

# **THE MINISTRY OF FINANCE**

**REQUEST FOR PROPOSAL**

**TAX INFORMATION REPORTING SOLUTION**

**Issue Date: August 2016**

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## **1. INTRODUCTION**

The Government of Bermuda (the “Government”) through the Ministry of Finance (the “Ministry”) is pleased to release this Request for Proposal (“RFP”) inviting proposals from private sector Proponents to provide services in relation to the Tax Information Reporting Solution (the “Project”). The Preferred Proponent will consult with Ministry officials, conduct industry and regulatory research and have the ability to deliver the Services as set out in the proposed binding agreement for the Preferred Proponent’s delivery of the Services (the “Agreement”) to a high standard in a cost efficient manner.

Unless otherwise indicated, capitalized terms and acronyms used in this RFP will have the meanings ascribed to them in Appendix 1.

### **1.1 THE MINISTRY OF FINANCE**

The Ministry is responsible for supervising the economy of Bermuda generally and provides the overall framework for the financial management and control of Government activities.

The Ministry is organized into five units, one of which, the Treaty Management Unit (the “TMU”) is responsible for this RFP.

## **2. BACKGROUND INFORMATION**

### **2.1 US FATCA**

In an effort to combat tax evasion, the HIRE Act was signed into law by the US government on 18 March 2010. The HIRE Act contained the Foreign Account Tax Compliance Act (“FATCA”), which introduced a new reporting regime aimed at the disclosure of US persons with accounts and investments outside the US.

FATCA requires financial institutions outside the US to report information on financial accounts held by their US customers to the Internal Revenue Service (“IRS”) or their local government for transmission to the IRS.

If foreign financial institutions do not comply with the requirements of FATCA, a 30% withholding tax may be imposed on US source income and gross proceeds paid to that financial institution, both on proprietary US investments and those held on behalf of its customers.

The US recognises that in some jurisdictions there are legal impediments to implementing FATCA as well as practical difficulties for financial institutions in complying with FATCA. In order to address those points, the concept of “government-to-government reporting” was introduced, and two model intergovernmental agreements (“IGAs”), Model I and Model II, were developed to overcome the associated legal issues, simplify practical implementation, and potentially reduce compliance costs for financial institutions in those jurisdictions.

On 19th December 2013, Bermuda signed a Model II IGA with the US government to implement “US FATCA”, requiring Bermuda financial institutions to report their FATCA information directly to the IRS. The Bermuda-US IGA is non-reciprocal, i.e. Bermuda financial institutions report information directly to the IRS, but no information is reported by US financial institutions to Bermuda.

The exchange of information for tax purposes with the US is authorised through Article 3 of the intergovernmental agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland (on behalf of the Government) for the exchange of information with respect to taxes, executed in Washington DC on 2 December 1988 and implemented in Bermuda via the USA Bermuda Tax Convention Act of 1986.

The Ministry has issued a local FAQ document providing some basic guidance with regard to the Bermuda-US IGA and the implementation of US FATCA in Bermuda.

### **2.2 UK FATCA**

Following the introduction of FATCA by the US, the UK government entered into similar agreements with their Crown Dependencies and Overseas Territories, including Bermuda. On 25 November 2013, Bermuda signed an IGA with the UK government to introduce “UK FATCA”.

The FAQs issued by the Ministry also provide guidance with regard to the Bermuda-UK IGA where specifically identified.

### **2.3 COMMON REPORTING STANDARD**

In light of the establishment of US and UK FATCA, as a measure to improve wider co-operation between tax administrations in order to fight tax evasion and protect the integrity of tax systems, the Organisation for Economic Co-operation and Development (“OECD”) established a model Competent Authority Agreement (“CAA”) and a standard for automatic exchange of financial account information in tax matters (Common Reporting Standard or “CRS”) to create a global standard for the automatic exchange of financial account information.

The basic CRS requirements are similar to US and UK FATCA, but the scale is much greater. CRS is truly global, extending to any customer who is a tax resident in a “reportable jurisdiction”. Around 60 early adopter jurisdictions signed up to start reporting in 2017 with another wave of approximately 40 jurisdictions is due to commence reporting from 2018.

The Ministry, as the competent authority for Bermuda, on 29 October 2014, signed a CAA to become a member of the “Early Adopters Group” of the CRS. Further, on 4 July 2015, Bermuda put in place a law to implement the CRS including the Annexes A to F included in the CAA signed by Bermuda. As such, the CRS took effect in Bermuda (and approximately 60 other jurisdictions) from 1 January 2016, with first reporting by the Ministry to the OECD due by 30 September 2017. All financial institutions which are incorporated in Bermuda need to have processes and procedures in place to meet their CRS obligations, most notably to fulfil their respective due-diligence and reporting requirements. The Ministry intends to issue regulations and guidance notes, and develop a portal to collect the information required from Bermuda financial institutions to enable it to report required information to the OECD in compliance with its obligations.

## **2.4 COUNTRY-BY-COUNTRY REPORTING**

As a further step to tackling tax evasion, in 2013 the OECD and G20 countries adopted the Base Erosion and Profit Shifting ("BEPS") Action Plan. The BEPS Action Plan recognises that enhancing transparency for tax administrations by providing them with adequate information to assess high-level transfer pricing and other BEPS related risks is a crucial aspect for tackling BEPS as a method of improperly reducing tax liability.

In light of the above, the OECD September 2014 Report on Action 13 provides a template for Multinational Enterprises ("MNEs") to report annually and for each tax jurisdiction in which they do business the information set out therein. This report is called the Country-by-Country ("CbC") Report.

On 20 April 2016, Bermuda became a signatory of the Multilateral Competent Authority Agreement ("MCAA") for the automatic exchange of Country-by-Country reports, which is based on Article 6 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and puts in place the automatic exchange framework for exchanging CbC Reports, as contemplated by BEPS Action 13.

Under the CbC MCAA, the jurisdictions where a company operates will receive aggregate information annually, starting with 2016 accounts, relating to the global allocation of income and taxes paid by the MNE, together with other indicators of the location of economic activity within a multinational enterprise group. CbC will also report information about which entities do business in a particular jurisdiction and the business activities each entity engages in.

CbC information will be collected by the country of residence of the ultimate parent of the MNE, and that country will then exchange the information collected in accordance with the agreements signed by Bermuda. First exchange will occur by 30 September 2017 on the year to 31 December 2016 information.

## **2.5 TAX INFORMATION EXCHANGE AGREEMENTS**

Bermuda has entered into Tax Information Exchange Agreements ("TIEAs") with various other jurisdictions. Under the TIEAs, Bermuda agreed to provide the competent authority of the respective other jurisdiction with certain tax information that is relevant to the enforcement of that jurisdiction's domestic tax laws upon request.

## **2.6 PERSONAL INFORMATION PROTECTION BILL**

The Government of Bermuda is currently debating and is soon expected to pass privacy / data protection legislation ('The Personal Information Protection Act' "PIPA"). The Bermuda draft legislation is based upon a EU data protection model and to this end it is hoped that Bermuda will obtain a finding of adequacy from the EU. PIPA includes provisions that enable personal information to be used for the purposes of compliance with international tax treaties (s25 General Exemption). Notwithstanding this the 'minimum requirements' will still apply - s5 Responsibility and Compliance; s8 Fairness; s11 Proportionality; s12 Integrity of personal Information; and s13 Security Safeguards.

All new IT projects must comply with the provisions of this legislation.

## **3. OBJECTIVES OF THE PROJECT**

The Project has the following main objectives:

- To provide industry with a framework, through regulations and guidance notes, to report tax information required under the CbC and CRS regimes to the Ministry for assimilation and onward reporting to international bodies as prescribed by the CbC, the CRS, and the applicable TIEAs;
- To provide the interface (the “Portal”), between the Ministry and industry which enables the secure and efficient reporting of the required tax information under CRS and CbC. The Ministry envisages that this information-technology solution will be developed from a pre-existing platform (that is, one that has been preferably deployed for other jurisdictions) which will be adapted to meet the requirements of the Project. The portal should further provide the Ministry with the capability to collect and report US FATCA information under a Model I IGA, should such an IGA be signed at a later date; and will also deliver a solution for receiving and processing TIEA requests; and
- To operate an effective helpdesk for the Ministry and industry users. The helpdesk shall be run by the Portal vendor during Bermuda business hours (i.e. 9am – 5pm) for a period of at least one year from the time the portal has become operational.

