023	Start of Phase 3
December 2024	Fabrication of Phase 3 prototype complete
January 2025	Commissioning of Phase 3 prototype
February 2025	Operational readiness review
March 2025	Installation and operational period begins
March 2026	Operational period concludes
April 2026	Recovery of Phase 3 prototype
29/05/2026	Deadline for submission of Phase 3 final milestone(s)/final report/ deliverable(s)
29/05/2026	End of Phase 3

The procurers reserve the right to adjust the time schedule, especially for Phase 2 and 3. This will be communicated in a timely manner.

5 Intellectual property rights (IPRs)

5.1 Ownership of results (foreground)

Each contractor will keep ownership of

- the results and the IPRs attached to the results they generate during the PCP implementation; and,
- any physical models, prototypes or other test pieces produced during the PCP.

The tendered price is expected to take this benefit into account (see §7.7).

The ownership of the IPRs will be subject to the following:

- the procurers of the buyers group have the right to:
  - access results, on a royalty-free basis, for their own use
  - require the contractors to grant non-exclusive licences to third parties to exploit the results under fair and reasonable conditions (without the right to sublicense)
- the procurers have the right to require the contractors to transfer ownership of the IPRs if the contractors fail to comply with their obligation to commercially exploit the results (see below)

or use the results to the detriment of the public interest (including security interests).

the contractor may grant non-exclusive licences to third parties allowing them to exploit the results (or otherwise give the right to exploit them) unless this impedes the access rights of the procurers.

Each contractor will be responsible for the management and protection of its IPRs. The Lead Procurer will monitor the management of the IPR.

The framework agreement contains a provision that describes in more detail the rights and obligations of the different parties regarding ownership of results.

5.2 Pre-existing rights (background)

The ownership of pre-existing rights remains unchanged.

To be able to distinguish clearly between Results and pre-existing rights (and to establish which pre-existing rights are held by whom):

Procurers and contractors will establish, before the start of the contract, a list of respective pre-existing rights to be used.

The procurers of the buyers group own pre-existing rights which could be made available to contractors in the EuropeWave PCP programme:

Wave Energy Scotland acquired certain intellectual property assets of Aquamarine Power and Pelamis Wave Power and maintains the patent rights to the Pelamis Wave Power 'Marine Connection System and Method' invention. Contractors may request access to this background under licence.

The framework agreement contains a provision that describes in more detail the rights and obligations of the different parties regarding pre-existing rights.

5.3 Commercial exploitation of results

Contractors are expected to take measures to ensure that the results generated in the PCP are exploited commercially for at least four (4) years after the end of the framework agreement.

The framework agreement contains a provision that describes in more detail the rights and obligations of the different parties regarding the commercial exploitation of results.

6 Evaluation of tenders

6.1 Eligible tenderers, joint tenders and subcontracting

Participation in the tendering procedure is open on equal terms to all types of operators from any country, regardless of their geographic location, size or governance structure.

There will, however, be a requirement relating to the place of performance of the R&D services (§6.4.3).

For phases 2 and 3, participation is limited to tenderers that successfully complete the preceding phase.

Participation in the open market consultation is not a condition for submitting a tender.

A tender may be submitted by a single operator or a group (consortium) of operators acting together (a joint tender). A tender (or joint tender) may include the use of subcontractors.

6.1.1 Joint tender submissions

A joint tender is the situation where a group (consortium) of operators agree to work together to submit a tender. A joint tender may also include subcontractors in addition to the operators that form the group (consortium).

A joint tender submission must indicate the role, qualification and experience of each member of the group (consortium) (in the project team section of the Technical Offer [tender document TD05]), the proportion of the services to be delivered by each member (determined in the Financial Offer [tender document TD06]), and, how the group (consortium) will operate in respect of this tender (in the project management section of the Technical Offer [tender document TD05]).

The group (consortium) must select a 'Lead Contractor' who will have the power to sign the framework agreement and call-off contracts in the name and on behalf of the group (consortium) and will be responsible for the contracts without prejudice to the existence of joint powers that they may grant for receiving and making payments of a significant amount.

All members of the group (consortium) shall be jointly and separately bound to fulfil the terms of the framework agreement and the call-off contracts.

The composition of the group (consortium) submitting a successful joint tender cannot be altered for the duration of the framework agreement, except in exceptional circumstances.

In the case of a joint tender submission, the term 'tenderer' in the tender documentation shall mean the group (consortium) of operators acting together.

6.1.2 Subcontracting

Subcontracting refers to any contract or agreement between the tenderer and any third party whereby that third party agrees to provide services to the tenderer to enable or assist the tenderer to provide the services or any part thereof to the buyers group.

The tenderer must identify in the offer those parts of the contract which are to be subcontracted and the identity of the intended subcontractors, so far as this is possible.

The tenderer remains fully liable to the buyers group for the performance of the contract and will be responsible for the acts and omissions of its subcontractors as though those acts and omissions were its own. The tenderer must therefore assure that subcontractors are aware of the provisions set out in the tender documents including the related to IPRs.

The execution of the services assigned to a subcontractor shall not be the subject of further subcontracting.

Should the tenderer need to change or add new subcontractors, the new subcontractor must provide a statement declaring that is aware of the provisions set out in the tender documents, that it meets the qualification requirements for the subcontracted service and that it has its resources at the contractor's disposal for the full duration of the contract.

6.2 Exclusion criteria

The exclusion criteria are presented in the table below.

Exclusion Criteria	Evidence
Part A – Grounds relating to criminal convictions	Declaration of Honour (Form 2: Exclusion Criteria Part A)
Part B – Grounds relating to the payment of taxes or social security contributions	Declaration of honour (Form 2: Exclusion criteria Part B)

Part C – Grounds relating to insolvency or professional misconduct	Declaration of honour (Form 2: Exclusion criteria Part C)
Part D – Grounds relating to a conflict of interest	Declaration of honour (Form 2: Exclusion criteria Part D)
Part E – Grounds relating to the national legislation	Declaration of honour (Form 2: Exclusion criteria Part E)

The tenderer must confirm, by completing and signing Form 2 [Exclusion Criteria] of tender document TD07 [Tender Forms], whether it or its subcontractors are subject to any of the exclusion criteria stated therein.

In the case of joint tender, all members of the group (consortium) must complete and sign a separate instance of Form 2.

The exclusion criteria will be assessed on a 'pass' or 'fail' basis. Only tenders achieving a 'pass' will be considered for further evaluation.

Where a tenderer (or in case of a joint tender the members of the group (consortium)) is the subject of an exclusion criterion in Part A and Parts C to E, any self-cleansing measures taken to demonstrate reliability should be described. A tenderer may be assessed as 'fail' if the procurers assess the self-cleansing measures to be insufficient.

A tenderer (or in case of a joint tender the members of the group (consortium)) responding 'Yes' to the exclusion question in Part B will be assessed as 'fail' unless it can demonstrate it has or will fulfil its obligations.

