

**SELECTION QUESTIONNAIRE GUIDANCE FOR A CONCESSION CONTRACT FOR LEISURE MANAGEMENT SERVICES**

File Ref:

**SQ Responses to be submitted by: 12.00pm, 12th July 2018**

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Part 1 - General

1. Introduction and scope of the project
   1. The SQ is made available by the Royal Borough of Kensington and Chelsea (the ‘Authority’) to Applicants wishing to express an interest in the Leisure Management Contract (the “Services”).
   2. The SQ should be read in conjunction with the OJEU Contract Notice and the Draft Procurement Documents that together define the Authority’s needs and requirements, and provide further details about the procurement, the Contract, the Authority’s chosen award criteria, indicative timetable and the basis on which the Authority intends to select organisations to be invited to submit Tenders.
   3. This procurement is being advertised under the Concession Contracts Regulations (“the 2016 Regulations”) but the Authority has adopted a process similar to the Competitive Procedure with Negotiation pursuant to the Public Contracts Regulations 2015 (“the 2015 Regulations”).
   4. Words in the SQ with an initial capital letter not defined in the SQ shall have the meanings given in Appendix A (Glossary).
   5. Tenderers should first read the Descriptive Document (“the Descriptive Document”) forming part of the Concession Documents on the Authority’s e-tendering portal.
2. Procurement Timetable
   1. The Authority intends to procure the Contract in accordance with the indicative timetable in the Descriptive Document.
   2. The Authority reserves the right to change the timescales and/or to include new stages as it considers appropriate. In compliance with the 2016 Regulations the Authority will inform Applicants/Tenderers of any changes.
3. Purpose and SQ Structure
   1. The SQ has been produced to enable the Authority to assess the economic and financial standing and technical and professional ability of Applicants who wish to be considered for participation in this procurement.
   2. The SQ consists of three parts:
      1. Part 1 contains instructions for participation and the general requirements;
      2. Part 2 sets out the Selection Methodology that will be applied by the Authority to assess SQ Responses and select those Applicants suitable to be invited to tender. Subject to there being a sufficient number of Applicants expressing interest and passing the Minimum Standards described in Part 2 of the SQ, the Authority’s intention is to invite a minimum of [4] Applicants to submit Tenders (please note that we reserve the right to invite 5 should the scores be close (less than 1% difference in the scoring between 4th and 5th placed)); and
      3. Part 3 General Conditions and Important Notices.
   3. The Authority is satisfied that the SQ addresses the relevant principles covered under the European Single Procurement Document (“ESPD”). Any omissions or errors in the SQ in relation to the requirements of the ESPD are unintentional. Applicants should address any concerns they have in this regard to the Authority through the Portal detailed in the Glossary at Appendix 1 below.
4. Instructions
   1. The standard SQ can be found on the Portal across both the SQ Qualification and Technical Envelopes. Applicants should complete the questionnaire on the Portal by responding to the questions within these Envelopes.
   2. Please ensure:
      1. You read all parts of this SQ Guidance, the SQ on the Portal and the Draft Procurement Documents (which are available for downloading from the Portal with this SQ Guidance) and ensure you are capable of fulfilling all of the requirements before submitting a SQ Response.
      2. You complete the SQ Response on the Portal and supporting information in English.
      3. You submit your responses through the Portal, please allow plenty of time to upload any documents prior to the Deadline.
      4. All attachments include the name of the Applicant, the relevant question number and title of the question.
      5. Your SQ Response is received prior to the Deadline otherwise it will not be considered and will be rejected.
      6. All responses to the SQ are compatible with Microsoft Word/Microsoft Excel and/or Adobe Reader.
      7. All your answers and information provided is clear, concise and provided in a logical manner and at the appropriate points within the document. Cross-referencing and reliance on attachments (other than where specifically requested) should be avoided.
      8. Any requests for clarification arising from the SQ or the Procurement Documents must be submitted via the Portal system messaging facility.
   3. Please do not:
      1. Include any promotional literature or cross-reference to any web-based material or provide any information other than that requested as the Authority will not consider it as part of the SQ assessment process.
      2. Make any alterations to the questions asked. For the avoidance of doubt, returned SQ Responses may not be evaluated if they are in any form other than that required.
      3. Provide any information other than that required as a means to providing an answer since the Authority may not consider it as part of its assessment of the SQ Response.
      4. Exceed any word limits specified in Part 3 of the SQ for Additional Questions which can be found in the Technical Envelope. The Authority will assess only up to and including the word limit. Any text above the word limit for a question may, at the Authority’s discretion, be disregarded and not taken into account as part of the assessment.
   4. **Please be aware that the Authority can only make its assessment from the information you supply. It is therefore essential that you answer all questions in the SQ in the relevant response box as indicated and that all information requested is submitted in full.** If a question is not applicable, it should be stated in the relevant box and an explanation included as to why it is not applicable. For example, it is recognised in Consortium/Prime Contractor applications that each Consortium member/Significant Sub-Contractor may not be able to give all of the information requested because it does not have the relevant experience. In this case, it should be specified in the response which of the relevant organisations is providing that information. A common reason why respondents to SQs fail to progress through the SQ process is due to incomplete information, inappropriate references, unsubstantiated statements or information presented in a manner not reasonably obvious to the assessors.
   5. If additional information is to be appended to the SQ Response, it must be clearly referenced within the relevant response box. Such additional information should be cross-referenced to the particular question to which it relates. Please put your organisation’s name on each additional sheet and provide a summary list of all attachments accompanying the completed SQ Response. The Authority reserves the right to disregard any supporting information which it considers has been submitted to circumvent the word limits specified in Part 3 (Technical Envelope) in response to the Additional Question.
   6. Applicants outside England and Wales are advised that a number of the questions refer to standards and legislation relevant to this jurisdiction. In each of these cases, the Applicant is invited to submit its home country’s equivalent standard or legislation as necessary, and provide a commentary on the comparability with that requested.
   7. Insofar as an expression of interest by an interested Applicant (or subsequently the submission of proposals) is made in response to the OJEU Concession Notice, the SQ and any invitation to submit a Tender, forms (or is deemed to form) a contractual relationship between the Authority and that Applicant governing the relationship of the parties during this procurement process until an award is made (if any), the terms and conditions of such contract shall be as expressly set out in the OJEU Concession Notice, the SQ, or the Draft Procurement Documents together with the Regulations. The Regulations, the OJEU Contract Notice, SQ, and the Draft Procurement Documents form the entire agreement between the parties relating to the procurement process and the submission of expressions of interest and/or detailed proposals and there shall not be implied into any such contract any further terms, obligations or restrictions on the Authority.
5. Clarification Process
   1. Applicants may submit questions and requests for clarification or further information during the procurement process. If you have any questions about the SQ or the procurement please submit them via the question and answer facility of the Portal to arrive no later than the deadline set out at paragraph 3 above. The Authority may not respond to questions received after this date. The Authority will seek to respond to queries within 5 Business Days.
   2. An Applicant’s queries submitted via the Portal will be secure and cannot be seen by any other Applicants. However, Applicants should note that requests for information or requests for clarification/questions posed by Applicants or anything similar is deemed to be of relevance to all Applicants. The request/question and response will be provided in a suitably anonymised form via the Portal to all Applicants before the closing date for submission of SQ Responses.
   3. When submitting a question or request for clarification or further information, Applicants should clearly indicate which (if any) part of their question they view as commercially confidential to them and applicable only to the Applicant submitting the question.
   4. Any such question or request which an Applicant considers is commercially confidential must be clearly marked ‘Confidential – not to be circulated to other Applicants’ and the Applicant must set out the reason(s) for the request for non-disclosure to other Applicants, which the Authority will then consider.