#### 4. PROJECT REQUIREMENTS

Given the background and Ministry’s objectives outlined in sections 2 and 3 above, the proponent selected in accordance with this RFP (the “Preferred Proponent”) is expected to demonstrate the appropriate experience and expertise to carry out the Project. In particular, the Preferred Proponent is expected to demonstrate their experience and expertise is sufficient to simultaneously provide solutions to all of the objectives of the project (i.e. the drafting of Bermuda’s CRS and CbC regulations and guidance notes, the development of a Portal, and operating an effective helpdesk within the specified timelines as an inseparable seamless single package.

As part of their proposal to this RFP, the Proponents will present the members of their team involved in the Project, their competences and experiences, and a detailed project plan and timeline for the delivery of each step of the project (as set out in accordance with Appendix 2).

Specifically, the Preferred Proponent is expected to deliver the Project Requirements specified in sections 4.1 and 4.2 below.

##### 4.1 BERMUDA CRS / CBC REGULATIONS AND GUIDANCE NOTES

The Preferred Proponent is expected to:

- Create two separate sets of draft regulations, one for CRS and one for CbC, and submit them to the Bermuda Attorney General’s Chambers for review, comment and eventual approval, after initial consultation with industry stakeholders (the “Regulations”); and
- Create two separate sets of draft guidance notes for CRS and CbC, to submit to the Bermuda Attorney General’s Chambers for review, comment and eventual approval, after initial consultation with industry stakeholders (the “Guidance Notes”). The Guidance Notes should build upon the detailed guidance already provided by the OECD, as well as other jurisdictions, having regard to the specific requirements of Bermuda, specifically those derived from Annex E and Annex 1 of Bermuda’s CRS and CbC Multilateral Competent Authority Agreements respectively.

The Guidance Notes are intended to provide practical assistance to both business and the Government staff who deal with entities affected by CRS or CbC reporting obligations. In order to draft the Guidance Notes and

Regulations, the Preferred Proponent is expected to demonstrate extensive experience and technical knowledge with regard to CRS and CbC reporting, including, but not limited to, the following:

- Classification of entities under the CRS;
- Financial institutions' due diligence / remediation requirements with regard to pre-existing financial accounts;
- Financial institutions' due diligence / onboarding requirements with regard to newly opened financial accounts;
- Reporting requirements under the CRS / CbC Report; and
- The specifics of the offshore market place, including profound knowledge of the CRS developments in other offshore jurisdictions and their respective regulations and guidance notes.

As part of their proposal to this RFP, the Proponents should present an outline of the process to draft the Guidance Notes (including sources), how to structure the Bermuda Guidance Notes and Regulations and describe how these compare to the guidance notes and regulations in other jurisdictions.

#### 4.2 DEVELOPMENT OF A BERMUDA TAX INFORMATION REPORTING PORTAL

The Preferred Proponent is expected to create the Portal as a secure US FATCA/CRS/CbC web solution for Bermuda, with independent segments for receiving filings from Bermuda entities according to all the relevant schemas and transmitting that information to the appropriate recipient(s). Specifically, the Portal should contain the following segments:

- CRS;
- US FATCA , in case Bermuda decides, at a later stage, to enter into a Model 1 IGA with the US;
- CbC; and
- a non-schema segment of the Portal for receiving TIEA requests for information and for sending Bermuda replies thereto, including documents obtained from Bermuda persons in response to those requests.

The Portal is expected to be a fully automated web solution that allows users to upload the information with regard to the reporting regimes outlined above and the Ministry to directly forward that information to the respective foreign tax authorities **with no manual input (i.e. the Portal is expected to be a “push-the-button” solution for the Ministry).**

The following section identifies the minimum requirements that the proposed Portal must meet, some requirements that are desirable in addition to the minimum requirements and some optional requirements. For each requirement, the bidder must indicate if its proposal is fully or partially compliant. In the case of partial compliance a short explanation of the reason and a reference to the details present in the RFP must be given.



#### 4.2.1 Portal Minimum Requirements

The proposed solution must provide the following:

- a) All necessary hardware, software, training, secure implementation, warranty and support components are required to deliver a turn-key solution. The Proponent is expected to deliver the solution “As A Service” from a data centre located in Bermuda.
- b) The capability for financial institutions to self-register and create and manage an account in accordance with the requirements of the IGAs, CRS and CbC. This capability should include validation against the US FATCA Global Intermediaries Identification Number (“GIIN”) where applicable.
- c) Monitoring and approval workflow to provide oversight and management to the Ministry of the registration process undertaken by financial institutions.
- d) Support for the electronic reporting of data by financial institutions to the Ministry as prescribed by the IGAs, CRS, CbC and domestic legislation, in accordance with the published applicable Extensible Markup Language (“XML”) schema to include all applicable data validation.
- e) Support for the option to complete manual data entry of returns directly into the Portal interface using a Web Form, or similar, by those financial institutions not wishing to submit an XML file and conversion of the manual entry into the required schema(s) for onward submission of that information by the Ministry to the respective tax authorities.
- f) Support for requests for information made under Tax Information Exchange Agreements (“TIEAs”) by partner jurisdictions where automatic exchange of information is not yet in place or is not in use, to include full case management, history, associated document management and management reporting.
- g) Secure, automatic (as appropriate) electronic transmission of reported data cross-border to IGA, CRS, CbC and TIEA partner jurisdictions, in accordance with relevant business rules and technical schemas, and the IRS international data exchange service (“IDES”).
- h) Support for changes made to the applicable CRS, CbC and FATCA schemas as may occur from time-to-time to ensure that necessary updates are applied to the Portal in a timely manner in accordance with the instructions issued by the applicable authority without additional cost to the Ministry.
- i) Support for sufficient scalable capabilities to ensure a comprehensive and integrated approach in accommodating reporting and transmission requirements for multiple partner jurisdictions is delivered to enable the Ministry to remain in compliance with the obligations identified in the CRS, CbC, TIEAs, FATCA and the applicable IGAs.
- j) Support for sufficient capacity in design to accommodate up to 15,000 – 20,000 reporting financial institutions, including the ability to handle multiple submissions and multiple users.
- k) Support for the automated exchange of information with other jurisdictions as they are added to the CRS and CbC population of reporting countries in order to ensure that the Ministry remains in compliance with its obligations.
- l) Compliance with the technical specifications in accordance with published IRS, CRS and CbC schemas and Implementation Packages, including (but not limited to) requirements for

certificate / access management, encryption, exchange services, identification and authentication, audit and accountability, business rules and user delivery notification.

- m) Adherence to IRS / CRS / CbC / TIEA and Bermuda Government cybersecurity and accessibility standards and requirements.
- n) Adherence to Open Web Application Security Project (“OWASP”) testing protocols which will be conducted as a test case as part of the solution acceptance criteria.
- o) Support for downloading security patches and product updates. The Portal should have a mechanism in place to alert users about such updates/patches. The Proponent should also describe the procedures for applying software updates and upgrades;
- p) Support for responsive access via modern browsers including Internet Explorer, Chrome, Firefox, and Safari. This support should not be bound to a particular version or browser.
- q) Provision of end-user help in the form of an up-to date user guide available within the Portal to users and ongoing maintenance of associated Frequently Asked Questions.
- r) Provision of a comprehensive set of management reports and flexible reporting options in order to ensure that the Ministry had adequate review, tracking and monitoring of information throughout each phase and milestone of the reporting workflow processes related to CRS, CbC, FATCA and TIEA exchange requests.
- s) The Proponent must provide help desk support to end-users of the Portal to assist in the registration and reporting process for at least the initial 12 months following launch.
- t) The Proponent must specify any physical, environmental or power requirements that represent dependencies for the proposed solution.
- u) The Proponent will provide a high-level view of their technical architecture showing the components (servers, databases, and network connections) that make up the solution.
- v) The Proponent must describe in detail the proposed portal hardware/software solution network management and security solution, as well as any specialized management software that is included or embedded with the hardware/software solution proposed. The management solution must support strong security features including, but not limited to, password attribute customization, authentication logging, role-based access, audit logs and multilevel authorization access. The Proponent should describe any optional management

tools it recommends to specifically enhance operations and the ability to manage the proposed Portal solution.

- w) The Proponent must define major and minor alarm conditions for the Portal solution, how the system responds to each circumstance and describe the capabilities for remote monitoring and automatically reporting fault conditions, both to the Ministry and supplier personnel.
- x) The Proponent must describe in detail the Service Level Agreement(s) applicable to all components of the Portal solution.
- y) The Portal must ensure least possible cost, resource and administrative burdens on the Competent Authority and partner jurisdictions counterparts.

### **4.2.2 Portal Desirable Requirements**

- a) External certification of the proposed portal solution, or portal solution components to industry standard security criteria.
- b) Support for end-user access to the current applicable CRS, CbC and FATCA Regulations and applicable Guidance Notes within the Portal solution and the ability for the Ministry to update this content.