6.2.1 Part A: Grounds relating to criminal convictions

A tenderer may be excluded from further participation in the PCP if it, or any entity on whose resources it relies upon in this procurement, does not meet one or several of the exclusion criteria stated in Article 57(1) of Directive 2014/24/EU.

6.2.2 Part B: Grounds relating to the payment of taxes or social security contributions

A tenderer may be excluded from further participation in the PCP if it, or any entity on whose resources it relies upon in this procurement, does not meet one or several of the exclusion criteria stated in Article 57(2) of Directive 2014/24/EU.

6.2.3 Part C: Grounds relating to insolvency or professional misconduct

A tenderer may be excluded from further participation in the PCP if it, or any entity on whose resources it relies upon in this procurement, does not meet one or several of the exclusion criteria stated in Article 57(4) of Directive 2014/24/EU.

6.2.4 Part D: Grounds relating to a conflict of interest

A tenderer may be excluded from further participation in the PCP if it, or any entity on whose resources it relies upon in this procurement, does not meet one or several of the exclusion criteria stated in Article 57(4)(e) & (f) of Directive 2014/24/EU.

A conflict of interest covers both personal and professional conflicts and may relate to any of the procurers in the buyers group.

Personal conflicts are any situation where the impartial and objective evaluation of tenders and/or implementation of the contract is compromised for reasons relating to economic interests, political or national affinity, family, personal life (e.g. family of emotional ties) or any other shared interest.

Professional conflicts are any situation in which the contractor's (previous or ongoing) professional

activities affect the impartial and objective evaluation of tenders and/or implementation of the contract.

The tenderer is required to be open and transparent about its interests and if in any doubt to err on the side of transparency.

The determination of whether an interest represents a material conflict will consider public perception, i.e. whether a member of the public, acting reasonably, would perceive that a conflict exists. The final decision regarding materiality of a conflict rests with the procurers.

If an actual or potential conflict of interest arises at the tender preparation stage, or at a later stage (i.e. during the implementation of the contract), the tenderer must inform the Lead Procurer immediately in writing and take steps to rectify the situation.

The Lead Procurer, Wave Energy Scotland (WES), is a subsidiary of Highlands and Islands Enterprise (HIE), and as such is governed by HIE's policy on Conflict of Interest, a copy of which is provided with the request for tenders documentation pack. Specific guidance relating to the activities undertaken by WES is also attached. The tenderer should familiarise itself with this policy and guidance.

6.2.5 Part E: Grounds relating to the national legislation

A tenderer may be excluded from further participation in the PCP if it, or any entity on whose resources it relies upon in this procurement, does not meet the exclusion criteria relating to bribery or corruption within the meaning of sections 68 and 69 of the Criminal Justice (Scotland) Act 2003(7) or bribery within the meaning of sections 1 or 6 of the Bribery Act 2010, or, has committed an act prohibited under the Employment Relations Act 1999 (Blacklists) Regulations 2010.

6.3 Selection criteria

The purpose of selection criteria is to determine whether a tenderer has the legal and financial capacities to perform the contract to be awarded.

The tenderer must complete the declaration in Form 3 [Selection Criteria] of tender document TD07 [Tender Forms] that it can satisfy the selection criteria. Evidence to support the declaration will be sought from a successful tenderer prior to contract.

The selection criteria are as follows:

Selection Criteria	Evidence
A) Insurance	Declaration that the requested types of insurance and levels of cover will be put in place should the tender be successful in winning a contract.
B) On-demand advance payment guarantee	Declaration that an on-demand advance payment guarantee will be provided for the value of the mandatory pre-finance payment should the tenderer be successful in winning a contract.

The selection criteria will be assessed on a pass/fail basis according to responses in Form 3. Only tenders achieving a 'pass' will be considered for further evaluation.

6.3.1 Insurance

A tenderer must declare that it holds or commits to obtain, and, commits to maintain a policy or policies of insurance with a reputable insurance company providing the types and the levels of cover required for each phase call-off contract.

The type of policy and the minimum cover required may vary for each phase call-off contract.

For phase 1 the following insurance policies are required:

Public liability: minimum cover € 1,000,000 (one million euros) on an each and every claim basis;

A tenderer whose place of business is in the UK

Employers' liability [12]:minimum cover £5,000,000 (five million pounds) on an each and every claim basis.

A tenderer whose place of business is not in the UK

An equivalent policy and cover as mandated in the country of the tenderer's place of business.

Where a policy's cover is expressed in a currency other than euros, that policy must provide at least the minimum level of cover stated above when converted to the local currency using the conversion rate stated by InforEuro facility [13] for the month in which the policy commences.

A tenderer may not rely on another entity or entities to satisfy this selection criteria, with the exception of a parent company.

6.3.2 On-demand advance payment guarantee

A tenderer must declare that prior to signing the framework agreement and call-off contract for Phase 1, it commits to arrange an on-demand advance payment guarantee from a reputable bank for the value of the mandatory pre-financing payment (§8.3.1).

A template for the on-demand advance payment guarantee is provided in Annex A to tender document TD04 [Call-off Contract].

A sole tenderer may not rely on another entity to arrange the on-demand advance payment guarantee.

In the case of a joint tender submission, a lead tenderer may rely on other members of the group (consortium) to arrange the on-demand advance payment guarantee.

6.4 Compliance criteria

Before assessing the tenders based on the weighted award criteria (§6.5), the procurers will check whether the tenders satisfy the compliance requirements.

The purpose of compliance criteria is to determine whether the Tender is compliant with the principles of PCP, public financing, place of performance, research integrity, and there are no restrictions to its freedom to develop the proposed concept design (compliance criteria A) to E)). A further compliance criterion relates to the applicability of the proposed concept design for the environmental conditions at the Phase 3 test sites, the Biscay Marine Energy Platform (BiMEP) and the European Marine Energy Centre (EMEC) (compliance criteria F)).

Compliance criteria A) to E) will be assessed on a pass/fail basis according to responses to the questions in Form 4 [Compliance Criteria]. The offers for each subsequent phase will be assessed against the compliance criteria A) to E).

Compliance criterion F) will be assessed at entry to Phase 1 only, based on the evidence provided in §2.1 of tender document TD05 [Technical Offer] (see §6.4.6).

Only tenders achieving a 'pass' will be considered for further evaluation.

Additional compliance criteria may be introduced at the call-off competitions for Phase 2 and 3.

Compliance Criteria	Evidence

[12] Most employers in the UK are required by law (Employers' Liability (Compulsory Insurance) Act 1969) to insure against liability for injury or disease to their employees arising out of their employment with a minimum cover of £5 million. Employers whose place of business is not in the UK must comply with legislation concerning an employer's responsibilities for the health and safety of their employees in the country of their place of business.

