

SO-14433 Rental & Maintenance of O2 Cylinders
Appendix A Terms of Procurement

APPENDIX A
TERMS OF THE PROCUREMENT
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1. INTRODUCTION

1.1 These Terms of the Procurement regulate the conduct of the Potential Provider and the Crown Commercial Service throughout the Procurement. These terms also grant the Crown Commercial Service specific rights and limit its liability.

1.2 Except for the words and expressions set out below, the capitalised words and expressions used in these Terms of the Procurement shall have meanings given to them in the Invitation to Tender:

“**FoIA**” means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

“**EIR**” means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;

1.3 In these Terms of the Procurement any reference to 'person' includes, but is not limited to, any person, firm, body or association, corporate or incorporate.

2. CONDUCT

The Potential Provider agrees to abide by these Terms of the Procurement and any instructions given in the Invitation to Tender and agrees to ensure that any of its staff, contractors, subcontractors, consortium members and advisers involved or connected with the Procurement abides by the same.

2.1 Contact during the Procurement exercise and canvassing

The Potential Provider must not directly or indirectly canvass any Minister, public sector employee or agent regarding this Procurement or attempt to procure any information from the same regarding the Procurement (except where permitted by the Invitation to Tender). Any attempt to do so may result in the Potential Provider's disqualification from this Procurement.

2.2 Collusive Behaviour

2.2.1 The Potential Provider must not (and shall ensure that its subcontractors, consortium members, advisors or companies within its Group do not):

2.2.1.1 fix or adjust any element of the Tender by agreement or arrangement with any other person;

2.2.1.2 communicate with any person other than the Crown Commercial Service the value, price or rates set out in the Tender or information which would enable the precise or approximate value, price or rates to be calculated by any other person;

2.2.1.3 enter into any agreement or arrangement with any other person, so that person refrains from submitting a Tender;

2.2.1.4 share, permit or disclose to another person, access any information relating to the Tender (or another Tender to which it is party) with any other person; or

2.2.1.5 offer or agree to pay or give or does pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any other person for doing or having done or causing

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or having caused to be done in relation to the Tender any other Tender or proposed Tender, any act or omission,

except where such prohibited acts are undertaken with persons who are also participants in the Potential Provider's Tender, such as subcontractors, consortium members, advisors or companies within its group, or where disclosure to such person is made in confidence in order to obtain quotations necessary for the preparation of the Tender or obtain any necessary security.

- 2.2.2 If the Potential Provider breaches paragraph 2.2.1, the Crown Commercial Service may (without prejudice to any other criminal or civil remedies available to it) disqualify the Potential Provider from further participation in the Procurement.
- 2.2.3 The Crown Commercial Service may require the Potential Provider to put in place any procedures or undertake any such action(s) that the Crown Commercial Service in its sole discretion considers necessary to prevent or curtail any collusive behaviour.

3. COMPLIANCE

The Potential Provider agrees that in cases where their Tender is deemed non-compliant when compared with the requirements set out within the Invitation to Tender (e.g. terms and conditions) they will be excluded from the Procurement.

4. RIGHT TO CANCEL OR VARY THE PROCUREMENT

- 4.1 The Crown Commercial Service reserves the right:
 - 4.1.1 To amend, clarify, add to or withdraw all or any part of the Invitation to Tender at any time during the Procurement;
 - 4.1.2 to vary any timetable or deadlines set out in the Invitation to Tender;
 - 4.1.3 to not to conclude a contract for some or all of the goods and/or services (as applicable) for which Tenders are invited; and
 - 4.1.4 to cancel all or part of the Procurement at any stage at any time.
- 4.2 The Potential Provider accepts and acknowledges that by issuing the Invitation to Tender, the Crown Commercial Service is not bound to accept a Tender or obliged to conclude a contract with the Potential Provider at all.
- 4.3 The Potential Provider accepts and acknowledges that they are responsible for any and all costs incurred in their participation in this Invitation to Tender, regardless of a contract award being made.
- 4.4 The Authority may require interviews with, or presentations by the Potential Provider in order to carry out clarification on elements of the proposal. Such requirement shall imply no obligation on the part of the authority and the Potential Provider shall be responsible for any of its own expenses incurred. Should these be required a minimum of 48 hours notice will be provided.

5. CONCLUDING THE CONTRACT

- 5.1 The Potential Provider undertakes that, in the event of the Tender being accepted by the Crown Commercial Service and the Crown Commercial Service confirming in writing such acceptance to the Potential Provider, the Potential Provider will execute the contract as amended to accommodate aspects of the Tender within 30 days of being called upon to do so by the Crown Commercial Service.