### **4.2.3 Portal Optional Requirements**

- a) Support for mobile (smartphone and tablet) devices and browsers, including those on iPhone/iPad and Android devices.
- b) The Portal may provide support for a common format return (e.g. Excel) option, with associated data validation, xml schema conversion and submission.

### **4.2.4 Network Security Requirements**

- a) The Proponent must describe in detail, with an accompanying network diagram, the Network Security features of the Portal solution including the IT infrastructure components that will support the solution and whether these are dedicated or shared. Where any component is shared the specific security controls in place should be clearly stated.
- b) The Proponent must provide confirmation that the associated data centre within which the Portal will be housed has been certified to a recognised attestation standard, specifically SOC1 and/or SOC2. Shortlisted vendors will be required to provide a copy of the applicable report as part of the evaluation process.
- c) The proposed solution must include, at a minimum, password requirements with configurable parameters, access authorization levels, authentication, secure access, logging activities, backup/restore and patching/update capabilities. The Proponent should confirm compliance and describe the security features of the proposed Portal solution as requested below.

The Proponent should describe the following capabilities of the solution:

- i. Describe the application of IP and MAC access control lists
- ii. Describe what features exist to support secure device partitioning (e.g., VRF) and multi-tenancy.
- iii. Describe support provided for private VLANs.
- iv. Provide an overview of the ability to restrict network access on the interface level, either via DHCP or ARP interrogation, 802.1X or other mechanisms.
- v. Administrative user access levels to restrict administration access and flexible password configuration parameters (e.g., password length, aging, complexity).
- vi. Support for strong (two-factor) authentication, authentication logging, auditing / accounting and RBAC. This applies to all components (physical / logical devices, controllers, etc.).
- vii. How protection from unauthorized access is achieved.
- viii. How protection from denial-of-service attacks is achieved.

### 4.2.5 Warranty, Maintenance and Training

- a) The portal solution will be provided “As A Service” for the duration of the contract, inclusive of all required solution elements: hardware, software (including software maintenance) hosting, network access, bandwidth, help desk and associated services.
- b) The Proponent should specify the warranty period for the Portal, including all associated solution components. The Ministry requires identified costs for at least 3 year’s full warranty and maintenance including software support. Any recurring support costs will be paid annually after year one.
- c) The proponent is required to include within the inclusive pricing offer:
  - Software maintenance to provide for access to new releases (including new features and/or patching for bugs/vulnerability remediation);
  - Help Desk support for the end-users of Bermuda financial institutions for at least a 12 month period from the time the Portal has become operational, which will occur on the completion of the formal acceptance process;
  - General technical support/assistance with operational and maintenance activities associated with the Portal; and

The Proponent should also provide a range of maintenance levels for consideration, including an emergency response time of no more than four hours. The Proponent must detail the availability of local Bermuda personnel with the skill-sets required to support the Portal.

The Proponent should:

- Define the number of trained service technicians available
- Provide a description of how monitoring and alerting of the Portal solution status is achieved

- Provide a copy of the standard SLAs for support / maintenance and details of optional extras.
  - Describe committed response times by service disruption / incident type
  - Provide a copy of normal escalation procedures, and include communications with affected parties — with names and contact details of all parties affected.
  - Provide emergency contact number if normal channels of fault-reporting communications fail. Describe how that emergency contact number will be answered and by whom:
    1. Indicating whether there are any times or restrictions by day, week or month on this service.
    2. Identifying what information those answering a call will have available.
    3. Specifying whether those answering the call will have specific information on the system being proposed for the Ministry.
- d) For training the Preferred Proponent will be required to provide online or on-site training and train-the-trainer sessions to users and system management communities. Training should include, at a minimum, the administration, management and troubleshooting of the proposed portal solution. Proponents should describe the training that is recommended in order to use the proposed solution and services. Trainers should have English as a first language. A detailed training schedule should be provided. The schedule should denote class sizes and length of a typical training session. The Proponent shall also provide pricing for alternative modes of training delivery, if available. It is anticipated that training will be required for 1 to 5 staff. Onsite training is preferred, but pricing for both virtual and onsite training should be included if available.
- e) For implementation the Proponent will include a detailed explanation of any professional services that are provided as part of the RFP response. The Proponent should describe how it will manage the transition from current state to target state, including migration/implementation plans and handoff, clearly identifying who will provide the necessary resources and who will pay for them.
- The Proponent must provide an implementation plan that includes:
1. Project stages and milestones.
  2. Resources required.
  3. Responsibilities of each of the parties.
  4. Sources and skills required of the program and/or project manager(s).
  5. Sources and skills required of other resources and who will pay for them.
  6. Communication processes for reporting the project's progress.
  7. Recommendations for briefing the project manager, and possibly the Steering Committee.
- f) For system pricing and licensing the Proponent should describe the pricing structure of the proposed technology solution and provide a pricing schedule. The pricing schedule is a table or spreadsheet in editable electronic format with all pricing information showing line-item detail for any item that has a separate price, even if the item is sold as part of a bundle. Any

pricing changes due to version/model changing or technology improvement must be clearly stated.

Column headings should reflect:

1. Part number
2. Item description
3. List price
4. Discount amount
5. Net unit price
6. Quantity
7. Total net price

The Proponent should provide pricing for the following components:

1. Hardware
2. Software Licensing
3. Hosting and Bandwidth
4. Maintenance (3 years fixed, with optional 2 years for a total of 5 years post warranty)
5. Training
6. Professional services (includes design) Implementation services
7. Project management costs
8. Documentation
9. Delivery/Shipping costs
10. Applicable taxes
11. Optional capabilities

### **Portal Timing**

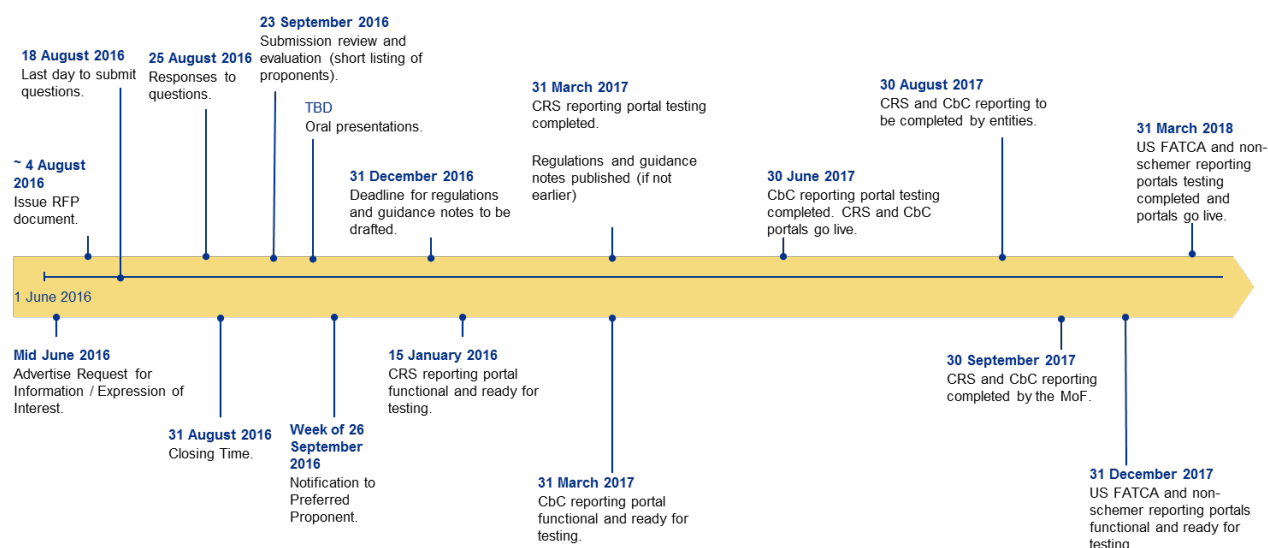
The CRS section of the Portal should be fully operational for testing by end of December 2016; the CbC section of the portal should be fully operational for testing by the first quarter of 2017 (please refer to the timetable set out in section 5 below). Once the Portal is operational, the Preferred Proponent is expected to operate a helpdesk with regard to the portal for a period of at least 12 months.

In order to meet the timeline for the development of the Portal, it is anticipated that the Preferred Proponent will apply a Commercial Off The Shelf ("COTS") (i.e. fully operational) product that was created for US FATCA in another jurisdiction and that can be subject to limited modification in order to meet Bermuda's needs.