[13] InforEuro provides the European Commission's official monthly accounting rates for the euro and the corresponding conversion rates for other currencies. https://ec.europa.eu/info/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-inforeuro_en

A) Compliance with the definition of R&D services	Declaration of Honour (Form 4 Compliance Criteria Part A).
B) Compatibility with other public financing	Declaration of Honour (Form 4 Compliance Criteria Part B).
C) Compliance with the requirements regarding the place of performance of the contract	Declaration of Honour (Form 4 Compliance Criteria Part C). TD06 [Financial Offer & Cost Breakdown]
D) Compliance with ethics requirements	Declaration of Honour (Form 4 Compliance Criteria Part D).
E) Freedom to operate	Declaration of Honour (Form 4 Compliance Criteria Part E). Form 4 Annex A [Background]
F) Applicability to Phase 3 test sites	Technical description in TD05 [Technical Offer, §2.1]

6.4.1 Compliance with the definition of R&D Services

Tenders that go beyond the provision of R&D services will be excluded.

R&D covers fundamental, industrial research and experimental development, as per the definition given in the EU R&D&I state aid framework [14]. It may include exploration and design of solutions and prototyping up to the original development of a limited volume of first products or services in the form of a test series. Original development of a first product or service may include limited production or supply in order to incorporate the results of field-testing and to demonstrate that the product or service is suitable for production or supply in quantity to acceptable quality standards [15].

R&D **does not include** quantity production or supply to establish commercial viability or to recover R&D costs. It also **excludes** commercial development activities such as incremental adaptations or routine or periodic changes to existing products, services, production lines, processes or other operations in progress, even if such changes may constitute improvements. The purchase of commercial volumes of products or services is not permitted.

The EuropeWave PCP will not involve the purchase of any products.

The following evidence is required:

- the financial offer must provide binding unit prices for all foreseeable categories of R&D personnel for the duration of the framework agreement;
- the financial offer for each phase must provide a breakdown of the price for that phase in terms of the binding unit prices for those categories of R&D personnel;
- the offers for all three phases may include only items needed to address the challenge in question and to deliver the R&D services described in the request for tenders;
- the offers for all three phases must offer services matching the R&D definition above.

The tenderer must sign a declaration of honour stating the services and activities offered in the tender are solely for the purpose of R&D as defined above (see Part A of Form 4 [Compliance Criteria] of tender document TD07 [Tender Forms]).

The binding unit prices and the breakdown of the financial offer for Phase 1 must provide sufficient information to allow an assessment of compliance with the requirements (see tender document TD06 [Financial Offer] for more details).

[14] See Point 15 of the Communication from the Commission, 'Framework for state aid for research and development and innovation', C(2014) 3282.

[15] See Article XV(1)(e) WTO GPA 1994 and the Article XIII(1)(f) of the revised WTO GPA 2014.

6.4.2 Compatibility with other public financing

Tenders that receive public financing from other sources will be excluded if this leads to double public financing or an accumulation of different types of public financing that is not permitted by EU or national legislation (e.g. EU state aid rules).

The tenderer must sign a declaration of honour stating the absence of other incompatible public financing at each call-off (see Part B of Form 4 [Compliance Criteria] of tender document TD07 [Tender Forms]).

6.4.3 Compliance with place of performance requirements

A tender will be excluded if it does not meet the following requirements relating to the place of performance of the contract:

- The principal R&D staff working on each call-off contract must be located in the EU Member States or Horizon 2020 associated countries (including the UK).
- At least 70% of the total value of activities in each call-off contract in the PCP must be performed in the EU Member States or Horizon 2020 associated countries (including the UK).

The percentage is calculated as the part of the total monetary value of the contract that is allocated to activities performed in the EU Member States or Horizon 2020 associated countries (including the UK). All activities covered by the contract are included in the calculation, i.e. all R&D and operational activities that are needed to perform the R&D services (e.g. research, development, testing and certifying solutions). This includes all activities performed under the contract by the contractor and, if applicable, its subcontractors.

The **principal R&D staff** are the main researchers, engineers, developers, etc., responsible **for leading the R&D activities** covered by the contract.

The following evidence is required:

- the technical offer (tender document TD05) must provide a list of key personnel working on the call-off contract, indicating clearly their role in performing the contract, whether they are principal R&D staff, and the location (country) where they will carry out their tasks under the contract;
- the financial offer (tender document TD06) must provide unit prices for all foreseeable categories of R&D personnel, binding for the duration of the framework agreement, and indicate their normal place of work;
- the financial offer for each phase must provide a breakdown of the price for that phase in terms of activities by organisation and category of R&D personnel undertaking the activity, medium to high value materials and equipment, and, subcontracting, indicating the place of performance;
- a declaration of honour that, where certain activities forming part of the contract are subcontracted, subcontractors will be required to comply with the place of performance obligation to ensure that the minimum percentage of the total amount of activities that has to be performed in the EU Member States or Horizon 2020 associated countries (including the UK), is respected.

The tenderer must sign a declaration of honour stating the services and activities offered in the tender comply with the place of performance requirements. (see Part A of Form 4 [Compliance Criteria] of tender document TD07 [Tender Forms]).

6.4.4 Compliance with ethics requirements

Tenders will be excluded if the proposed activities:

- do not comply with ethical principles, including the highest standards of research integrity [16] or applicable international, EU and national law;

[16] The European Code of Conduct for Research Integrity of ALLEA (All European Academies).

will be conducted in a country outside the EU, where those activities are prohibited in all EU Member States;
do not focus exclusively on civil applications;
do not raise any other ethical issues.

Call-offs for phases 2 and 3 may request that this information be updated in the offers submitted for these phases.

The framework agreement contains a provision on ethics.

The tenderer must sign a declaration of honour stating the activities offered in the tender will comply with the ethics requirements. (see Part D of Form 4 [Compliance Criteria] of tender document TD07 [Tender Forms]).

6.4.5 Freedom to operate

The tenderer must be free to develop and commercialise its proposed concept design.

The tenderer must complete Annex A [Background] to Form 4 to identify any pre-existing rights (background) required to develop the concept design proposed in their technical offer and sign a declaration of honour stating the absence of any restriction on the freedom to operate in relation to those pre-existing rights (see Part E of Form 4 [Compliance Criteria] of tender document TD07 [Tender Forms]).

6.4.6 Applicability to Phase 3 test sites

The proposed concept design must be appropriate for the environmental conditions at the Phase 3 test sites of the Biscay Marine Energy Platform (BiMEP) in Spain and the European Marine Energy Centre (EMEC) in Scotland (as stated in requirement P04 in tender document TD02 [Specification – PCP Challenge]).

Evidence supplied in the tenderer's technical description of the proposed concept design provided in tender document TD05 [Technical Offer, §2.1] will be assessed to determine its suitability for deployment at the BiMEP and EMEC test sites. The tenderer must achieve the minimum grade stated in tender document TD05 to obtain a 'pass'.

6.5 Award criteria

Only tenders that 'pass' the evaluation of the exclusion criteria, the selection criteria, and the compliance criteria will be assessed against the award criteria.

The award criteria will be assessed by examining the written Technical Offer (tender document TD05 and its associated annexes) and the Financial Offer (tender document TD06). Assessment of offers for call-offs for phases 2 and 3 may include hearings with, or presentations to, the Evaluation Committee.