   5. Any statement requesting that the question or request or the response to the question or request is to be kept confidential should be well constructed, thought out and meaningful and not simply a broad statement that covers matters clearly in the public domain or not commercially sensitive.
   6. If the Authority considers that in the interests of open and fair competition, it is unable to respond to the question or request for clarification or further information on a confidential basis, it will inform the Applicant who has submitted it. During the pre SQ submission phase, the Applicant must thereafter respond within 24 hours to indicate that either the query be withdrawn, or treated as not confidential. The Authority will deem that the question or request for clarification or further information is withdrawn if the Authority is not contacted in 3 Business Days.
   7. The Applicant must endeavour, so far as is practicable, to respond to all questions and clarifications within the timeframe set by the Authority and, in any event, within three Business Days.
   8. The Authority will endeavour to provide Applicants with any additional information to which the Authority has access, but the Authority shall not be obliged to comply with any such request and does not accept liability or responsibility for failure to provide any such information.
6. Bidding organisations and Consortia
   1. The Authority wishes to maximise competition to secure best value for money for the Authority and is keen to ensure that the procurement is open to a wide market and that there is genuine competition. An Applicant may express interest in and (if subsequently invited to tender) tender for the Contract as a single entity or as part of a Consortium (in whatever form).
   2. An Applicant may express interest in the Contract in its own right or in a Consortium as a member at tier one. It may not however:
      1. bid with any Consortium member and in competition with the same Consortium member at tier one.
      2. express interest as a single entity and as part of a Consortium where that Tenderer is in the Consortium at tier one.
      3. be a member of more than one Consortium at tier one.
   3. If the Applicant completing the SQ is doing so as part of a Consortium, the following information must be provided with the completed SQ Response:
      1. names of all Consortium members;
      2. the lead member of the Consortium (the ‘Lead Applicant’) who will be contractually responsible for delivery of the Contract (if a separate legal entity is not being created but rather a Prime Contractor and Sub-Contractor arrangement is proposed); and
      3. if the Consortium is not proposing to form a legal entity, full details of proposed structure of the consortium and arrangements which will be put in place shall be set out in a separate appendix to the SQ Response.
   4. The Lead Applicant shall complete the whole of the SQ and the other Consortium members shall complete all questions in sections 1.1(a) to (h) in section 1; section 2 and section 3. The Lead Applicant’s response to Section 4 (Economic and Financial Standing) and Part 3 (Additional Questions in the Technical Envelope) may be a composite response on behalf of the Consortium members. When doing so the Lead Applicant must specify responses which content/experience relates to the Prime Contractor and each other member of the consortium and Significant Subcontractor.
   5. Applicants should note that the Authority may require the Consortium to assume a specific legal form if awarded the Contract, to the extent that a specific legal form is deemed by the Authority as being necessary for the satisfactory performance of the Contract. Consortium members will be required to assume joint and several liability. The Authority also reserves the right to seek clarification regarding the information submitted and the relationships between members of a group as part of its assessment and selection process.
   6. The Authority recognises that arrangements in relation to a Consortium may be subject to future change. Applicants should therefore respond on the basis of the arrangements as currently envisaged. Applicants are reminded that the Authority must be immediately notified of any changes, or proposed changes, in relation to the Consortium so that a further assessment can be carried out by applying the selection criteria to the new information provided. The Authority reserves the right to deselect an Applicant prior to any award of Contract, based on an assessment of the updated information.
   7. Each organisation that completes and returns a SQ Response (whether it is a single organisation or a Consortium) is referred to as an “Applicant”.
7. Sub-Contractors
   1. Applicants (and subsequently Tenderers) must be able to satisfy the Authority as to their ability to deliver the Contract for which they are expressing an interest (and subsequently bidding) and to perform the Services.
   2. The Authority is aware that the following situations may arise that could result in a risk of breach to the conflict and collusion requirements at paragraphs 8 and 9 below. Applicants/Tenderers may be able to continue with such situations provided they are able to satisfy the Authority at all stages of the process that appropriate arrangements are in place to ensure that there is no risk of potential or actual collusion. The situations referred to that may potentially arise are:
      1. an Applicant /Tenderer proposes to appoint another Applicant/Tenderer as a Sub-Contractor;
      2. an Applicant/Tenderer is acting as a proposed Sub-Contractor to more than one Applicant/Tenderer; and
      3. more than one Applicant/Tenderer proposes the same Sub-Contractor (although that proposed Sub-Contractor is not a Tenderer in its own right).
   3. In the case of paragraph 7.2.1 and 7.2.2 above it must be evident from the face of the SQ Response (and subsequently a Tender) that the proposed Sub-Contractor has agreed to be named as a Sub-Contractor notwithstanding that it is participating in the process as a main Applicant/Tenderer in its own right. In each case the Applicant/Tenderer shall use best endeavours to ensure that:
      1. a party offering to act as Sub-Contractor to more than one Lead Applicant/main Tenderer should be open with each Lead Applicant/main Tenderer that such is the case;
      2. a party offering to act as Sub-Contractor should not treat any Lead Applicant/main Tenderer unfairly or unequally. That does not necessarily mean the same terms, conditions and process should be offered to all Applicants/Tenderers because different factors or considerations may well apply. It does, however, mean that there must be sound and justifiable reasons why different terms, conditions or prices are offered to avoid accusations of any price fixing, cartel or other anti-competitive behaviour; and
      3. care must be taken by all parties to ensure that any information passing between the main Tenderer and the potential Sub-Contractor relates solely to the construction of the sub-contract arrangements and its impact on the main Tender. Any information provided by one party to the other must be provided on a strictly ‘need to know’ basis as set out above.
   4. Information relating to the sub-contract arrangements must only be passed from a potential Sub-Contractor ‘up’ to a Lead Applicant/main Tenderer and not from a Lead Applicant/main Tenderer ‘down’ to the proposed Sub-Contractor. This is to ensure that a potential Sub-Contractor has no access to information relating to a Lead Applicant/main Tenderer that it could either use for the purposes of its own Tender (where it is also bidding in its own right) or (where the Sub-Contractor is named by a number of Tenderers) to cross fertilise between Tenders.
   5. Particular care will need to be taken to ensure that proposed Sub-Contractors are not present at Tender preparation meetings or meetings with the Authority where it may gain access to confidential and Tender sensitive information.
   6. If the Authority considers that there has been any co-operation or collusion which actually or potentially undermines or distorts competition or there is a risk of any co-operation or collusion which could potentially undermine or distort competition, it reserves the right to reject the compromised Tender and exclude the relevant Applicants/ Tenderers from the process. Applicants/Tenderers should seek clarification from the Authority if they are uncertain about this or any other potential conflict situation.
8. Changes to the information supplied
   1. Applicants must note that if any of the information supplied in response to its SQ Response changes at any subsequent stage in the procurement process, the Applicant is required to notify the Authority immediately. In the case of a Consortium, including a Prime Contractor submission, it is the responsibility of the Lead Applicant to send any new or changed information to the Authority.
   2. The Authority reserves the right to exclude an Applicant at any stage of the SQ process if it fails to satisfy the Minimum Standards (or having satisfied the Minimum Standards, circumstances change and it no longer satisfies the Minimum Standards) for any criterion. In addition, the Authority reserves the right to exclude an Applicant during the further stages of the process if it no longer satisfies the Minimum Standards for any criterion. During the procurement process, Applicants will be required to confirm to the Authority:
      1. Whenever there is a proposed change in a Consortium structure or other material change, for example, a change in a Significant Sub-Contractor; and/or
      2. At each bid stage that there has been no material change to the information provided to the Authority at the SQ stage.