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- 5.2 In cases where the Potential Provider fails to:
- 5.2.1 agree, without caveats or limitations, that in the event they are successful in this Procurement, they will unreservedly sign the Terms and Conditions of Contract as set out at Appendix C;
 - 5.2.2 execute the contract by signing it when requested to do so by the Crown Commercial Service; or
 - 5.2.3 execute the contract within 30 days of being called to do so;
- the Crown Commercial Service reserves the right to deem the Potential Provider's Tender non-compliant and award the contract to the next ranked Potential Provider (who has achieved the Minimum Pass Score).
- 5.3 The Authority reserves the right to visit the Potential Providers premises prior to any contract award being made, and both the Potential Provider and the Authority will remain responsible for its own expenses incurred.

6. CONFIDENTIALITY

- 6.1 The contents of the Invitation to Tender are being made available by the Crown Commercial Service on the condition that the Potential Provider:
- 6.1.1 treats the Invitation to Tender (together called the **"Information"**) as confidential at all times, unless it is already in the public domain;
 - 6.1.2 does not disclose, copy, reproduce, distribute or pass any of the Information to any other person at any time or allow any of these things to happen, except where, and to the extent that, the Information has been publicised in accordance paragraph 7 (Freedom of Information) or paragraph 8 (Transparency) ;
 - 6.1.3 only uses the Information for the purposes of preparing a Tender (or deciding whether to respond); and
 - 6.1.4 does not undertake any promotional or similar activity related to the Procurement within any section of the media during the Procurement process.
- 6.2 The Crown Commercial Service may disclose information submitted by the Potential Provider during the Procurement to its officers, employees, agents or advisers or other government departments who are stakeholders in this Procurement exercise.

7. FREEDOM OF INFORMATION

- 7.1 In accordance with the obligations and duties placed upon public authorities by the FoIA and the EIR, all information submitted to the Crown Commercial Service may be disclosed in Tender to a request for information made pursuant to the FoIA and the EIR.
- 7.2 The Potential Provider should note that the information disclosed in Tender to a FoIA or EIR request may include, but is not limited to, the disclosure of its Tender (including any attachments or embedded documents) and/or any score or details of the evaluation of a Tender.
- 7.3 If the Potential Provider considers any part of its Tender or any other information it submits to be confidential or commercially sensitive, the Potential Provider should:
- 7.3.1 clearly identify such information as confidential or commercially sensitive;
 - 7.3.2 explain the potential implications of disclosure of such information; and

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- 7.3.3 provide an estimate of the period of time during which it believes that such information will remain confidential or commercially sensitive.
- 7.4 If the Potential Provider identifies that part of its Tender or other information it submits is confidential or commercially sensitive, the Crown Commercial Service will consider withholding it from publication. The Potential Provider should note that, even where information is identified as confidential or commercially sensitive, the Crown Commercial Service may be required to disclose such information in accordance with the FoIA or the EIR.
- 7.5 The Crown Commercial Service is required to form an independent judgement upon whether the information is exempt from disclosure under the FoIA or the EIR and whether the public interest favours disclosure or not. The Crown Commercial Service cannot guarantee that any information indicated as being “confidential” or “commercially sensitive” by the Potential Provider will be withheld from publication.
- 7.6 If the Potential Provider receives a request for information under the FoIA or the EIR during the Procurement process, it should be immediately referred to the Crown Commercial Service.
- 8. TRANSPARENCY**
- 8.1 In accordance with the Government's policy on transparency, the Crown Commercial Service reserves the right to make all or part of the Information publicly available (subject to any redactions made at the discretion of the Crown Commercial Service by considering and applying relevant exemptions under the FoIA).
- 8.2 A Tender will not be published unless such disclosure is required in accordance with paragraphs 7.1 or 8.3.
- 8.3 The Potential Provider should note that the terms and conditions of contract will permit the Crown Commercial Service to publish the full text of the contract concluded with the Potential Provider, after considering (at the Crown Commercial Service's sole discretion) any representations made by the Potential Provider regarding the application of any relevant FoIA or EIR exemptions.
- 8.4 The Potential Provider acknowledges and agrees that information contained within its Tender may be incorporated by the Crown Commercial Service into any contract awarded to it and as a result, it may be published in accordance with this paragraph 8.