Sub-criteria, weightings, and, minimum scores, may be amended for the call-offs for phases 2 and 3, as a way of making the award criteria more precise, provided the amendments do not substantially change the existing criteria. Contractors will be advised of the award criteria, sub-criteria and their respective weightings as part of the Phase 2 and 3 call-off competition.

Awards will be made based on the most economically advantageous tenders determined by the best combined technical quality (technical offer) and price (financial offer) score (§6.6.3).

6.5.1 Award criteria and weightings

Tenders will be scored against the technical quality award criteria (technical offer) and the price award criterion (financial offer) weighted as follows for Phase 1.

Where a threshold grade is specified, tenders failing to achieve that threshold will be excluded from the evaluation. The technical quality scoring scheme is presented in §6.6.3.1.

Framework agreement & Phase 1, Phase 2 and Phase 3			
Award criteria	Threshold grade	Criteria weighting	Section weighting
TECHNICAL QUALITY			
Technology			33%
Technical description	2	10%	
Prior development			
Power performance	2	5%	
Survivability	2	2%	
Affordability	2	3%	
Innovation	2	8%	
Technology risk	-	5%	
Impact			19%
Project impact	-	7%	
Commercialisation			
LCOE potential	-	7%	
Business strategy	-	5%	
Programme			25%
Project team	-	10%	
Phase 1 scope of work			
The activities proposed	-	7%	
The outputs delivered	-	3%	
Phase 2 and 3 outline	-	5%	
Project Management			8%
Schedule	-	2%	
Methodology	-	3%	
Phase 1 risk	-	2%	
Health, safety and environmental management	-	1%	
PRICE			
Total Price			15%

6.6 Evaluation procedure

6.6.1 Committees

6.6.1.1 Procurement Committee

The Procurement Committee is the decision-making body for matters relating to the joint procurement procedure.

The Procurement Committee shall comprise four (4) members, two (2) senior representatives from each procurer in the buyers group.

6.6.1.2 Opening Committee

The Opening Committee will consist of two representatives from the Procurers' procurement teams.

Tenders must be submitted electronically using the Postbox facility of the Public Contracts Scotland (PCS) portal. Submitted tenders are held in the secure Postbox until the deadline for responses has expired. The Opening Committee will then unlock the Postbox to access the submitted tenders. The Postbox cannot be unlocked prior to the deadline. The Postbox provides an audit trail of all access to the Postbox, including a record of all supplier submissions.

6.6.1.3 Evaluation Committee

The goal of the Evaluation Committee is to determine the relative merits of all tenders and offers for the call-off competitions for Phase 2 and 3, in a fair and consistent manner.

The Procurement Committee will appoint an Evaluation Committee Manager to oversee the selection of the panel of assessors to the committee, the activities of the committee, and, to report on the outcome of the evaluation process. The Evaluation Committee Manager will not evaluate the tenders. The Evaluation Committee Manager will be supported by members of the Lead Procurer's procurement team to ensure a transparent and open process is followed.

The Evaluation Committee shall consist of a panel of at least five (5) assessors made up from at least one representative of each procurer in the buyers group (internal assessors) and a number of independent experts (external assessors) selected to augment the technical knowledge and perspective available within the buyers group. The ratio of internal to external assessors is at the discretion of the Evaluation Committee Manager.

Assessors shall be appointed on an individual basis. In performing their tasks, they shall not take or seek instructions from the Lead Procurer or other procurer in the buyers group, nor from any other institution, body, office, agency, or government.

All assessors will be subject to conflict of interest checks.

The selection of external assessors will be through an open procurement process.

It is desirable for the composition of the panel of assessors to remain the same for the duration of the PCP programme. However, where a need to change the composition arises (e.g., an assessor is unavailable, or, to introduce additional expertise) the Evaluation Committee Manager shall seek approval from the Procurement Committee in advance.

6.6.2 Opening of tenders

The expected date for the opening of tenders is 01 October 2021.

The Opening Committee will perform the legal opening of all tenders received using the Postbox facility of the Public Contracts Scotland (PCS) portal. The Postbox facility records certain basic details (e.g. tendering company name, date and time of submission, list of documents submitted).

Tenders submitted by the deadline will undergo preliminary compliancy checks to identify tenders with major issues that disqualify them from evaluation. The preliminary compliancy checks will identify tenders that:

- have not been submitted in accordance with the instructions regarding content and format issued in the request for tenders (e.g. tenders that are incomplete);
- have indicated there are grounds for exclusion based on the exclusion criteria (§6.2);
- do not satisfy the selection criteria (§6.3);
- do not satisfy the compliance criteria A) to E) (§6.4).

The Opening Committee may request clarifications from tenderers. Communication with tenderers will be conducted in writing by email. Clarifications must not materially alter the tenderer's original proposal.

Tenders not complying with these formal requirements may be excluded from the evaluation process.

The Opening Committee will prepare a report to the Procurement Committee, agreed and signed by the members of the Opening Committee, summarising the outcome of the session, identifying those

tenders that have failed to satisfy the preliminary compliancy checks and are recommended for exclusion from the evaluation process.

Compliant tenders will be issued to the Evaluation Committee Manager.

The principles of this opening procedure will be repeated at each phase gate, although an alternative secure platform for submitting offers may be used.

6.6.3 Evaluation

The objective of evaluation is to identify the most economically advantageous tenders determined by a combined technical quality (technical offer) and price (financial offer) score.

The process of evaluating a tender follows two steps:

(1) Evaluate the tender based on the compliance criteria F) (§6.4);
(2) Evaluate the tender based on the weighted award criteria (§6.5).

Failure to pass step (1) will result in exclusion from the evaluation process at that step.

The evaluation of the technical quality award criteria will be conducted in two stages.

Independent evaluation – Assessors review the compliant tenders independently grading responses against the published technical quality award criteria using the scheme presented in §6.6.3.1. Each assessor submits their draft grades to the Evaluation Committee Manager in advance of an Evaluation Committee meeting.

Evaluation Committee meeting – The meeting of the Evaluation Committee, chaired by the Evaluation Committee Manager, permits the panel of assessors to discuss the tenders and their grading of the responses against the technical quality award criteria. The panel may issue requests for clarification from the tenderer in writing by email. Assessors may amend their draft grades at this stage. If there are any clarification questions, the Evaluation Committee reconvenes to discuss the responses received from tenderers and finalise the grades.

The Evaluation Committee meeting will be held in-person or virtually as circumstances allow.

The Evaluation Committee meeting will consider any technical quality compliance award criteria first. Tenders not satisfying the compliance award criteria (F) will be excluded from further evaluation.

The Evaluation Committee meeting will then consider those technical quality award criteria for which a threshold is applied. Tenders not achieving the threshold will be excluded from further evaluation.

The Evaluation Committee meeting will then consider the remaining technical quality award criteria.

The assessors' final grades are converted to a score using the methodology presented in §6.6.3.1 and the panel's score for each technical quality award criteria established as the average of the assessors' scores. A technical quality score for each tender is obtained by summing the weighted scores of the technical quality award criteria.