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Part 2 - SQ Selection Methodology

1. Overall Assessment
   1. The SQ questions are designed to enable the Authority to make an assessment as to the suitability of an Applicant to be invited to tender.
   2. The Authority will assess SQ Responses in three stages:
      1. **Stage 1** - A compliance check will be undertaken to ensure SQ Responses are complete and have been completed and submitted in accordance with the instructions in the SQ. Applicants may be rejected at this stage if the SQ Response is not compliant or the Authority may at its own discretion seek to clarify the SQ Response, if appropriate to do so;
      2. **Stage 2** - Compliant SQ Responses will then be assessed on a pass/fail basis against the Minimum Standards described for the following sections of the SQ as further described in the paragraphs set out in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| SQ Section | Heading | **Criteria** | **Paragraph** |
| Section 1 | Applicant Information | Information only | 18 |
| Section 2 | Grounds for mandatory exclusion | Pass/ Fail | 19 |
| Section 3 | Grounds for discretionary exclusion (Part 1) | Pass/Fail | 20 |
| Section 4 | Economic and Financial Standing | Pass/Fail | 21 |
| Section 5 | Wider Group Details | Pass/Fail | 22 |
| Section 6.1/6.3 | Technical and Professional Ability | Pass/Fail | 23 |
| Section 7 | Modern Slavery Act | Pass/Fail | 24 |
| Question8.1 | Insurance | Pass/Fail | 25 |
| Question 8.2 | Skills and Apprentices | Pass/Fail | 26 |