If a partnership approach is being pursued the Preferred Proponent should be able to demonstrate a Preferred track record in partnering for the delivery of similar projects.

## 5. PROJECT TIMELINE

The project is envisioned to follow the timeline set out below.



## 6. SERVICES AGREEMENT

The Ministry anticipates that the Preferred Proponent selected in accordance with this RFP will enter into the Agreement with the Ministry to provide the Services, thereby becoming the Advisor.

The Preferred Proponent will be responsible for providing the Ministry and the Attorney General's Chambers with a draft Agreement for review and comment within seven days of notification of their selection as Preferred Proponent.

At a minimum, the draft Agreement provided should clearly set out the services to be provided, key milestones and delivery dates, the method and amount of remuneration and the responsibilities of the Ministry and the Advisor.

## 7. REMUNERATION

The Ministry will make payments in accordance with the terms set out in the Agreement, as agreed between the Ministry and the Advisor.

## 8. REPORTING TO THE MINISTRY

The Advisor will report to a steering committee (the "Steering Committee") comprising key representatives of the Ministry and representatives of the Project Manager (KPMG Advisory Limited). It is expected that the Advisor will provide the Steering Committee with regular updates on the Project status per the terms of the Agreement.

## 9. COMPETITIVE SELECTION PROCESS

### 9.1 SCHEDULE OF KEY RFP DATES

Milestone	
Issue RFP	~ 4 August 2016
Last day to submit questions	18 August 2016
Responses to questions	25 August 2016
Closing Time	31 August 2016
Submission review and evaluation (short listing of proponents)	23 September 2016
Oral presentations (proof of concept interviews of finalists)	TBD
Notification to Preferred Proponent	Week of 26 September 2016

The above schedule is subject to change at the discretion of the Ministry.

### 9.2 DESIGNATED CONTACT PERSON

The Designated Contact Person for this RFP is:

Alexandra McInnes  
KPMG Advisory Limited  
Email: [taxinfo@project@kpmg.bm](mailto:taxinfo@project@kpmg.bm)

### 9.3 COMMUNICATIONS DURING THE RFP PROCESS

All communications related to this RFP are to be in writing and are to be directed only to the Designated Contact Person.

Proponents must not attempt to communicate with any employee, representative of the Ministry or the Project Manager, including members of the evaluation committee and any officials of the Ministry or the Project Manager, or with members of the public or the media, about the Services described in this RFP, other than as expressly directed or permitted by the Ministry.

The Ministry released a Registration of Interest document in order for interested parties to register for the circulation of this RFP upon its release. In addition, the RFP is available for download from [www.gov.bm](http://www.gov.bm). Potential Proponents who are interested in submitting a Proposal must notify the Project Manager by sending an email to the Designated Contact Person at [taxinfo@project@kpmg.bm](mailto:taxinfo@project@kpmg.bm) upon receipt of this RFP document. For the avoidance of doubt, even if a Proponent registered as part of the Registration of Interest process they must notify the Project Manager of their intention to submit a Proposal.



The registration email will provide the following information:

- Name of the individual or company
- Office location(s), including street address and main telephone number.
- Email address of the person with assigned responsibility to issue and receive communications in regard to the RFP.

All subsequent information regarding this RFP, including Question and Answer Series and Addenda will be provided only to potential Proponents who have submitted a "Registration" via email. ***The Designated Contact Person will send a confirming email following receipt of an electronically submitted Registration. If such confirmation is not received, the onus is on the Proponent to re-submit the Registration, and to follow up for confirmation.***

Proponents who have registered ("Registered Proponents") will be required to sign a Confidentiality Undertaking as outlined in section 4 of Appendix 2.

### 9.4 ISSUING OF ADDENDA

The Ministry may in its discretion, through the Project Manager, amend the terms or contents of this RFP at any time before the Closing Time by issuing a written Addendum. Addenda issued by the Ministry are the only means of changing, amending, or correcting the RFP.

Any Addenda issued by the Ministry will supersede and amend the RFP. Amendments or additions made in any manner other than through a written Addenda issued by the Project Manager will not be binding upon any party.

Addenda will be emailed only to potential Proponents who have registered as outlined in section 9.3.

### 9.5 QUESTIONS REGARDING THE RFP

Any questions with respect to this RFP should be submitted by email to the Designated Contact Person at the email address provided in section 9.2.

The Ministry is not required to provide a response to any question received from a Proponent. If the Ministry decides in its discretion to answer any question received from a Proponent, it will answer such question through a Question and Answer Series provided to Registered Proponents.

Proponents may request that a question be treated in confidence rather than being answered through a Question and Answer Series. If the Ministry denies such a request, the Proponent will have the option of either withdrawing the question or concurring that the question will be answered through a Question and Answer Series provided to Registered Proponents.

### 9.6 DUTY TO INFORM

Proponents are responsible for ensuring that they have all of the information necessary to respond to this RFP and for independently informing and satisfying themselves with respect to any of the information contained in the RFP and to fully inform themselves of all aspects of the Services before submitting a Proposal. The Ministry has no obligation to provide Proponents with any additional information regarding this RFP and the Ministry makes no assurance, representation, or warranty as to the accuracy, sufficiency,

appropriateness, or completeness of any of the information provided as part of the Competitive Selection Process.

Nothing in this RFP or otherwise relieves Proponents from undertaking their own investigations and examinations, including as they consider necessary, desirable, beneficial, or appropriate, and developing their own analysis, interpretations, opinions and conclusions including in respect of any factual data described in this RFP, with respect to the preparation and delivery of their Proposals, and with respect to this RFP and the Project.

Delivering a Proposal in response to the RFP constitutes a representation by a Proponent that it has received, reviewed, read and understood the entire RFP, including all of the terms and conditions, any Addenda, any Question and Answer Series and any confidential information provided by the Ministry, including information, in accordance with this RFP, that the Proposal has been prepared and delivered solely and exclusively in reliance on investigations, examinations, knowledge, and other information independently undertaken, obtained and verified by the Proponent, and that the Proposal satisfies the requirements of the RFP.

## **10. PROPOSAL SUBMISSION PROCEDURES**

### **10.1 PROPOSAL DELIVERY OFFICE**

For the purpose of this Competitive Selection Process, delivery of Proposals may be made electronically to the Designated Contact Person at the email address provided in section 9.2. A paper copy of the Proposal must follow to the following address:

KPMG  
Crown House  
4 Par-la-Ville Road  
Hamilton, HM08  
Bermuda  
Attention: Aaron Burrows

### **10.2 CLOSING TIME**

Proposals must be received electronically or in hard copy before **4:00 P.M. local time (Atlantic Standard Time) on Wednesday, 31 August 2016 (the “Closing Time”)**.

***The Designated Contact Person will send a confirming email following receipt of an electronically submitted Proposal. If such confirmation is not received the onus is on the Proponent to re-submit the Proposal, and to follow up for confirmation.***

In the event that the Proposal is first sent by email a paper copy should be delivered to the address identified in section 10.1 by 4:00 p.m. (Atlantic Standard Time) Wednesday, 31 August 2016. Hard copy submissions will only be considered if received prior to the Closing Time or if an emailed copy was received prior to the Closing Time.

Late Proposals will not be accepted and will be returned to the Proponent unopened.

### **10.3 PROPOSAL FORMAT AND DELIVERY**

Proponents should submit their Proposals using the categories noted in Appendix 3 (Submission Requirements). The Proponent's name should be clearly identified, and each page of the Proposal should be numbered.

Emailed Proposals should be clearly labeled in the subject line with the name of the Proponent and the RFP Title (Tax Information Reporting Project).

Proposals should include: with the clearly labeled email:

- The information as described in Appendix 3 (Submission Requirements), Part A, as an electronic copy (PDF searchable format); and
- The price information as described in Appendix 3 (Submission Requirements), Part B, as an electronic copy (PDF searchable format).

### **10.4 LANGUAGE**

Proposals and related documentation and all other communication relating to this RFP, whether verbal or written, shall be in English.

### **10.5 DATE AND TIME STAMP**

All Proposals received by the Ministry will be date and time stamped and the clock in use for that purpose at the time at the Proposal Delivery Office shall conclusively be deemed to be correct as to the date and time of delivery.

### **10.6 PROPOSAL PREPARATION COSTS**

All costs incurred by a Proponent in the preparation and submission of its Proposal will be the responsibility of the Proponent. The Ministry shall not be liable for paying any such costs for whatever reason, including, but not limited to, rejection of a Proposal or all Proposals, or the cancellation of the Competitive Selection Process.