The assessors will assist the Evaluation Committee Manager in preparing feedback on the evaluation.

The evaluation of the price award criterion is formulaic, using the methodology described in §6.6.3.2 to produce a price score for each tender that has satisfied the technical quality compliance award criteria and achieved the minimum thresholds for those technical quality award criteria for which a threshold is applied.

An overall score for each tender is calculated as the sum of its technical (quality) score and its weighted price score using the methodology described in §6.6.3.3.

The outcome of the evaluation process is an agreed ranking of the tenders based on the overall scores and a recommendation of which tenders could be awarded a framework agreement and a call-off contract for Phase 1 of the programme. The ranking will include only those tenders which have satisfied the technical quality compliance criteria and the minimum thresholds for those technical quality award criteria for which a threshold is applied. This ranking and recommendation will be submitted to the

Procurement Committee for its approval to award contracts.

The number of contracts awarded will be between the minimum and the anticipated number presented in §4.2.

The Lead Procurer will inform tenderers of the outcome of the evaluation once the Procurement Committee has approved the awards. Successful tenderers will receive a framework agreement and call-off contract for Phase 1. All tenderers will receive the feedback prepared by the Evaluation Committee Manager.

The evaluation for call-off contracts for Phase 2 and Phase 3 will follow a similar process:

(1) Evaluate the end-of-phase deliverables to determine whether a contractor has completed the phase 'successfully' (§8.4).
(2) Assess whether the contractor satisfies the selection criteria (§6.3);
(3) Evaluate the contractor's offer based on the compliance criteria (§6.4);
(4) Evaluate the contractor's offer based on the award criteria for the phase (§6.5).

6.6.3.1 Scoring – Technical offer

The extent to which the tender's technical offer meets the technical quality award criteria (§6.5) will be assessed and graded using the scheme outlined below.

Grade	Description	Explanatory Description
0	Unacceptable	Nil or inadequate response submitted. The response does not address or demonstrate an ability to meet the requirements. The response is not relevant.
1	Poor	Partially relevant but generally poor. Addresses some elements of the requirements. Contains insufficient detail or evidence to demonstrate adequate understanding of the requirements or how they will be fulfilled. One or more serious weakness(es) identified.
2	Fair	Relevant and broadly adequate. Demonstrates a basic understanding of the requirements. Provides some broad details on how the requirements will be fulfilled. In general, lacks detail or evidence to demonstrate how effectively and/or credibly the requirements will be fulfilled.
3	Good	Relevant and good. Demonstrates a good understanding of the requirements. Provides adequate details on how most of the requirements will be fulfilled. Some aspects lack detail on how effectively and/or credibly the requirements will be fulfilled.
4	Very good	Relevant and very good. Provides a high level of confidence that the requirements have been understood. Provides sufficient details on how the requirements will be fulfilled. Minor aspects could have been more comprehensive and/or effective and/or credible.
5	Excellent	Completely relevant and excellent overall. Demonstrates a thorough understanding of the requirements. Comprehensive detail which meets all requirements in full. No notable omissions.

The score for a technical quality award criterion is established as follows:

Each assessor grades the criterion independently;
Each assessor's grade is converted to an unweighted assessor score by multiplying by the factor

(100/5) (5 being the highest possible grade);

An unweighted panel score for the criterion is established as the average of the assessors' unweighted scores;

The final weighted score for the criterion is obtained by multiplying the unweighted panel score by the criterion's weighting.

Scores are rounded to 1 decimal place.

An example in the case of a three-assessor panel follows.

	Assessors' grades	Unweighted assessor scores	Unweighted panel score	Criterion weighting	Weighted score
Criterion 1	3, 3, 4	60, 60, 80	66.7	20%	13.3

A tender's technical quality score, TS, is obtained by summing the weighted scores of each technical quality award criteria.

6.6.3.2 Scoring – Financial offer

The tender's fixed price for Phase 1, identified in the financial offer (tender document TD06 [Financial Offer & Cost Breakdown] on the sheet tab 'Breakdown (Phase 1)') and repeated in the Form of Tender will evaluated formulaically.

An unweighted price score, PS_{un}, is calculated using the formula

$$PS_{un} = 50 + 100\left[1 - \frac{Price_{bid}}{Price_{average}}\right]$$

Where $Price_{bid}$ is the price of the tender under evaluation and $Price_{average}$ is the average price of those tenders that have satisfied the technical quality compliance award criteria and achieved the minimum thresholds for those technical quality award criteria for which a threshold is applied.

By way of explanation

A tender price equal to average price receives an unweighted price score of fifty (50).

A tender price equal to half of the average price receives an unweighted price score of one hundred (100).

A tender price equal to one-and-a-half times the average price receives an unweighted price score of zero (0).

The unweighted price score cannot exceed one hundred (100) or fall below zero (0). This means that a tender price less than half of the average price will receive an unweighted price score of one hundred (100), and, a tender price greater than one-and-a-half times the average price will receive an unweighted price score of zero (0).

A weighted price score PS is obtained by multiplying the unweighted price score, PS_{un}, by the price weighting stated in §6.5.

Scores are rounded to 1 decimal place.

6.6.3.3 Scoring – Overall

The overall score for a tender, S, is calculated as the sum of the technical quality score, TS, and the weighted price score, PS:

$$S = TS + PS$$

7 Submission, content and format

7.1 Tender submission

Tenders must be submitted using the Public Contracts Scotland [17] (PCS) Postbox facility.

Tenders submitted by email or as hard copies will not be accepted.

The tender should be submitted by an individual who has authority to act as the administrative lead for the tender, acting for and on behalf of the tendering organisation and other organisations involved in the tender (i.e. group (consortium) members and subcontractors).

The tenderer is encouraged to familiarise itself with the PCS system in advance of the submission deadline. PCS produce several Supplier Guides to aid users of the PCS portal. The 'Postbox – Supplier User Guide [18] is particularly helpful in understanding the procedure for uploading documents and dispatching the tender response.

Individual files should be no more than 10MB in size and the entire submission should not exceed 30MB. Files should not be encrypted in anyway. The Lead Procurer will reject encrypted or corrupt submissions.

Microsoft Office documents should be compatible with Microsoft Office 2010.

The name of the bidding organisation should be on all files.

The tenderer should ensure that its submission is complete.

Tender document TD09 [Documentation Checklist] provides a checklist of the supporting documents that must be submitted in addition to tender document TD05 [Technical Offer]. Only documents listed in this table will be considered for assessment purposes.

The tender response will comprise all the attachments outlined in TD09 [Documentation Checklist].

The tenderer is responsible for the accuracy and integrity of the information provided and the procurers reserve the right to check its validity at any point during the tendering process. The submission of an erroneous, incorrect or incomplete tender may result in the tender being disqualified. Where the error or misrepresentation is not discovered until after the framework agreement has been awarded, the Lead Procurer reserves the right to terminate the framework agreement and all costs incurred by them as a result of the termination shall be recoverable from the provider under the framework agreement.