* + 1. **Stage 3 -** SQ Responses to Part 3 Additional Questions in the Technical Envelope which comprise specific questions to assess Technical and Professional Ability) will then be scored and weighted in accordance with the methodology set out in paragraph 27 below.
  1. Applicants will be ranked and provided that there are sufficient numbers of SQ Responses passing stages 1, 2 and 3 the Authority intends to invite the top [4] scoring Applicants to submit tenders (please note that we reserve the right to invite 5 should the scores be close (less than 1% difference in the scoring between 4th and 5th placed)). If there are fewer than [3] Applicants expressing interest in the Contract and/or fewer than [3] Applicants passing the Minimum Standards, the Authority reserves the right to either abandon this procurement or continue with fewer Applicants provided the Authority is satisfied there are sufficient Tenderers to ensure genuine competition. In the event that one or more of the shortlisted Applicants withdraws from the procurement process soon after ITT, the Authority reserves the right (but shall not be obliged) to invite the next placed Applicant at SQ (or Applicants as appropriate) to ensure genuine competition is retained (provided always that such Applicant(s) passed the Authority’s thresholds and Minimum Standards set out in the SQ).
  2. **Verification**

Whilst reserving the right to request information at any time throughout the procurement process, the Authority may enable the Applicant to self-certify that there are no mandatory/ discretionary grounds for excluding their organisation. When requesting evidence that the Applicant can meet the specified requirements the Authority may only obtain such evidence after the Final Tender evaluation decision i.e. from the winning Applicant only.

* 1. At this stage in the procurement the Authority permits the Applicant to self-certify the following questions:
     1. Section 2 – Grounds for Mandatory exclusion
     2. Section 3 – Grounds for Discretionary exclusion
     3. Section 4 – Economic & Financial Standing (though see further below)
     4. Question 8.1 – Insurance.
     5. Question 8.2 – Skills and Apprenticeships

1. Section 1 - Applicant Information – Information only

Applicants are required to complete Section 1 (Applicant Information) of the SQ. Any Applicant who fails to provide all of the information required may, at the discretion of the Authority, be deemed non-compliant and excluded from the procurement process.

1. Section 2 - Grounds for mandatory exclusion – pass/fail
   1. Applicants must complete Section 2 (Grounds for mandatory exclusion) in the SQ.
   2. Section 2 is assessed on a pass/fail basis. Applicants are required to pass Section 2 in order for their SQ Response to be considered further by the Authority.
   3. In order to pass Section 2, Applicants must provide all of the information required in Section 2 of the SQ and pass the Minimum Standard for Section 2 described in the table below. Any Applicant who fails to satisfy the Minimum Standard will be rejected.

|  |  |
| --- | --- |
| **Criteria** | **Minimum Standard and method of assessment** |
| **Grounds for Mandatory Exclusion** | **Pass/Fail**  You will be excluded from the procurement process if there is evidence of convictions relating to specific criminal offences including, but not limited to, bribery, corruption, conspiracy, terrorism, fraud and money laundering, or if you have been the subject of a binding legal decision which found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate e.g. only minor amounts involved).  If you have answered “yes” to question 2.3 on the non-payment of taxes or social security contributions, and have not paid or entered into a binding arrangement to pay the full amount, you may still avoid exclusion if only minor tax or social security contributions are unpaid or if you have not yet had time to fulfil your obligations since learning of the exact amount due. If your organisation is in that position please provide details using a separate appendix. You may contact the Authority for advice before completing this form.  Any Applicant that answers ‘yes’ to question 2.1 should provide sufficient evidence, in a separate appendix, that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively “self-cleans” the situation referred to in that question. The Applicant has to demonstrate that it has taken such remedial action, to the satisfaction of the Authority in each case.  If such evidence is considered by the Authority (whose decision will be final) as sufficient, the economic operator concerned shall be allowed to continue in the procurement process.  In order for the evidence referred to above to be sufficient, the Applicant shall, as a minimum, prove that it has:  ● paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;  ● clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and  ● taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.  The measures taken by the Applicant shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered by the Authority to be insufficient, the Applicant shall be given a statement of the reasons for that decision. |

1. Section 3 – Grounds for discretionary exclusion – pass/fail
   1. Section 3 - grounds for discretionary exclusion – is also scored on a pass/fail basis. Applicants are required to pass every question in Section 3 of the SQ in order for their responses to be considered further by the Authority. The Authority may exclude an Applicant from the procurement if the Applicant answers yes to any of the questions in Section 3 and the rejection event has occurred in the last three years but may decide, having considered all the relevant circumstances, to allow the Applicant to proceed further.
   2. If an Applicant answers ‘yes’ to any question, Applicants should set out (in a separate appendix) full details of the relevant incident and any remedial action taken subsequently. The Authority will evaluate this evidence before making a decision on whether to exclude the Applicant.
   3. Applicants answering “yes” to any question have the opportunity to provide evidence of “self-cleaning”. Should an Applicant provide sufficient evidence that robust remedial action has taken place subsequently which prevents a re-occurrence of the offence or misdeed, then the Authority will evaluate this evidence before making a decision on whether to exclude the Applicant.
   4. The Authority is also entitled to exclude an Applicant in the event that the Applicant is guilty of serious misrepresentation in providing any information referred to within the Regulations or if the Applicant fails to provide any such information requested by the Authority.
   5. Conflicts of interest

In accordance with question 3.1 (g) of Section 3 of the SQ the Authority may exclude the Applicant if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Applicant to inform the Authority, detailing the conflict in a separate appendix. Provided that it has been carried out in a transparent manner, routine pre-market engagement carried out by the Authority should not represent a conflict of interest for the Applicant.