### **10.7 BINDING NATURE**

By submitting a Proposal, the Proponent agrees to be bound by the terms and conditions contained in this RFP (including any Addenda) and to be bound by the hourly rates provided in the Proposal for the term of the Agreement, if selected as the Preferred Proponent.

### **10.8 AMENDMENTS TO PROPOSALS**

Amendments to Proposals may be submitted in writing at any time before the Closing Time. Any amendment must be signed by an authorized signatory of the Proponent and submitted in accordance with this section 10.

### **10.9 PERIOD OF VALIDITY**

All prices offered shall remain firm for ninety (90) calendar days from the submission deadline unless the deadline is modified by an amendment to this RFP. A proposal valid for a shorter period may be rejected as non-responsive to these instructions to proponents.

In exceptional circumstances, prior to expiry of the original period of validity, the Ministry may request that the proposal validity period be extended. The request and the responses thereto shall be made in writing by email. A proponent may refuse the request and withdraw his proposal. A proponent agreeing to the request will not be required, nor permitted to modify their proposal.

## 11. EVALUATION PROCESS AND AWARD

### 11.1 OVERALL PROCESS

Proposals shall be evaluated by the Ministry in accordance with the following three stages, each as further described in section 11.2 – Evaluation Criteria:

Stage	Description	Evaluation Basis	Maximum Score
<b>One</b>	Minimum Requirements	Pass / Fail	<b>NA</b>
<b>Two</b>	Technical <ul style="list-style-type: none"> <li>Qualification and experience</li> </ul>	Scored with minimum of <i>15 for compliance</i> <i>25 for quality</i>	<i>40</i>
	<ul style="list-style-type: none"> <li>Work plan and approach</li> </ul>	<i>10 for compliance</i> <i>20 for quality</i>	<i>30</i>
<b>Three</b>	Price	Scored	<i>30</i>

Proposals that do not meet all Stage One Minimum Requirements will not be evaluated further.

In Stage Two, the Ministry will evaluate Proposals using the criteria and considerations outlined in section 11.2.2. Proponents that do not achieve the minimum required score for compliance will not be evaluated further.

In Stage Three, the Ministry will evaluate Proposals using the criteria and considerations outlined in section 11.2.3.

Any Proposal that does not substantially address the submission requirements of this RFP may not be evaluated, at the discretion of the Ministry.

Prior to commencement of the evaluation, all Proposals will be reviewed for responsiveness to the Submission Requirements contained in Appendix 3. Those Proposals that are determined not to substantially address the Submission Requirements set out in Appendix 3 may not be evaluated at the discretion of the Ministry.

## 11.2 EVALUATION CRITERIA

The following details the evaluation criteria that will be used to assess submitted Proposals.

### 11.2.1 Stage One – Minimum Requirements

Proposals must meet or exceed all of the following minimum requirements in Stage One to proceed to Stage Two of the evaluation:

- a) The Proposal must be received as an electronic PDF document as noted in section 3.3 by the Closing Time specified in section 3.2.
- b) The Proponent must have previous experience with developing a similar secure web based portal for the purposes of tax information exchange.
- c) The Proponent must agree to enter into the Agreement and commit to the fixed price in the Proposal.

Proposals that do not meet all of the Minimum Requirements of Stage One of the evaluation will not be evaluated further.

### 11.2.2 Stage Two – Technical

#### Qualifications and Experience

Qualifications and experience (including team members' experience) will be evaluated based on the extent to which the Proponent has demonstrated it has Preferred experience, similar in nature and scope to the Project Requirements, with:

- Involvement with and knowledge of the various US FATCA, CRS and CbC schema;
- Drafting regulations and guidance notes;
- Ability to develop and customize software solutions to meet the Project Requirements;

Additionally, consideration will be given to the Proponent's experience of operating in Bermuda.

#### Work Plan and Approach

The Proponent's work plan and approach will be evaluated based on consideration of the extent to which:

- The work plan and approach includes all of the components identified in Appendix 3;
- The quality of the proposed work plan, including reasonable timelines and deliverable results that meet the Ministry's objective as presented in section 1.2; and
- The appropriateness of the proposed approach and methodologies to develop the regulation, guidance notes and web portal.

### 11.2.3 Stage Three – Financial Rated Evaluation

The Ministry will evaluate price using the total price estimate provided in the Proposal. The lowest price estimate will be awarded full points (i.e. 30 points); other proposals will be awarded points on a pro-rate basis.

### **11.3 ADDITIONAL INFORMATION FOR EVALUATION**

To assist in the evaluation of Proposals, the Ministry may, in its discretion, but is not required to:

- conduct reference checks with any or all of the references cited in any or all of the Proposals, or request that a Proponent provide additional references, to verify any and all information regarding the Proponent, including its directors, officers and/or key personnel;
- conduct any investigations that it considers necessary in the course of the Competitive Selection Process in respect of any or all of the Proponents;
- seek clarification or rectification of a Proposal or supplementary information from any or all of the Proponents; and;
- request interviews or presentations with any or all of the Proponents to clarify any questions or considerations based on the information included in Proposals, with such interviews or presentations conducted in the discretion of the Ministry, including the time, location, length and agenda for such interviews or presentations.

Such reference checks, investigations, requests for clarification or supplementary information and interviews or presentations may be sought or obtained from any one or more Proponents, but not necessarily all Proponents, and may be sought at any time either serially or concurrently.

The Ministry may in its discretion rely on and consider any information received as a result of such reference checks, investigations, requests for clarification or supplementary information and interviews or presentations in the evaluation of Proposals, and any and all such further information so received by the Ministry with respect to a Proposal shall be deemed to form part of that Proposal.

### **11.4 CONTRACT FORMATION AND AWARD**

Without limiting any other provision in this RFP, or rights reserved to the Ministry in this RFP, the Preferred Proponent may be invited to execute and deliver the finalised Agreement to the Ministry, and if so invited, the Preferred Proponent must do so within 7 calendar days from notification of the Ministry's written invitation to execute the Agreement.

Before the award of the Agreement, the Preferred Proponent may be required to furnish evidence satisfactory to the Ministry, in its discretion, of the necessary facilities, ability and financial resources to fulfill the conditions of the Agreement.

The Ministry will have no binding obligations or commitments to the Preferred Proponent until and unless the Agreement has been duly executed and delivered.

If the Preferred Proponent does not execute the Agreement, the Ministry may, at its sole discretion at any time thereafter, terminate negotiations with that Proponent and either negotiate the Agreement with the next qualified Proponent or choose to terminate the Competitive Selection Process and not enter into the Agreement with any of the Proponents.

**THE AWARD OF THE AGREEMENT PURSUANT TO THE COMPETITIVE SELECTION PROCESS IS, WITHOUT LIMITATION, SUBJECT TO THE MINISTRY SECURING ANY NECESSARY INTERNAL AND/OR REGULATORY APPROVALS. THE MINISTRY RESERVES THE RIGHT TO TERMINATE THE COMPETITIVE SELECTION PROCESS OR REVISE THE SCHEDULE OR SCOPE OF THE SERVICES AT ANY TIME AT ITS ABSOLUTE DISCRETION IF THE NECESSARY APPROVALS ARE DENIED OR CANNOT BE SECURED IN A TIMELY MANNER.**

## APPENDIX 1 – DEFINITIONS AND INTERPRETATIONS

In this RFP, including the Appendices hereto, unless the context otherwise requires, the following words and expressions have the following meanings:

**“Addendum”** means an addendum to this RFP issued by the Designated Contact Person;

**“Advisor”** means the successful Proponent that enters into the Agreement with the Ministry for the Services;

**“Agreement”** means the written agreement resulting from this RFP executed by the Ministry and the Advisor;

**“BEPS”** means Base Erosion and Profit Shifting;

**“BD”** means Bermuda Dollars. The Bermuda Dollar is on par with the U.S dollar;

**“CAA”** means a Competent Authority Agreement;

**“CBC”** means Country by Country;

**“CDOT”** means the UK’s Crown Dependencies and Overseas Territories;

**“Claim”** includes claims, actions, proceedings, causes of action, suits, debts, dues, accounts, bonds, warranties, claims over, indemnities, covenants, contracts, losses (including consequential losses), damages, remuneration, compensation, costs, expenses, grievances, executions, judgments, obligations, liabilities (including those relating to or arising out of loss of opportunity or loss of anticipated profit), rights and demands whatsoever, whether actual, pending, contingent or potential, whether express or implied, whether present or future and whether known or unknown, and all related costs and expenses, including legal fees on a full indemnity basis, howsoever arising, including pursuant to law, equity, contract, tort, statutory or common law duty, or to any actual or implied duty of good faith or actual or implied duty of fairness, or otherwise;

**“Closing Time”** means the date and time specified in section 10.2 of this RFP;

**“Competent Authority of Bermuda”** means The Bermuda Ministry of Finance;

**“Competitive Selection Process”** means:

- (i) the procurement process for the Services and any part or stage of the procurement process, and includes this RFP, any Addenda, the Question and Answer Series, any and all processes relating to this RFP, any meetings, consultations, meetings and participation relating to or arising from this RFP, relationship review processes and the consultations, discussions, negotiations, closings and settling of agreements and documents relating to the Services and the Agreement; and
- (ii) activities, participation, continued participation, waivers, evaluation, exclusion, disqualification, determinations, opinions, rulings, reports, comments, advice, decisions, including rejection or acceptance of any responses, submissions, information, documents, Proposals, or any other proposals, whether they, or any of them, substantially satisfy the requirements of this RFP or otherwise;



involving the Ministry, the Restricted Parties, a Proponent, any sub Proponents, suppliers, directors, officers, employees, consultants, advisors or agents, or any other person, in connection with the matters described in subsections (i) and (ii) of this definition;

**“Confidentiality Undertaking”** means a confidentiality undertaking with the Government to ensure the confidentiality of Competitive Selection Process.