7.2 Tender closing time

The deadline for submission of tenders is 1200 (BST) / 1300 (CEST) on 01 October 2021.

Tenders received after the deadline will be rejected.

It is the responsibility of a tenderer to ensure they submit their tender in good time. A tenderer should not wait until the last moment before creating and dispatching their submission on the Public Contracts Scotland (PCS) portal in case of any last-minute problems.

Should a tenderer experience any issues with the PCS system, they must contact PCS directly (+44 800 222 9003). Do not contact the Lead Procurer.

7.3 Format

In order to be eligible, a tenderer must submit the following tender documents and declarations:

[17] https://www.publiccontractsscotland.gov.uk
[18] https://www.publiccontractsscotland.gov.uk/sitehelp/help_guides.aspx

Administrative Section
- TD07 Form 1: General declaration (including all necessary Annexes)
- TD07 Form 2: Exclusion criteria declaration
- TD07 Form 3: Selection criteria declaration
- TD07 Form 4: Compliance criteria declaration (including Annex A)
- TD07 Form 5: Form of tender – Phase 1

Technical Section
- TD05: Technical Offer (including Annexes)

Financial Section
- TD06: Financial Offer & Cost Breakdown

The forms and declarations in the Administrative Section should be completed and signed either digitally or manually. If a manual signature is used, signed forms and declarations should be scanned and submitted with the tender.

No unauthorised alterations are to be made to the tender documentation.

The call-offs for Phase 2 and 3 will provide further information regarding the requirements for the Phase 2 and 3 offers.

Tenders that fail to comply with the formal requirements may be excluded from the evaluation.

7.4 Tender validity period

The tenderer is bound by its tender for a minimum validity period of five (5) calendar months from the date of the deadline for submission of tenders.

7.5 Administrative section

7.5.1 TD07 Form 1: General declaration

The tenderer must complete and sign the declaration in the appropriate version of Form 1:

A sole tenderer must use Form 1a;

The lead tenderer of a group (consortium) submitting a joint tender must use Form 1b.

Form 1 must be accompanied by all necessary annexes

Annex A: Consortium Declaration (Power of Attorney) (where necessary). To be completed and signed by each member of a group (consortium) identified in Form 1b.

Annex B: Subcontractor Declaration (where necessary). To be completed and signed by each subcontractor identified in Form 1.

Annex C: Project Team Details (mandatory). To provide administrative information for all entities identified in Form 1.

7.5.2 TD07 Form 2: Exclusion criteria declaration

The tenderer (sole or lead) must complete and sign Form 2 to indicate whether it or its subcontractors are subject to any grounds for exclusion.

In the case of joint tender, all members of the group (consortium) must complete and sign a separate instance of Form 2.

7.5.3 TD07 Form 3: Selection criteria declaration

The tenderer (sole or lead) must complete and sign Form 3 to indicate that it has the requested legal and financial capacities to perform the contract to be awarded.

Whether the tenderer may rely on the capacity of another entity to satisfy the selection criteria is determined in §6.3.

7.5.4 TD07 Form 4: Compliance criteria declaration

The tenderer (sole or lead) must complete and sign Form 4 to indicate that it satisfies the requested compliance criteria.

7.5.5 TD07 Form 5: Form of tender – Phase 1

The tenderer (sole or lead) must complete and sign Form 5 as the formal acknowledgement that the tenderer understands and accepts the content of the tender documentation, including the terms and conditions and other requirements for participating in the tender procedure, and offers to provide the Phase 1 R&D services in accordance with the pricing proposal.

7.6 Technical section

The technical section of the tender consists of the technical offer and its annexes. The technical offer should address the challenge set out in tender document TD02 [Specification – PCP Challenge].

Templates for the technical offer and its annexes are provided in tender document TD05 [Technical Offer]. The template guides the tenderer's response and details the criteria against which the response will be evaluated. The tenderer must complete the template and its annexes.

Information provided in the technical offer and its annexes will be used to evaluate technical quality of the tender against the award criteria stated in §6.5.

The tenderer's response must provide a detailed description of the proposed scope of work for Phase 1, and an outline for phases 2 and 3. The procurer's objectives for each phase are established in §4 of tender document TD02 [Specification – PCP Challenge]. More detailed information for the Phase 2 and 3 technical offers will be sought in the call-off competitions.

7.7 Financial section

The financial section of the tender must include a detailed **financial offer** specifying:

- **Binding unit prices** for the categories of personnel needed for carrying out Phase 1 (given in euros, excluding VAT but including any other taxes and duties);
- A **fixed price** for Phase 1 (given in euros, excluding VAT but including any other taxes and duties).
- The value of a mandatory pre-finance payment (§8.3.1). In Phase 1, this must be in the range of 10 to 25% of a successful tenderer's fixed price offer.

In addition, the financial section must provide a **price breakdown for Phase 1** that shows:

- the price for R&D services to demonstrate compliance with compliance criterion A [R&D services];
- the location or country in which the different categories of activities are to be carried out (e.g. x days of senior researchers in country L at y euro/day; a days of principal engineer in country M at b Euro/day), to demonstrate compliance with the compliance criterion C [Place of performance].

The unit prices for each category of personnel remain binding for all phases (i.e. for the duration of the framework agreement and any call-off contracts) but may be subject to indexation at the start of each phase. The framework agreement (tender document TD03) contains a provision describing the index that may be used. Where new categories of personnel are introduced at the call-off competitions, their unit prices become binding for subsequent phases and indexed accordingly.

The information provided in the price breakdown will be used to evaluate:

- the compliance criteria A (R&D services) and C (Place of performance) for Phase 1; and,
- the price award criterion for Phase 1, using the methodology described in §6.6.3.2.

Similar price breakdowns will be requested, and used for the same purposes, at the call-off competition for Phase 2 and 3.

The financial offer, price breakdown and proposed payment schedule must be prepared by completing tender document TD06 [Financial Offer and Cost Breakdown] (an Excel workbook). Financial offers which are not prepared using this form will be excluded.

The financial offer must be priced in euros. Payments under the call-off contracts will be made in euros. The risk associated with variation in foreign exchange rates must be borne by the tenderer.

Financial offers that exceed the maximum value for the Phase 1 call-off contract (stated in §4.2) will be rejected.

A tender may be excluded if it is considered that the tender price, in combination with other constituent elements of the tender, is abnormally low in relation to the subject matter of the procurement and, consequently, the ability of the tenderer to perform the contract is in doubt. Where a tender price is considered to be abnormally low, the tenderer will be invited to provide details of the constituent elements of the tender in writing, in particular with respect to:

- The technical solutions offered;
- The economy of the services offered;
- Any favourable conditions available to the tenderer for the execution of the contract;
- Compliance with the provisions relating to employment protection and working conditions in force at the place where the work is performed.

The financial offer must propose a payment schedule using the template provided in tender document TD06 [Financial Offer and Cost Breakdown]. Each payment must be related to one or more project outputs ('deliverables'), and, each deliverable must have a value attributed to it. The value of the payment being the sum of the values attributed to the associated deliverables.