* 1. Taking account of Applicants’ past performance

In accordance with question 3.1 (i) of Section 3 of the SQ the Authority may assess the past performance of an Applicant (through a certificate of performance provided by a customer or other means of evidence). The Authority may take into account any failure to discharge obligations under the previous principal relevant contracts of the Applicant completing the SQ. The Authority may also assess whether specified Minimum Standards for reliability for such contracts are met.

In addition, the Authority may re-assess reliability based on past performance at key stages in the procurement process (i.e. Applicant selection, Tender evaluation, contract award stage etc.). Applicants may also be asked to update the evidence they provide in this section to reflect more recent performance on new or existing contracts (or to confirm that nothing has changed).

* 1. Minimum Standards for Section 3 of the SQ are set out in the table below.

|  |  |
| --- | --- |
| **Criteria** | **Minimum Standard and method of assessment** |
| **Grounds for Discretionary Exclusion** | **Pass/Fail**  The Authority may exclude you from the procurement exercise if you answer “yes” to any of the questions in this section but may decide, having considered all the relevant circumstances, to allow you to proceed further. If you answer ‘yes’ to any question, please set out (in a separate appendix) full details of the relevant incident and any remedial action taken subsequently. The Authority will evaluate this evidence before making a decision on whether to exclude you.  The Authority is also entitled to exclude you in the event that you are guilty of serious misrepresentation in providing any information referred to within the Public Contracts Regulations 2015 or you fail to provide any such information requested by us.  Any Applicant that answers ‘yes’ to question 3.1 should provide sufficient evidence, in a separate appendix, that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively “self-cleans” the situation referred to in that question. The Applicant has to demonstrate that it has taken such remedial action, to the satisfaction of the Authority in each case.  If such evidence is considered by the Authority (whose decision will be final) as sufficient, the economic operator concerned shall be allowed to continue in the procurement process.  In order for the evidence referred to above to be sufficient, the Applicant shall, as a minimum, prove that it has:  ● paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;  ● clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and  ● taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.  The measures taken by the Applicant shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered by the Authority to be insufficient, the Applicant shall be given a statement of the reasons for that decision. |

1. Section 4 – Economic and Financial Standing – Scored as pass/fail
   1. Section 4 is assessed on a pass/fail basis.
   2. Applicants are required to pass Section 4 in order for their responses to be considered further by the Authority.
   3. In order to pass Section 4, Applicants must provide all of the information necessary to facilitate the assessment. Any Applicant who fails to provide all of the information required will, at the discretion of the Authority, have been deemed to fail.
   4. In order to pass Section 4, Applicants must provide all of the information required in Section 4 of the SQ and pass the Authority’s minimum level of economic and financial standing as set out in paragraph 22.5 below. Any Applicant who fails to provide all of the information required or who fails to satisfy the Minimum Standard may be rejected, at the discretion of the Authority. Where the Applicant is a Consortium, each member of the Consortium must pass the Minimum Standard as described below.

**Minimum Standard of Economic and Financial Standing**

|  | **FINANCIAL INFORMATION** |
| --- | --- |
| **Criteria** | **Minimum Standard and method of assessment** |
| Question 5.1 | **Turnover Threshold – Pass/Fail**  Applicants must provide all of the information required. Any Applicant who fails to provide all of the information required will, at the discretion of the Authority have been deemed to fail.  Applicants must provide the information set out at Section 4 of the Selection Questionnaire.  The minimum standards have been set in order to give the Authority the assurance that those Applicants to whom it issues an Invitation to Tender and ultimately the company which is awarded the contract is financially stable and that the contract will not excessively dominate the existing business of the winning bidder.  The Authority will use CreditSafe, an independent third party, to obtain financial reports and accounts for Applicants and use it to verify the Applicant’s fulfilment of these minimum standards for economic and financial standing. |
| **Minimum Turnover Threshold**  Step 1 | Minimum Turnover Requirement:  The Applicant’s average turnover in the past two years must be in excess of £15million (in pounds sterling[[1]](#footnote-1)) (the ‘Turnover Threshold’) based on accounts available from CreditSafe or information supplied by the Applicant. |
| **Step 2 – Assessment of the financial statements and Creditsafe report** | The Authority wants to be assured that the Contractor who is awarded the contract has sufficient economic and financial resources to perform the Services.  The Authority will use CreditSafe to obtain financial reports and accounts to verify that the Tenderer submitting the offer evaluated as being the most economically advantageous has fulfilled the following test of economic and financial standing.  If no reports and accounts are available through CreditSafe, the Tenderer will be asked to provide other evidence that they satisfy this test:  *Be financially sound and have sufficient economic resources to perform the contract. Relevant factors include the Tenderer’s annual turnover, liquidity, gearing and cash flow.*  In the event that the Authority does not accept that the Tenderer submitting the most economically advantageous tender does satisfy this test, the Tenderer will be disqualified and the Authority will award the Contract to the second placed bidder (provided that bidder passes this and all other pass/fail tests).  If no Tenderer meets this test, the Authority reserves the right, at its absolute discretion, to abandon the procurement. |
| For the avoidance of doubt, where an Applicant is constituted by way of:   * a single organisation; the single organisation must pass stage 1 and stage 2; * a Consortium: * the Consortium (together) must pass the Turnover Threshold. In order to calculate whether a Group passes the Turnover Threshold, the 2 year mean average turnover for the Lead Applicant and every other member of the Group will be calculated and for each of them, multiplied by their (actual or anticipated) percentage of Turnover Threshold (as identified in the completed attachment in the legal entity to be formed to deliver the Contract and the totals will then be added together. It is this combined figure that will be used to determine whether the Group passes the Turnover Threshold; * Where the Consortium shall form a legal entity all Consortium parties with an equity share shall EACH pass Stage 2. * a Prime Contractor with Significant Sub-contractors; * the Prime Contractor with any Significant Sub-contractor(s) must pass the Turnover Threshold. In order to calculate whether a Prime Contractor with any Significant Sub-contractor(s) passes the Turnover Threshold, the 2 year mean average turnover for the Prime Contractor and every other Significant Subcontractor(s) will be calculated and for each of them, multiplied by their (actual or anticipated) percentage of Turnover Threshold (as identified in the completed attachment and the totals will then be added together. It is this combined figure that will be used to determine whether the Prime Contractor with any Significant Sub-contractors passes the Turnover Threshold; * the Prime Contractor and the Significant Sub-Contractors shall EACH pass Stage 2 individually. | |
| **Mitigating Solutions:**  **Where an Applicant does not meet the minimum standards set out in Step 1 or Step 2, the Applicant will be deemed to have failed, unless the Applicant has, in the reasonable opinion of, and at the discretion of the Authority, only narrowly missed passing the minimum standard or not satisfied the tests for good reason or the Applicants can provide**:   1. letters of support from its ***parent company*** (or, in the case of a group, including prime Contractor bids, parent companies of the lead member and/or relevant group member/significant sub-Contractor) that can meet the minimum standards. If the financial standing of the parent company is sufficient to provide the assurance the Authority requires then the Authority will require the parent company to provide a parent company guarantee in the form set out in the tender documentation and the letter of support should confirm the parent company’s consent to the provision of the parent company guarantee; 2. management accounts together with a statement from the Applicant’s bank to show financial trends/operating turnover of the company; and/or 3. a bond from a reputable bondsman in a form to be agreed with the Authority. | |