**“CRS”** means the Common Reporting Standard;

**“Designated Contact Person”** means the person named in section 9.2 of this RFP who has the authority to issue the RFP and manage the Competitive Selection Process on behalf of the Ministry;

**“FAQ”** means Frequently Asked Questions;

**“FATCA”** means the US Foreign Accounts Tax Compliance Act;

**“Government”** means the Government of Bermuda;

**“GIIN”** means a Global Intermediaries Identification Number;

**“IGA”** means an Intergovernmental Agreement;

**“IRS”** means the US Internal Revenue Service;

**“OECD”** means the Organisation of Economic Cooperation and Development;

**“MCAA”** means the OECD’s Model Competent Authority Agreement;

**“The Ministry”** means the Bermuda Ministry of Finance.

**“MNE”** means a multi-national enterprise;

**“OWASP”** means Open Web Application Security Project;

**“Preferred Proponent”** means a Proponent selected pursuant to this RFP to negotiate and enter into the Agreement;

**“Project Manager”** means the project manager for this RFP, KPMG Advisory Limited;

**“Project Requirements”** means the requirements of the Project as detailed in section 4;

**“Proponent”** means each individual or company that has been identified by the Ministry in accordance with section 9.3;

**“Proposal”** means the documents of a Proponent delivered to the Ministry offering to perform the Services as required under, and in response to this RFP, including Proponent registration documents, Parts A and B as described in section 10.3, and any additional information obtained by the Ministry in accordance with section 11.4;

**“Proposal Delivery Office”** means the Ministry office where Proposals shall be delivered, as specified in section 10.1 of this RFP;

**“Question and Answer Series”** means the questions submitted by Proponents and answers provided by the Ministry, as issued by the Ministry in accordance with section 9.5 of this RFP;

**“Registered Proponents”** means Proponents who have submitted a Registration as defined in this document;

**“Restricted Parties”** means those persons or firms (including their former and current employees) who had, or currently have, participation or involvement in the Competitive Selection Process in respect of the Services, and who may provide an unfair advantage or confidential information to any Proponent that is not, or would not reasonably be expected to be, available to other Proponents, and includes those persons and firms referred to in Appendix 2, section 10 of this RFP;

**“RFP”** means this request for proposals;

**“Services”** means the services to be delivered by the Advisor under the terms of the Agreement;

**“TIEA”** means Tax Information Exchange Agreement

**“UK”** means the United Kingdom of Great Britain and Northern Ireland;

**“US”** means the United States of America;

**“XML”** means Extensible Markup Language.

## **APPENDIX 2 – OTHER RFP TERMS AND CONDITIONS**

### **1. NO OBLIGATION TO PROCEED**

This RFP does not commit the Ministry in any way to select a Preferred Proponent or to enter into the Agreement and the Ministry may in its discretion at any time reject any one or all Proposals, and/or terminate this RFP and the Competitive Selection Process and procure the Services in some other manner.

### **2. PUBLIC ACCESS TO INFORMATION ACT 2010**

Any information collected or used by or on behalf of the Ministry under this RFP is subject to the Public Access to Information Act 2010 ("Act"). The information belongs to a class of information that might be made available to the general public unless it is contained in a record that is exempt from disclosure under the Act. Any questions regarding the collection, use, or disclosure of the information should be directed to the Ministry.

### **3. OWNERSHIP OF PROPOSALS**

All Proposals, including any documents submitted to the Ministry by a Proponent in connection with a Proposal or pursuant to this RFP, become the property of the Ministry and shall not be returned to Proponents.

### **4. CONFIDENTIALITY**

As part of the registration process described in section 9 of this RFP, a Proponent must agree, on its own behalf and on behalf of each of its sub Proponents, suppliers, directors, officers, employees, consultants, Preferred Proponents and agents, to hold in confidence all information supplied by the Ministry in relation to this RFP and to execute a confidentiality undertaking acceptable to the Ministry.

In consideration of the opportunity to receive this RFP and to submit a Proposal, a Proponent and any person who has obtained a copy of this RFP shall indemnify and save harmless the Ministry and the Ministry's directors, officers, employees, Proponents, consultants and agents from all claims, loss and damages arising out of failure to comply with this RFP and such confidentiality undertaking and all costs associated with or arising from those claims, loss and damage.

### **5. PUBLIC ANNOUNCEMENT**

Except as required by applicable law, no prospective or registered Proponent shall issue any press release or make any public announcement or disclosure concerning this RFP, the Competitive Selection Process, the Agreement, the Services or the Project without the prior written consent of the Ministry.

### **6. NO LOBBYING**

Proponents and their respective employees, Proponents, directors, officers, Preferred Proponents, consultants and agents or any individual member of any of them will not communicate or attempt to communicate directly or indirectly with the Ministry or the Project Manager, including any employees, directors, officers, agents or representatives of any of them during any part of the RFP, except as expressly directed or permitted by this RFP. Proponents will not engage in any form of political or other lobbying whatsoever with respect to the Project, or otherwise attempt to influence the outcome of the RFP. In the event of any such communications or lobbying, the Ministry may at any time, but is not required to, disqualify that Proponent or impose such conditions on that Proponent's continued participation in the RFP as The Ministry, at its discretion considers appropriate.

### **7. OBLIGATION TO DEAL IN GOOD FAITH**

By submitting a Proposal, each Proponent agrees to deal with the Ministry and participate in the Competitive Selection Process in the utmost good faith.

## **8. CHANGES TO PROPONENTS**

After delivery of a Proposal, changes in the ownership or control of a Proponent or any changes to any sub Proponent or key team member named in the Proposal may only be made with the permission of The Ministry. The Ministry may, in its discretion, refuse or permit the proposed change, including granting permission on such terms and conditions as The Ministry considers appropriate.

## **9. RESTRICTED PARTIES**

The persons listed in this section and their affiliates have been identified as Restricted Parties:

- Employees of the Ministry
- KPMG Advisory Limited

This is not an exhaustive list of Restricted Parties.

Additional persons may be identified as Restricted Parties, including by being added to the list during the Competitive Selection Process. Restricted Parties, their respective directors, officers, partners, employees, and affiliates are not eligible to participate as a Proponent, or advise any Proponent, directly or indirectly, or participate in any way as an employee, Preferred Proponent, consultant, or otherwise in connection with any Proposal.

Each Proponent will ensure that it does not use, consult, include or seek advice from any Restricted Party.

## **10. RELATIONSHIP DISCLOSURE AND CONFLICT OF INTEREST**

As part of the registration process described in section 9.3 of this RFP, each Proponent must provide full disclosure of all relationships it or any of its sub Proponents has with any Restricted Party, The Ministry, KPMG or any of their respective employees (both current or former), or individuals or firms who have been involved in the Competitive Selection Process that could constitute a conflict of interest or unfair advantage. For the purposes of this RFP, references to unfair advantage and similar terms include references to confidential information that is not, or would not reasonably be expected to be, available to all Proponents.

During the Competitive Selection Process, whether before or after delivery of the Proposal, each Proponent will notify The Ministry, by written notice addressed to the Designated Contact Person, promptly after becoming aware of any relationship it, or any sub Proponent or key team member listed in its Proposal, has with any Restricted Party, The Ministry, KPMG or any of their respective employees (both current or former), or individuals or firms who have been involved in the Competitive Selection Process that could constitute a conflict of interest or unfair advantage.

