



Department
for Education

Market Engagement - Rules of Consultation

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1. INTRODUCTION

1.1. These Terms of Participation should be read in conjunction with the documentation made available by the Department in connection with the market consultation ("the Consultation") to those electing to participate in it ("Potential Supplier").

1.2. The Department has commenced the Consultation in connection with its proposed procurement ("the Procurement") to appoint a supplier/suppliers to deliver grant administration services in relation to the Support for Families with Disabled Children (SFDC) Fund to which the Procurement relates.

1.3. These Terms of Participation set out the conditions of participation in the Consultation, including:

1.3.1. rules in relation to the conduct of all Potential Suppliers; and

1.3.2. specific rights of the Department and limits to the Department's liability, which apply throughout the Consultation.

2. INTERPRETATION

2.1. Except where specified or the context requires, capitalised expressions in these Terms of Participation shall have the meaning given to them herein. In these Terms of Participation any reference to 'person' includes, but is not limited to, any person, company, firm, or body, and any association, corporate or incorporate.

3. CONDUCT

GENERAL

3.1. Potential Suppliers shall comply with these Terms of Participation and any instructions given by the Department during the Consultation.

3.2. An obligation on Potential Suppliers to do, or to refrain from doing, any act or thing under these Terms of Participation shall include an obligation upon the Potential Supplier to procure that all of its directors, office holders, employees, workers, companies within its group, proposed sub-contractors (if any), advisers or agents involved in or connected with the Consultation also do, or refrain from doing, such act or thing.

4. CONDUCT

SPECIFIC OBLIGATIONS

4.1. The Potential Supplier agrees that it will not directly or indirectly canvass or solicit any Minister, officer, public sector employee, member, of staff or agent of the Department (or their advisors or any other persons employed or engaged by them) for the purpose of offering that person employment or any other form of remuneration in connection with the Consultation or the Procurement. This agreement will be enforced for as long as the Potential Supplier remains a Potential Supplier.

4.2. If the Potential Supplier is in any situation which might (or which might be perceived to) give rise to an actual or potential conflict of interest in connection with the Procurement, the Department may make further enquiries to identify any such conflict or to satisfy itself that none exists, or that it can be effectively managed. The Department may require the Potential Supplier to provide such further information as the Department might specify for any such purpose or may require the Potential Supplier to withdraw from the Consultation if, in the Department's reasonable opinion and at its sole discretion, any of the above

issues have arisen or may arise and there are no other means to ensure the equal treatment of all potential suppliers. Prior to requiring any such withdrawal, the Department shall provide the Potential Supplier in question with the opportunity to prove that its capacity as a Potential Supplier is not capable of distorting competition.

4.3. The Potential Supplier must not, during the Consultation or after it:

4.3.1. agree to fix or adjust any element of its proposed tender by agreement or arrangement with any other person, except where, but subject always to paragraph 4.4, such acts are undertaken with persons who are also Potential Suppliers in the Potential Supplier's tender, such as members of its consortium or sub-contractors, or where disclosure to such person is made in confidence in order to obtain quotations necessary for the preparation of its tender or obtain any necessary security;

4.3.2. enter into any agreement or arrangement with any other person such that it, or that other person, might refrain from submitting a tender in the Procurement;

4.3.3. share, or disclose to another person, or permit access for another person to, any information relating to any tender which it might propose to submit in the Procurement; or

4.3.4. offer or agree to pay or give, or do pay or give, any, money, inducement, or valuable consideration directly or indirectly to any other person for doing or having done or causing or having caused to be done in relation to its tender, any other tender or proposed tender, any act or omission.

4.4. If, the Potential Supplier breaches any part of paragraph 4.3, the Department may (without prejudice to any other criminal or civil remedies available to it) exclude the Potential Supplier from further participation in the Consultation and the Procurement.

4.5. The Department may require the Potential Supplier to put in place any procedures or undertake any other action that the Department in its sole discretion considers necessary to prevent any collusive behaviour.

5. WITHDRAWAL

5.1. The Potential Supplier may withdraw from the Consultation at any stage. In that case, the Potential Supplier should inform the Department in writing (where possible electronically through the messaging system on Jaggaer) as soon as they have made their decision that they no longer wish to be a Potential Supplier.

6. RIGHT TO VERIFY AND CLARIFY

6.1. The Department reserves the right to seek third party independent advice or assistance to validate information submitted by the Potential Supplier or to assist in the tender evaluation process.

6.2. The Department may require the Potential Supplier to add to, or clarify, any information which it has provided to the Department in connection with any information provided to the Department during the tender process.