Due to the short duration of Phase 1, the payment schedule shall contain no more than three payments, two interim payments and a final payment on satisfactory completion of the phase. The pre-finance payment should not be included in the payment schedule.

The Procurers may adjust a tenderer's proposed payment schedule, in consultation with the tenderer, to establish an agreed payment schedule prior to signing the call-off contract.

The Procurers may also restrict the number of payments in the payment schedule in future phases.

8 Contract implementation

8.1 Contract award

A successful tenderer will be required to sign both a framework agreement and a call-off contract for Phase 1.

The issuing of a framework agreement and a call-off contract for Phase 1 is subject to a successful tenderer providing evidence to support its selection criteria declarations (§6.3) to the satisfaction of the procurers, namely:

- evidence that the required insurance policies and levels of cover are in place; and,
- an on-demand advance payment guarantee for the value of the pre-finance payment.

Further call-off contracts for Phases 2 and 3 will be awarded to selected contractors.

8.2 Monitoring

During each phase, contract implementation will be monitored periodically, and progress reviewed against the expected outcomes (milestones, deliverables and outputs or results).

Each contractor will be assigned a main contact appointed by the procurers (the procurers' representative).

There will be regular monitoring meetings between contractor and the procurers' representative.

Monitoring meetings may be held physically or virtually and will be subject to agreement between the procurers' representative and the contractor. Contractors could be asked to discuss the results achieved in the preceding period. The procurers' representative, or any party designated by it, are entitled to visit the premises of the contractor, consortium members (where applicable), and its subcontractors.

The procurers' representative will provide feedback in writing or electronically to contractors after meetings, visits, or reviews of deliverables, the purpose of which is to allow contractors to improve the way in which their solutions address the problem set out in the PCP description.

The precise form and timing of the monitoring meetings will be agreed following the contract award.

8.3 Payments

8.3.1 Pre-finance payment

A mandatory pre-finance payment will be paid on commencement of the phase. The on-demand advance payment guarantee (§6.3.2) must be for the value of the prefinance payment.

The value of the prefinance payment value must be indicated in a tenderer's financial offer, tender document TD06 [Financial Offer and Cost Breakdown] (§7.7).

Pre-finance payments may be used with the Phase 2 and 3 call-off contracts.

8.3.2 Interim and final payments

Project progress will be demonstrated using project outputs submitted to the buyers group (the "deliverables") and through the completion of defined milestones.

Interim payments will be made subject to the satisfactory completion of the associated deliverables.

Satisfactory completion will be assessed by the procurers' representative and at least one representative from each of the procurers in the buyers group.

Satisfactory completion of milestones and deliverables will be assessed according to the following requirements:

- the work corresponding to that milestone/ deliverable has been carried out;
- a reasonable minimum quality has been delivered; and,
- the reports have been submitted on time.

The final payment will be subject to the satisfactory completion of the phase. Satisfactory completion of a phase will be assessed according to the following requirements, in addition to the above:

- the monies have been allocated to the planned objectives;
- the monies have been allocated and the work has been carried out according to the compliance criteria A (R&D services), B (Public funding) and C (place of performance); and,
- the work has been carried out in compliance with the provisions of the contract (including verification that the contractor has duly protected and managed IPRs generated).

'Reasonable minimum quality' of a report means that:

- the report can be read by somebody who is familiar with the topic, but not an expert;
- the report gives insight to the tasks performed and the results;
- the report is made in the appropriate form (where applicable, e.g. the end of phase report form) and the requirements of the form have been met.

'Reasonable minimum quality' of a demonstration means:

- the demonstration can be understood by somebody who is familiar with the topic, but not an expert (for instance, somebody with operational but not technical knowledge);
- the demonstration shows how the innovation works, how it can be used and (if applicable) how it

is operated and maintained;

the demonstration is accessible to parties appointed by the procurers, unless these are direct competitors of the contractor.

Satisfactory completion of milestones or of a phase does not mean successful completion of the milestone or phase.

Assessments will consider the efforts made by contractors to consider the feedback received from the procurers' representative.

The buyers group will approve or reject the submitted deliverable as 'satisfactory'. Where the assessment judges the completion of deliverables or milestones to be 'unsatisfactory' the contractor will be advised of the remedial actions that must be undertaken. The Procurement Committee may decide to reduce or withdraw payments for 'unsatisfactory' deliverables.

All contractors will be paid by the Lead Procurer. Invoices may only be submitted once deliverables have been approved by the buyers group following a deliverable review process. Contractors' invoices submitted to the Lead Procurer must provide:

- a **price breakdown** showing the price for R&D services to demonstrate compliance with compliance criterion A (R&D services);
- a **price breakdown** showing the location or country in which the different categories of activities were performed (e.g. *xx* days of senior researchers in country *LL* at *aa* euro/day, *yy* days of junior developers in country *MM* at *bb* euro/day) in order to demonstrate compliance with compliance criterion C (Place of performance).

The applicable VAT regime will be that under which the Lead Procurer operates. The Lead Procurer operates under the VAT regime of the UK. VAT will apply at a rate of 20%.

Payments will be made to the bank account provided by the contractor within ten (10) working days from the date of receipt of a correct and approved invoice.

Payments will be made according to the agreed payment schedule until the full value of the fixed contract price has been paid. At this point no further payment is due and failure to deliver any outstanding project outputs will result in the buyers group invoking the on-demand advance payment guarantee.

An example of a payment schedule for Phase 1, consisting of two interim and the final payment, is given below using the template from tender document TD06 [Financial Offer and Cost Breakdown]. Cells in blue are provided here for information only and do not appear in the template. Notional values for each payment (expressed as a percentage of the fixed price contract value) are used to illustrate how payments will be made alongside the pre-finance payment, which is assumed here to be 25% of the fixed price contract value.

Table 1: Example Payment Schedule for Phase 1

				For information Payment value (% of contract value)	
Payment ID	**Date**	**Milestone ID**	**Value**	**Individual**	**Cumulative**
Pre-finance payment	*Month 0*		*25%*	*25%*	*25%*
P01	Month ##	M01	25%	*25%*	*50%*
P02	Month ##	M02	35%	*35%*	*85%*
P03	Month 7	M03	40%	*15%*	*100%*

8.4 Eligibility for the next phase

Eligibility for participation in the next phase will be subject to **successful** completion of the current

phase.

Only contractors assessed to have completed a phase 'satisfactorily' will be assessed to establish whether a phase has been completed 'successfully'.

Successful completion of a phase will be assessed by the Evaluation Committee against the following requirements:

- if all milestones have been successfully completed
- if the R&D results have delivered the phase target outcomes of the challenge description.
- if the results of the R&D are considered to be promising;

'Promising' means:

- for Phase 1, that the evidence is convincing that the WEC system is suited to the Phase 3 deployment sites and is on-track to provide an attractive commercial offering.
- for Phase 2, that the evidence is convincing that the design for the WEC system remains suited to the Phase 3 deployment sites, the project impacts are feasible, and the commercial opportunity is attractive.