At the time of disclosure of such relationship, the Proponent will include sufficient information and documentation to demonstrate that appropriate measures have been or will be implemented to manage, mitigate, minimize, or eliminate any actual or potential conflict of interest or unfair advantage, as applicable, to the greatest extent practicable, and will provide such additional information and documentation and implement such additional measures as the Ministry may require in its discretion in connection with the Ministry's consideration of the disclosed relationship and proposed measures.

The Ministry may in its discretion waive any and all potential or actual conflicts of interest. Any waiver may be upon such terms and conditions as the Ministry in its discretion requires to satisfy itself that the conflict, actual or potential, or impact or consequence of the relationship, as the case may be, has been appropriately managed, mitigated, minimized, or eliminated, including requiring the Proponent and affected persons, firms or organizations to put into place such policies, procedures, measures and other safeguards as may be required by and are acceptable to the Ministry, in its discretion, and to ensure that any and all confidential information the Proponent or any team member thereof may have continues to be kept confidential and not disclosed or used except as expressly permitted by the Ministry.

Without limiting the generality of the foregoing, the Ministry may, in its discretion, require the Proponent to substitute a new person, firm or organization for the person, firm or organization giving rise to the potential or actual conflict of interest, or who has the existing relationship.

The Ministry also may in its discretion disqualify any Proponent that in the Ministry's sole and absolute opinion has a conflict of interest, whether existing now or likely to arise in the future.

The Ministry will disqualify any Proponent that in the Ministry's sole and absolute opinion has an unfair advantage, whether existing now or likely to arise in the future.

## **11. GOVERNING LAWS**

This RFP will be governed, construed, and interpreted in accordance with the laws of Bermuda applicable therein and Proponents irrevocably attorn to the exclusive jurisdiction of the courts of Bermuda.

## **12. THE MINISTRY'S RIGHTS**

Notwithstanding anything to the contrary contained in this RFP, the Ministry, in its discretion, may:

- a) accept or reject any Proposal based on the evaluation of the Proposal;
- b) waive informalities, irregularities (including erasures or alterations), qualifications, conditions, omissions, inaccuracies, misstatements or other deficiencies in, or failure of, a Proposal to conform to the requirements of this RFP (each a "Nonconformity"), and consider and accept a Proposal which contains one or more Nonconformities, except where any such Nonconformity is substantial or material and would render such Proposal null and void or otherwise incapable of consideration;
- c) give preference to Proposals where the products, services or work methods are considered by the Ministry in its sole and absolute discretion to be environmentally superior, as well as cost effective, relative to products, services or work methods offered in other Proposals;
- d) reject, without necessarily proceeding with full evaluation, any Proposal that, in the Ministry's sole opinion:
  - (i) lacks adequate clarity or fails to provide sufficient information to enable the Ministry to carry out full and proper evaluation of that Proposal;
  - (ii) is technically or commercially unacceptable;
  - (iii) fails to establish that the Proponent has adequate financial and other resources to carry out the Services; or
  - (iv) fails to comply with any or all of the mandatory requirements set forth in this RFP.
- e) reject, without necessarily proceeding with full evaluation, any Proposal submitted by a Proponent who:
  - (i) in the Ministry's sole opinion, has, or if awarded the Agreement would have, an actual, apparent or potential conflict of interest, unless the Proponent has provided the required written

disclosure of the conflict of interest in its Proposal and has also provided a detailed undertaking satisfactory to the Ministry, in the Ministry's discretion, for resolving the conflict of interest if the Proponent is awarded the Agreement; or

- (ii) to the Ministry's knowledge or belief, based on information deemed reliable by the Ministry, has breached any of the terms and conditions of this RFP, including the Confidentiality Undertaking;
- f) negotiate any or all terms and conditions of the Agreement with any one or more Proponents, but not necessarily all Proponents, and to do so serially or concurrently;
- g) negotiate and enter into the Agreement on terms and conditions different than those contained in this RFP and/or any Proposal;
- h) not enter into negotiations with any one or more Proponents;
- i) terminate negotiations with any one or more Proponents at any time;
- j) not disclose to any Proponent any details of its discussions and negotiations with any other Proponent;
- k) not award the Agreement to any Proponent;
- l) extend, from time to time, any date, time period or deadline provided in this RFP, upon issuance of an Addendum;
- m) modify, postpone, cancel, suspend or terminate the Competitive Selection Process at any time for any reason, and re-advertise for new proposals, call for tenders, or enter into negotiations for the Services or for work of a similar nature;
- n) not offer the same or substantially the same or comparable terms and conditions of a proposed Agreement to more than one Proponent with which the Ministry may conduct negotiations; and
- o) award separate Agreements for different portions of the Services, to any one or more Proponents and to structure the evaluation and ranking of Proposals, including create more than one ranking list, as it in its discretion considers appropriate to facilitate the award of such separate Agreements, if any.

### **13. NO CONTRACTUAL OR LEGAL OBLIGATIONS**

This RFP is not intended to constitute, or be interpreted as, a call for tenders, and the submission of a Proposal is not intended to create any contractual or other legal obligations or duties whatsoever owed to any Proponent by the Ministry, including any obligation or duty to accept or reject a Proposal, to enter into negotiations or decline to enter into or continue negotiations, or to award or not award the Agreement. Without restricting the generality of the foregoing, no contractual relations shall exist between the Ministry and any Proponent until the execution of the Agreement with that Proponent, except for any waivers, releases, exclusions or limitations of liability, confidentiality and/or indemnity obligations or other covenants or agreements expressly made, given or accepted by the Proponent in the Proposal or otherwise in connection with the Competitive Selection Process.

### **14. NO RELIANCE**

Neither the Ministry nor any of the representatives of the Ministry, makes any representation, warranty, guarantee or endorsement, or has any liability, obligation or responsibility whatsoever in contract, tort or otherwise, with respect to the scope, quality, timeliness, accuracy, reliability, appropriateness, sufficiency, relevance or completeness of any information provided by the Ministry in connection with the Competitive Selection Process, this RFP, the Services or the Project or any statements, representations, assurances, commitments, or agreements which Proponents believe they may have received or reached with any stakeholders, interested parties, or other persons.

No actions or omissions, communications or responses, including information, statements, opinions, comments, consents, waivers, acceptance or approvals made or raised by or on behalf of the Ministry or any of its representatives, the Proponent any of the other Proponents, or any person, whether positive or negative, including if set out in any document or information provided by the Proponent, or its team members, any of the other Proponents, or any of their team members, in relation to any matter, including the Competitive Selection Process, this RFP, the Services or the Project, at any time or times during the Competitive Selection Process will be binding on the Ministry or be relied upon in any way by the Proponent or its team members for any purpose whatsoever; be deemed or considered to be an indication of a preference by The Ministry or any representative even if adopted by the Proponent, or another of the Proponents, or will amend or waive any term of this RFP in any way for any purpose whatsoever, unless and only to the extent expressly incorporated by Addendum, or expressly set out in the Question and Answer Series.

By submitting a Proposal, each Proponent represents and warrants to the Ministry that its Proposal has been prepared, relies and has been submitted solely on investigations, examinations, knowledge, analyses, interpretation, information, opinions, conclusions, judgments, and assessments independently undertaken, formulated, obtained, and verified by the Proponent and not in any way upon any action or omission, the scope, timeliness, accuracy, completeness, relevance, or suitability of any information provided by the Ministry in connection with the Competitive Selection Process, this RFP, the Services or the Project.

Any and all use of or reliance upon, in any way whatsoever, any information, including as described in this section of this RFP or any statements, representations, assurances, commitments or agreements which Proponents believe they may have received or reached with any stakeholders, interested parties, or other persons will be at their sole risk and without recourse of any kind whatsoever against the Ministry or any of its representatives.

## **15. LIMITATION OF LIABILITY**

Each Proponent, on its own behalf and on behalf of any sub Proponents, in participating in the Competitive Selection Process under this RFP:

- a) agrees not to bring any Claim against the Ministry or any of its employees, Preferred Proponents or representatives for damages, compensation or reimbursement for any matter in respect of this RFP or the Competitive Selection Process, including:
  - (i) if the Ministry accepts a non-compliant Proposal or otherwise breaches, or fundamentally breaches, the terms of this RFP or the Competitive Selection Process;
  - (ii) if the Project or Competitive Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the services or modification of this RFP or both) or the Ministry exercises any rights under this RFP; or
  - (iii) if the Ministry exercises any of the Ministry's rights set out in section 12 of this Appendix 2; and
- b) waives any and all Claims against the Ministry or any of its employees, Preferred Proponents or representatives for loss of anticipated profits or loss of opportunity if no Agreement is made between the Ministry and the Proponent for any reason, including without limitation:
  - (i) if the Ministry accepts a non-compliant Proposal or otherwise breaches or fundamentally breaches the terms of this RFP or the Competitive Selection Process;

- (ii) if the Project or Competitive Selection Process is modified, suspended or cancelled for any reason (including modification of the scope of the Project or modification of this RFP or both) or the Ministry exercises any rights under this RFP; or
- (iii) if the Ministry exercises any of the Ministry's rights set out in section 12 of this Appendix 2.