1. Section 5: Wider Group Details
   1. Applicants must complete Section 5 (Wider Group Details) in the SQ.
   2. Section 5 is assessed on a pass/fail basis. Applicants are required to pass Section 5 in order for their SQ Response to be considered further by the Authority. The Minimum Standard is set out in paragraph 22.3 below.
   3. In order to pass Section 5, Applicants must either
      1. have indicated in their response to question 1.2 that they are not part of a wider group and therefore Section 5 is not applicable to them; or
      2. if they have indicated in their response to question 1.2 that they are part of a wider group provide all of the information required in Section 5 of the SQ.
   4. Any Applicant who fails to satisfy this Minimum Standard will be excluded from the process and not be further considered.
2. **Section 6 – Technical and Professional Ability**
   1. Applicants must complete Section 6 (Technical and Professional Ability) in the SQ.
   2. Section 6 is assessed on a pass/fail basis. Applicants are required to pass Question 6 in order for their SQ Response to be considered further by the Authority. The Minimum Standard is set out in paragraph 23.3 below.
   3. In order to pass Question 6, Applicants must
      1. have provided 3 examples of contracts of similar services provided by the Applicant in the past three years in response to Question 6.1; or have provided an explanation for why no examples can be given in response to Question 6.3;
      2. have provided details of healthy supply chains with sub-contractors if the Applicant intends to sub-contract any of the services.
   4. An Applicant who fails to satisfy this Minimum Standard will be excluded from the process and not be further considered.
3. Section 7: Modern Slavery Act 2015
   1. Applicants must complete Section 7 (Modern Slavery Act 2015) in the SQ.
   2. Section 7 is assessed on a pass/fail basis. Applicants are required to pass Section 7 in order for their SQ Response to be considered further by the Authority. The Minimum Standard is set out in paragraph 23.3 below.
   3. In order to pass Section 7, Applicants must either
      1. have indicated in their response to question 7.1 that it does not apply to them; or
      2. have indicated in their response to question 7.1 that it does apply to them and confirmed in their response to 7.2 that it is compliant with the annual reporting requirements contained within Section 54 of the Modern Slavery Act 2015.
   4. An Applicant who fails to satisfy this Minimum Standard will be excluded from the process and not be further considered.
4. Question 8.1: Insurance
   1. Applicants must complete Question 8.1 (Insurance) in the SQ.
   2. Question 8.1 is assessed on a pass/fail basis. Applicants are required to pass Section 8 in order for their SQ Response to be considered further by the Authority. The Minimum Standard is set out in paragraph 8.1a of the SQ below.
   3. In order to pass Question 8.1Applicants must self-certify that they already have, or can commit to obtain, prior to the commencement of the Contract, the levels of insurance indicated. An applicant who fails to satisfy this Minimum Standard will be excluded from the process and not be further considered.
5. Question 8.2 – Skills and Apprentices
   1. Applicants must complete Question 8.2 (Skills and Apprentices) in the SQ.
   2. Question 8.2 is assessed on a pass/fail basis. Applicants are required to pass Question 8.2 in order for their SQ Response to be considered further by the Authority. The Minimum Standard is set out in paragraph 26.3 below.
   3. In order to pass Question 8.2, Applicants must either
      1. have indicated in their response to question 8.2.a that it does not apply to them; or
      2. have indicated in their response to question 8.2.a that it does apply to them and confirmed in their response to 8.2.b and c that it can provide supporting evidence if required to do so and has a policy in place.
   4. An Applicant who fails to satisfy this Minimum Standard will be excluded from the process and not be further considered.
6. Part 3: Additional Questions Technical and Professional Ability
   1. Applicants who pass Sections 1 to 7 and Questions 8.1 and 8.2 of the SQ will then be assessed or scored on the basis of their responses to Part 3 Additional Questions in the Technical Envelope. Applicants must complete all Additional Questions (Technical and Professional Ability) on the Portal. The Authority is entitled to exclude an Applicant from the procurement exercise if the Applicant fails to answer any of the questions in Part 3 Technical Envelope.
   2. The Authority is looking for evidence that the Applicant demonstrates the necessary technical resources, experience and has the technical and professional ability to perform the Services.
   3. The Additional Questions are set out in Part 3 on the Portal and are included in at Annex Two to this SQ guidance for ease of reference.
   4. The Additional Questions in Part 3 Technical Envelope are weighted in accordance with the stated weightings against each question set out in the table below and responses will be scored on a system of 0 – 5 points as indicated in the table at 27.5 below.