9 Other tender conditions

9.1 Language

All communication (relating to either the tender procedure or the implementation of the contract) must be carried out in English.

Tenders as well as offers for Phase 2 and 3 call-offs must be submitted in English.

Deliverables must be submitted in English.

The working language of the EuropeWave project is English.

9.2 Terms and conditions

The EuropeWave PCP framework agreement (tender document TD03) sets the terms and conditions for the duration of the PCP. There will be no renegotiation. A tenderer's terms and conditions will not be accepted. A tender with qualifications regarding the terms and conditions will be regarded as non-compliant. In signing the form of tender (Form 5 of tender document TD07) the tenderer accepts the terms and conditions set out in the EuropeWave PCP framework agreement.

9.3 Tender constitutes a binding offer

A signed tender will be considered to constitute a firm, irrevocable, unchangeable and binding offer from the tenderer.

The signature of an authorised representative will be considered as the signature of the tenderer (and will be binding on the tenderer or, for joint tenders, the group (consortium) of tenderers).

9.4 Cancellation of the tender procedure

The buyers group may, at any moment, cease to proceed with the tender procedure and cancel it.

The buyers group reserves the right not to award any contracts at the end of the tender procedure.

The buyers group is not liable for any expense or loss a tenderer may have incurred in preparing its offer.

9.5 Change in circumstances

A tenderer should notify the Lead Procurer immediately it is aware of any change in circumstances that could materially affect its tender and the evaluation of it. Such changes in circumstances may relate but are not limited to:

- the exclusion, selection, or compliance criteria;
- the composition of the project team proposed in Form 1 [General Declaration] of tender document TD07; or
- information contained in its response.

Any change in circumstances will be assessed in accordance with evaluation procedure set out in the request for tenders.

A tenderer's failure to disclose any material change in circumstance after the date of submission of its tender may result in the tender being rejected or disqualified from the tender process, at the absolute discretion of the Lead Procurer.

9.6 Queries and unauthorized communication

Responses to queries raised during the open market consultation are provided in tender document TD08. Further queries must be raised using the 'Question & Answer' facility provided on the Public Contracts Scotland (PCS) portal.

Queries must be raised in English, be concise, and only relate to clarification of the tender documentation.

The PCS Q&A facility anonymises submissions. Submissions should avoid including information that might identify individuals or organisations.

Responses will be published using the PCS Q&A facility and will be available to all suppliers recording an interest in the contract notice.

Queries must be raised on the PCS Q&A facility before the deadline detailed in §4.3. Queries not raised using the PCS Q&A facility or raised after the deadline will be disregarded.

All other contacts (or attempted contacts) will be considered unauthorised and may lead to the exclusion of your tender.

9.7 Confidentiality

A tenderer must keep confidential any information obtained in the context of the tender procedure.

9.8 Freedom of access to information

As public bodies, the procurers of the buyers group are subject to freedom of access to information legislation as implemented in their respective national law.

The procurers may be obliged to disclose and/or publish any information submitted in a tender, including confidential or commercially sensitive information.

The procurers do not accept any express or implied duty of confidentiality as regards information supplied in a tender. The words 'In Confidence' or any similar such words on documents supplied by a tenderer to the procurers shall have no legal force against the procurers.

The procurers cannot hold information in confidence unless it is genuinely confidential in nature and any information provided may be subject to release. Even where an exemption applies, it may be subject to the tests of substantial prejudice and/or the public interest.

If any of the information included in the tender is believed to be confidential or commercially sensitive

it should be identified and an explanation provided (in broad terms) as to the harm that is believed may result from disclosure and/or publication, how disclosure/publication might cause such harm, and, the period for which the situation is expected to persist. Information identified as confidential should be limited to that which is genuinely confidential, and which may be exempted from disclosure under national law. Information identified as commercially sensitive should be provided as a discrete annex (no template provided) and the reasons and period of the sensitivity described.

Even when information is identified as confidential or commercially sensitive, it is entirely at the procurers' discretion to determine whether such information is disclosed/published.

The procurers will consult with third parties affected by disclosure/publication where it is considered appropriate to do so. However, there is no legal obligation for the procurers to do so prior to disclosure/publication. The final decision as to whether information should be published will always remain with the procurers.

The procurers shall not be liable for any loss, damage, harm or other detriment however caused arising from any disclosure of information under freedom of access to information legislation as implemented in their respective national law.

9.9 Permitted disclosure

The procurers will disclose information provided in the tenders (including, for the avoidance of doubt, confidential or commercially sensitive information) to independent external assessors appointed to assist the procurers in evaluating the tenders ('Permitted Disclosure'). In appointing the independent external assessors, and before any Permitted Disclosure is made, the Lead Procurer will:

- Undertake conflict of interest checks; and
- Require the independent external assessors to execute a confidentiality and non-disclosure undertaking that imposes an obligation to treat all disclosed information in strict confidence and prohibits the use of any disclosed information for any purpose other than evaluating the tenders.

9.10 Information sharing

In this procurement process, Wave Energy Scotland (Lead Procurer) and its parent company, Highlands and Islands Enterprise (HIE), will each act as a 'data controller', holding and processing personal data (for example, personal data in the form of contact details and resumes of a tenderer's employees). Information on how this personal data is processed may be found at https://www.waveenergyscotland.co.uk/privacy-policy/.

9.11 Procedures of appeal

9.11.1 Applicable laws

This procurement is governed by and construed in accordance with the laws of Scotland.

This procurement is exempted from the EU public procurement directives (including the EU procurement remedies directives 89/665/EEC and 92/13/EEC) and the national laws that implement them.

9.11.2 Appeals

Any request for reviews should be communicated to the Lead Procurer.

9.12 Statutory obligations

A tenderer shall be deemed to be acquainted, and comply, with all conditions likely to affect the

execution of the call-off contracts, including health & safety, equality and diversity and other regulations in force. No claim for additional payment shall be allowed on the grounds of any misunderstanding or misinterpretation due to lack of knowledge of the conditions, regulations or requirements.

9.13 Sustainability

The procurers of the buyers group are committed to sustainability and want to engage responsible suppliers that are considering their own sustainable credentials.

To help deliver sustainable economic growth across the buyers group's regions and/or in the countries of suppliers participating in the programme, the buyers group reserves the right to include community benefit clauses (CBS) in the Phase 2 and/or 3 call-off contracts. CBS could include (but are not limited to) the following examples, and suppliers will be encouraged to propose their own CBS:

- engaging SMEs as part of the deployment phase;
- offering graduate placements;
- school/college/university visits to promote profession/career options;
- (part) sponsorship of PhD students;
- mentoring of young people wanting to pursue a career in engineering and/or marine energy.

The buyers group recognises the important of a workforce that is well rewarded, well-motivated, well-led, has access to appropriate opportunities for training and skills development, are diverse and is engaged in decision making. These factors are also important for workforce recruitment and retention, and thus continuity of service. Therefore, suppliers will be expected to commit to such Fair Work Practices and the Lead Procurer reserves the right to ask for details on these in Phase 2 and/or 3.