7. RIGHT TO CANCEL

7.1. The Department reserves the right, for any reason, to:

- 7.1.1. change the basis of the Consultation (or any aspect of it) at any time;
- 7.1.2. amend, clarify, or add to the scope of the Consultation;
- 7.1.3. cancel all or part of the Consultation at any stage at any time;; and
- 7.1.4. not proceed with the Procurement.

8. RIGHT TO EXCLUDE

8.1. The Department may exclude the Potential Supplier from the Consultation if the Potential Supplier fails to:

- 8.1.1. provide to the Department any information requested by either of them;
- 8.1.2. provide a full and satisfactory response to any question or clarification request;
- 8.1.3. comply fully with the requirements of the Consultation;
- 8.1.4. comply with clause 4.4; or
- 8.1.5. comply with any of these Terms of Participation.

8.2. The Department may exclude the Potential Supplier from the Consultation if the Potential Supplier has committed a wilful omission or misrepresentation in the provision of any information in connection with the Consultation.

9. STATUS OF THE CONSULTATION

9.1. No information provided to the Potential Supplier in the Consultation or in any communication made between the Department and the Potential Supplier in connection with the Consultation shall be relied upon as constituting any agreement or representation that the Procurement (if commenced) will reflect any of the information provided to the Potential Supplier in the course of the Consultation, or that any contract will be entered into as a result of the Procurement.

9.2. The Department shall not be committed to any course of action as a result of:

9.2.1. running the Consultation;

9.2.2. any communication with the Potential Supplier or their representatives, agents

or advisers in respect of the Consultation; and/or

9.2.3. any communication between the Potential Supplier, the Department, or any other party (whether directly or through their agents or representatives) in respect of the Consultation.

9.3. Neither the Department nor its advisers, directors, officers, members, employees or workers other staff or agents:

9.3.1. accept any liability or responsibility for the adequacy, accuracy or completeness of the information provided to the Potential Supplier in connection with the Consultation or any element of it; or Department for Education

9.3.2. make any representation or give any warranty, express or implied, with respect to

the information provided during the Consultation, nor shall any of them be liable for any loss or damage arising because of reliance on any such information or any subsequent communication.

9.4. The Potential Supplier is responsible at its own expense, for obtaining all information required for it to prepare such tender as it might wish to submit in the Procurement.

9.5. Any exclusions of liability on the part of the Department in this paragraph 9 do not apply to the extent of any deceit or fraudulent misrepresentation made by or on behalf of the Department.

10. COSTS

10.1. The Department will not, in any circumstances, reimburse any costs incurred by the Potential Supplier in connection with its capacity as a Potential Supplier.

11. CONFIDENTIALITY

11.1. Subject to the exceptions referred to in paragraph 11.2, the information provided in the course of the Consultation is made available by the Department on the condition that the potential Suppliers:

11.1.1. treats such information (the "Information") as confidential at all times, unless the Information is already in the public domain other than as a result of any breach of these Terms of Participation or any other obligation owed to the Department by the Potential Supplier;;

11.1.2. 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 with paragraph 12 (Freedom of Information) or paragraph 13 (Transparency);

11.1.3. only uses the Information for the purposes of deciding whether to participate in the Procurement; and

11.1.4. does not undertake any promotional or similar activity related to the Consultation during the Consultation or after it.

11.2. The Potential Supplier may disclose, distribute, or pass any of the Information to any other person, provided that:

11.2.1. this is done for the sole purpose of enabling the Potential Supplier to decide whether to participate in the Procurement and the person receiving the Information undertakes in writing (such written undertaking to be made available to the Department on the Department's request) to keep the Information confidential on the same terms as those imposed by these Terms of Participation; or

11.2.2. it obtains the Department's prior written consent in relation to such disclosure, distribution or passing of Information, which consent may be refused, withheld or only given on such terms as the Department may in its sole and absolute discretion stipulate; or

11.2.3. the disclosure is made in confidence for the sole purpose of obtaining legal advice from external lawyers in relation to the Consultation and subject to obtaining an undertaking from such external lawyers on the same terms as are specified in paragraph 11.2.1 above; or

11.2.4. the Potential Supplier is legally required to make such a disclosure; or

11.2.5. the Information has been published in accordance with paragraphs 12 (Freedom of Information) and 13 (Transparency).

11.3. The Department may disclose information submitted by the Potential Supplier during the Consultation to its officers, employees, workers, agents or advisers or other Government departments who are stakeholders in the Consultation.

11.4. All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross Government role delivering overall Government Policy on public procurement (including ensuring value for money and related aspects of good procurement practice).