|  |  |  |
| --- | --- | --- |
| Question | Title | Weighting |
| 2.1.1 | Organisations should demonstrate experience of operating multiple sites of a varying nature, for local authorities of a similar nature to RBKC . Responses must include experience of contracts where building responsibilities (i.e. full buildings maintenance responsibility) form part of the contract. | 40% |
| 2.1.2 | Organisations should demonstrate experience of delivering improvement projects above £2m in value for a single contract that have improved the building infrastructure, and in turn increased participation through improved service delivery. Responses must include details of how the funds were raised. | 15% |
| 2.1.3 | Organisations should provide examples of projects / programmes where additional sources of income have been achieved in order to benefit the management fee. | 15% |
| 2.1.4 | Organisations should provide examples of Health initiatives and programmes that are successfully run and managed with partners to help promote Health and tackle Health inequalities. | 15% |
| 2.1.5 | The Candidate must detail experience of developing and delivering a variety of sports development initiatives with a focus of engaging inactive participants to services, and supporting participants to fulfil their potential in sport and physical activity. | 15% |

* 1. If a SQ Response to a scored question in any of the Questions 2.1.1 to 2.1.5 scores 2 or less the SQ Response will fail and the Applicant will be rejected.

**Scoring System – Technical and Professional Ability**

* 1. The following scoring system will be used to score each of the SQ Response to Additional questions in Part 3 (technical and professional ability questions of the SQ).

|  |  |  |
| --- | --- | --- |
| **Technical and Professional Ability** | | |
| **Score** | **Rating** | **Basis for Awarding Score** |
| 0 | **Unacceptable** | The requested response and required information is omitted/no details provided/no relevant evidence provided. |
| 1 | **Poor** | The response addresses some parts of the question but contains insufficient detail or explanation to evidence the Applicant’s achievements and technical capability in this market and relevance to the Authority’s requirements and/or overall limited evidence of and low confidence in the Applicant’s technical ability, resources and/or experience to provide the Services. |
| 2 | **Fair** | The response addresses most parts of the question and lacks details in some aspects but provides some evidence of the Applicant’s achievements and technical capability in this market and relevance to the Authority’s requirements and/or overall fair level of confidence in the Applicant’s technical ability, resources and/or experience to provide the Services. |
| 3 | **Satisfactory** | The response addresses all aspects of the question in sufficient detail and shows relevant evidence of the Applicant’s achievements and technical capability in this market and relevance to the Authority’s requirements and/or overall satisfactory evidence of and satisfactory confidence in the Applicant’s technical ability, resources and/or experience to provide the Services. |
| 4 | **Good** | The response addresses all aspects of the question very well and shows considerable relevant evidence of the Applicant’s achievements and technical capability in this market and relevance to the Authority’s requirements and/or overall good evidence of and good confidence in the Applicant’s technical ability, resources and/or experience to provide the Services. |
| 5 | **Excellent** | The response addresses all aspects of the question extremely well and in detail and shows extensive relevant evidence of the Applicant’s achievements and technical capability in this market and relevance to the Authority’s requirements and overall excellent evidence of and high level of confidence in the Applicant’s technical ability, resources and/or experience to provide the Services. |

* 1. The scores allocated for each SQ response to the Additional Questions in Part 3 will be agreed by the evaluation team. The agreed score for each response will then be multiplied by the applicable weighting as set out at paragraph 27.3 above. The weighted scores will be added together to make the total score for the Applicant.
  2. The Applicants will be ranked as set out at 17.3 above.
  3. Provided Applicants pass the compliance checks at Stage 1 and the subsequent assessments at Stage 2 and Stage 3, they will achieve an overall score for technical and professional ability from evaluation of the responses to Part 3 of the SQ.