This section 15 survives the completion of the Competitive Selection Process or termination of the RFP.

## **16. INTERPRETATION**

References to this RFP or to the documents which make up the appendices to this RFP, or to any part of those documents, refer to the most current version of those documents, including all modifications, amendments, and Addenda thereto made and issued by the Ministry to Proponents.

Each appendix attached to this RFP is an integral part of this RFP as if set out at length in the body of this RFP.

Headings or captions in this RFP are inserted for convenience of reference only and will not constitute a part of the document in which they are contained, and in no way define, limit, alter, or enlarge or otherwise affect the scope or meaning or interpretation of this RFP.

As used in this RFP, gender is used as a reference term only and applies with the same effect whether the parties are masculine, feminine, corporate or other form and unless the context otherwise indicates to the contrary, the singular includes the plural and the plural includes the singular.

In this RFP, the terms "include", "includes", "including" and others of like import will not be deemed limited by any specific enumeration of items but will be deemed to be without limitation, interpreted as if the term was "including without limitation" and as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

As used in this RFP, "must" or "mandatory" means a requirement that must be met in order for a Proposal to receive consideration.

References in this RFP to "in the opinion of the Ministry", "at the discretion of", "in its discretion", "in the discretion of the Ministry", "in the Ministry's discretion", "in the sole opinion of the Ministry", "the exercise by the Ministry of any right, power or remedy" or similar expressions when used in respect of the Ministry will be interpreted to mean the sole, absolute and unfettered, including unfettered by any implied or express duties of good faith or of fairness, discretion or opinion, as the case may be, of the Ministry.



## **APPENDIX 3 – SUBMISSION REQUIREMENTS**

Proponents should submit the information described below in their Proposals, including the order, section headings and numbering.

### **Part A**

#### **A-1 CORPORATE PROFILE**

For the Proponent and any team members, provide the following (where applicable):

- office location(s), including street address, email address and main telephone number;
- number of years in business;
- overview of services offered;
- number of employees; and
- subsidiary companies including any Bermuda affiliated companies, or contractual relationships with third parties, for delivery of the Services.

#### **A-2 QUALIFICATIONS AND EXPERIENCE**

Briefly summarize relevant experience, identifying specific projects and including examples and/or documentation as appropriate, with the following:

##### **A2.1 Experience**

- a) Demonstrating your experience specific to the development of regulations, preferably with a regulatory focus;
- b) Demonstrating your experience specific to the development of guidance notes, preferably with a regulatory focus;
- c) Developing and customizing software solutions (i.e. that would meet the need of the Portal) for tax information exchange, including the ability to operate a helpdesk to support the software and users;
- d) Providing specific examples of relevant projects (no more than 3 for each of a) through c)).

##### **A2.1.1 Knowledge of the Bermuda financial industry**

- a) Summarize your knowledge of Bermuda's financial industry and the key items that you believe will need to be considered in the drafting of regulations and guidance notes.

##### **A2.2. Project and Relationship Management**

- a) Supplying similar services for organizations of a similar size or projects of a similar scope as the Ministry. Include specific project examples with details on size and experience (services delivered) of the project team, length of the project, budget and issues encountered and resolved.
- b) Examples of industry consultation and working with and across multiple stakeholder groups.

### **A2.3 Overall Quality**

### **A-3 PROJECT TEAM STRUCTURE**

Describe the proposed project team structure, including the proposed key team members and their specialization. Identify how sufficient personnel and resources will be available to deliver on all requirements outlined in this RFP.

Provide an organizational chart and written description that highlights how the project team will be organized to work cohesively, including the reporting structure within the team and to the Steering Committee.

### **A-4 KEY TEAM MEMBERS**

Describe the roles and responsibilities of all key team members identified in section A-3. Include description of key team members' prior experience working together. Provide resumes or bios for key team members, including job title, years of relevant experience, projects, qualifications, education, and any other pertinent information.

### **A-5 COMPLIANCE WITH REQUIREMENTS**

**For each requirement in section 4, provide a statement of compliance:**

- Compliant
- Partially Compliant

### **A-5 WORK PLAN**

Based on the Project Requirements detailed in section 4, provide a draft project plan that provides the following:

- Key activities and duration anticipated to deliver the Services;
- Any key dates, deliverables and milestones your team anticipates as required to deliver the Services; and
- Estimated budget.

### **A-6 APPROACH**

Provide sufficient information to allow a meaningful assessment of your corporate approach to delivering the Services, managing your team, resources and client needs.

Provide the following:

- **Project Management and Risk Management:**  
Provide your step by step project management approach that you would apply to the approach of the overall project and the plan for mitigation of risks associated with the delivery of the project.

### **A-7 CLIENT REFERENCES**

Provide no more than three client references that you have provided comparable projects.

Provide the following information for each reference:

- client name;
- description of services;
- period of service;
- contact information (name, title, email address and phone number);
- budget; and
- awards or recognition received if applicable.

## **Part B**

### **B-1 PRICE**

Form 1 must be completed to provide an estimate of the overall project cost, based on the anticipated resources required to deliver the Services. A guaranteed maximum price must also be provided, which will be adhered to in order to deliver the defined scope within the RFP.

Cost estimates should also include anticipated disbursements (e.g. travel expenses etc.).

Form 1

Please express all amounts in BD\$

REGULATIONS & GUIDANCE NOTES			
CRS Regulations	BD\$		
CbC Regulations	BD\$		
CRS Guidance Notes	BD\$		
CbC Guidance Notes	BD\$		
Expenses / disbursements	BD\$		
<b>PRICE FOR REGULATIONS &amp; GUIDANCE NOTES</b>	<b>BD\$</b>		
SECURE WEB BASED REPORTING PORTAL			
		Initial Capital Cost	Ongoing Annual Costs*
			* = Annual maintenance & license fee cost - fixed for first 5 years
Licensing / purchase of "off the shelf" package	BD\$		
<b>Customization for Bermuda (incl. minimum requirements for the Portal as described in section 4.2.1 of this document)</b>  Please specify the costs for any additional modules, customization or new development in relation to any specific requirements as described in section 4.2.1 above that are not covered in the pricing for the "off the shelf" product listed above.	BD\$		
4.2.1 a)	BD\$		
4.2.1 b)	BD\$		
4.2.1 c)	BD\$		
4.2.1 d)	BD\$		
4.2.1 e)	BD\$		

4.2.1 f)	BD\$		
4.2.1 g)	BD\$		
4.2.1 h)	BD\$		
4.2.1 i)	BD\$		
4.2.1 j)	BD\$		
4.2.1 k)	BD\$		
4.2.1 l)	BD\$		
4.2.1 m)	BD\$		
4.2.1 n)	BD\$		
4.2.1 o)	BD\$		
4.2.1 p)	BD\$		
4.2.1 q)	BD\$		
4.2.1 r)	BD\$		
4.2.1 s)	BD\$		
4.2.1 t)	BD\$		
4.2.1 u)	BD\$		
4.2.1 v)	BD\$		
4.2.1 w)	BD\$		
4.2.1 x)	BD\$		
4.2.1 y)	BD\$		
<b>Desirable requirements for the Portal as described in section 4.2.2 of this document)</b>  Please specify the costs for any additional modules as described in section 4.2.2 above.	BD\$		
4.2.2 a)	BD\$		
4.2.2 b)	BD\$		

<b>Optional requirements for the Portal as described in section 4.2.3 of this document)</b>  Please specify the costs for any additional modules as described in section 4.2.3 above.	<b>BD\$</b>		
4.2.3 a)	BD\$		
4.2.3 b)	BD\$		
4.2.4	BD\$		
4.2.5	BD\$		
Travel Expenses	BD\$		
Other expenses / disbursements	BD\$		
<b>PRICE FOR SECURE WEB BASED REPORTING PORTAL</b>	<b>BD\$</b>		
<b>TOTAL PRICE</b>	<b>BD\$</b>		
<b>GUARANTEED MAXIMUM PRICE</b>	<b>BD\$</b>		

**Explanatory Notes:** Proponents are advised to note the exclusion of key activities or limitation of efforts which have been made in order to provide the above price quotes.