11.5. For the purposes referred to at 11.3 and 11.4 above, the Department may disclose within HM Government any of the Potential Supplier's information such as specific information in any document provided to the Department as part of the Consultation and/or information provided by the Potential Supplier in the course of any meetings or other discussions taking place during the Consultation (including the proposed 1:1 meeting forming part of the planned Market Consultation days). The Department may also use and disclose this same information provided by Potential Suppliers in an anonymised form as part of any information published (or otherwise made publicly available) by the Department relating to the key themes, questions, and areas where comments have been received as part of the Consultation or in relation to any other outputs of any part of the Consultation made publicly available by the Department. By participating in the Consultation (to include by providing any such information to the Department), the Potential Supplier consents to such use and disclosure by the Department of such information, as referred to in these Terms of Participation.

12. FREEDOM OF INFORMATION

12.1. In accordance with the obligations and duties placed upon public authorities by the Freedom of Information Act 2000 ("the FoIA") and the Environmental Information regulations 2004 ("the EIR") and in accordance with any Government code of practice on the discharge of public authorities' functions under the FoIA, all information submitted to the Department may be disclosed under a request for information made pursuant to the FoIA and the EIR.

12.2. If the Potential Supplier considers any part of its tender or any other information it submits to be confidential or commercially sensitive, the Potential Supplier should:

12.2.1. clearly identify such information as confidential or commercially sensitive;

12.2.2. explain the potential implications of disclosure of such information considering and specifically addressing the public interest test as set out in the FoIA; and

12.2.3. provide an estimate of the period of time during which it believes that such information will remain confidential or commercially sensitive.

12.3. If the Potential Supplier identifies that part of its tender or other information it submits is confidential or commercially sensitive, the Department in its sole discretion will consider Department for Education whether or not to withhold such information from publication. Where information is identified as confidential or commercially sensitive, the Department may nevertheless be required to disclose such information in accordance with the FoIA or the EIR.

12.4. The Department is required to form an independent judgement of whether the Potential Supplier's information referred to in paragraph 12.3 is exempt from disclosure under the FoIA or the EIR and whether the public interest favours disclosure or not. The Department cannot guarantee that any information indicated as being confidential or commercially sensitive by the Potential Supplier will be withheld from publication.

12.5. If the Potential Supplier receives a request for information under the FoIA or the EIR during and in relation to the Consultation, it should be immediately referred to the Department.

13. TRANSPARENCY

13.1. In accordance with the Government's policy on transparency, the Department reserves the right to make all or part of the Information publicly available (subject to any redactions made at the discretion of the Department by considering and applying relevant exemptions under the FoIA).

13.2. The terms of the any contract resulting from the Procurement will permit the Department to publish the full text of such contract awarded after considering (at the Department's sole discretion respectively) any representations made by the successful supplier regarding the application of any relevant FoIA or EIR exemptions.

13.3. The Potential Supplier acknowledges and agrees that information contained within its tender (if submitted in the Procurement) may be incorporated by the Department into any contract awarded to the Potential Supplier and as a result, it may be published in accordance with this paragraph.

14. DATA PROTECTION

14.1. The Department will collect, hold, and use personal data (as defined in the UK General Data Protection Regulation) obtained from the Potential Supplier including any members of its consortium and their staff during the course of the Consultation and the Procurement ("Personal Data"). The Potential Supplier agrees to such Personal Data being collected, held, and used in accordance with and for the purpose of administering the Consultation and for the management of any contract awarded as a result of the Procurement.

14.2. The Potential Supplier warrants, on a continuing basis, that it has:

14.2.1. all requisite Department and has obtained and will maintain all necessary consent required under the UK General Data Protection Regulation; and

14.2.2. otherwise fully complied with all of its obligations under the UK General Data Protection Regulation in order to disclose to the Department the Personal Data, and allow the Department to carry out the Consultation and the Procurement.

14.3. The Potential Supplier shall immediately notify the Department if any of the consents referred to in paragraph 14.2.1 are revoked or changed in any way which affects on the Department's rights or obligations in relation to any of the Personal Data.

15. INTELLECTUAL PROPERTY RIGHTS

15.1. All information issued in connection with the Consultation shall remain the property of the Department and shall be used by the Potential Supplier only for the purposes of the Consultation.

16. NO INDUCEMENT OR INCENTIVE

16.1. The Potential Supplier acknowledges and agrees that nothing contained within the Consultation shall constitute an inducement or incentive nor shall have in any other way persuaded the Potential Supplier to participate in the Procurement or enter into any other contractual agreement.

17. LAW AND JURISDICTION

17.1. Any dispute (including non-contractual disputes or claims) relating to the Consultation shall be governed by and construed in accordance with the laws of England and Wales.

17.2. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Consultation (including non-contractual disputes or claims).