Part 3 – General Conditions and Important Notices

2. Conflict of interest
   1. The Authority is concerned to avoid conflicts of interest and any undue influence which may arise as a result of such conflicts. In particular, a conflict of interest may arise where:
      1. An Applicant/Lead Applicant and/or Consortium member/Sub-Contractor has been involved in advising the Authority on matters relating to the Contract or in the preparation of documents or information relating to the Contract; and/or
      2. A director, company secretary, or a staff member from an Applicant, Lead Applicant and/or Consortium member/Sub-Contractor is related to one of the Authority’s officers or is a member or related to a member of the Authority. Such a relationship may not create a conflict of interest if it is declared as part of the SQ Response, and can therefore be managed by the Authority in an open and transparent way.
   2. Applicants should note that the Authority reserves the right at its sole discretion to disqualify or reject Applicants where there is undue influence as a result of an actual or potential conflict of interest involving the Applicant (and/or its associated Consortium members/ Sub-Contractors). Applicants are therefore advised to review carefully the prior or current involvement of the Applicant, Consortium members and Sub-Contractors with the Authority and to contact the Authority (as relevant) prior to submission of the completed SQ Response to discuss any actual or potential conflicts they have identified.
3. Non-collusion
   1. Any Applicant or any person employed by the Applicant, whether or not to the Applicant’s knowledge, who, in connection with this procurement and/or the potential Contract:
      1. offers any inducement, fee or reward to any member or officer of the Authority or any person acting as an advisor for the Authority in connection with the procurement and/or the potential Contract; and/or
      2. does anything which would constitute a breach of the Bribery Act 2010; and/or
      3. canvasses any of the persons associated with the Contract or / and this procurement process in connection with the procurement and/or the potential Contract; and/or
      4. contacts any officer of the Authority prior to the Contract being awarded about any aspect of the Contract in a manner not permitted by the SQ (including without limitation a contact for the purposes of discussing the possible transfer to the employment of the Applicant of such officer for the purpose of the procurement and/or the potential Contract), will be disqualified (without prejudice to any other civil remedies available to the Authority and without prejudice to any criminal liability which such conduct by an Applicant may attract).
   2. Any Applicant which, in connection with this procurement and/or the potential Contract colludes with another Applicant with a view to disrupting the fairness and competitiveness of the procurement process will be disqualified (without prejudice to any other civil remedies available to the Authority and without prejudice to any criminal liability that such conduct by an Applicant may attract).
4. Confidentiality
   1. Subject to the exceptions referred to in this paragraph 11, the information in the SQ and the Draft Procurement Documents (‘Information’) is made available by the Authority on condition and understanding that:
      1. Applicants shall not copy, reproduce, distribute or pass the Information to any other person at any time or allow any of these things to happen; and
      2. Applicants shall not use the Information for any purpose other than for the purposes of making, or deciding whether to make, an expression of interest.
   2. Applicants shall not discuss Information nor any aspect of this procurement process in the media nor make any media or publicity statement or comment in relation to it without the express consent of the Authority in writing.
   3. Applicants shall treat all Information relating to their SQ Response as confidential and where the Information needs to be copied to parties supporting the Applicant or Consortium member then the Applicant shall require such parties (‘disclosees’) to also treat the Information as confidential. The Applicant will remain responsible for any breach by its disclosees. The Applicant may disclose, distribute or pass Information to another person associated with its SQ Response (including but not limited to, for example, a Consortium member, the Applicant’s insurers or advisers) if either:
      1. this is done for the sole purpose of enabling a SQ Response to be made and the person receiving the Information undertakes in writing jointly for the benefit of both the Applicant and the Authority to keep the Information confidential on the same terms as set out in this paragraph 11; and
      2. the Applicant obtains the prior written consent of the Authority in relation to such disclosure, distribution or passing of Information (the Authority’s consent may be on such conditions as it sees fit (including as to entry into legally binding confidentiality undertakings)).
   4. The Authority may disclose detailed information relating to the Applicant and/or the SQ Response to the Authority’s members, officers, employees, agents or advisors.
   5. The Authority reserves the right to disseminate information that is relevant to the Contract and/or the procurement to all Applicants, even if the information has only been requested by one Applicant, subject to the duty to protect any Applicant’s commercial confidence in its SQ Response. The Authority will act reasonably as regards the protection of commercially sensitive information relating to the SQ Response. Commercially sensitive information will be kept confidential and only disclosed within the Authority and to the Authority’s advisers who reasonably require access to such commercially sensitive information in connection with this procurement process and the Contract.
5. Publicity
   1. Applicants shall not undertake (or permit to be undertaken) at any time, whether at the SQ stage, any other stage of the procurement process, or after any Contract award, any publicity activity with any section of the media in relation to the Contract other than with the prior written agreement of the Authority. Such agreement shall extend to the content of any publicity. In this paragraph the word ‘media’ includes (but without limitation) radio, television, newspapers, trade and specialist press, the internet and email accessible by the public at large and the representatives of such media.
6. Copyright
   1. The copyright in the SQ and all Draft Procurement Documents is vested in the Authority. The SQ and all Draft Procurement Documents shall not, either in whole or part, be reproduced, copied, distributed, stored in any medium or otherwise made available to any other party in any circumstances, for any other purpose than that for which it is intended, without the prior written consent of the Authority. The SQ and any document issued to supplement it, is and shall remain the property of the Authority and must be returned upon demand.
7. FOIA and disclosure of Information
   1. The Authority is subject to the requirements of the Freedom of Information Act 2000 (‘FOIA’) and the Environmental Information Regulations 2004 (‘EIR’), the subordinate legislation made under the FOIA/EIR and any guidance and/or codes of practice issued (from time to time) in relation to such legislation. Applicants should be aware of the Authority’s obligations and responsibilities under the FOIA and EIR to disclose, on written request, recorded information held by the Authority. Information provided by Applicants in connection with the Contract and the procurement, or with any Contract that may be awarded as a result of this procurement, may therefore have to be disclosed by the Authority in response to such a request, unless the Authority decides that one of the statutory exemptions under the FOIA and/or the EIR applies.
   2. Applicants should also note that in accordance with the Local Audit and Accountability Act 2014, the Authority may be obliged to disclose all books, deeds, contracts, bills, vouchers and receipts which relate to payments relating to the Contract which appear in the audited accounts. This might include information which the Applicant considers is commercially sensitive information.
   3. Applicants may provide information to the Authority in connection with this procurement, or with any Contract that may be awarded as a result of this procurement, which is commercially sensitive andconfidential in nature and which Applicants may wish to be held in confidence. **Applicants must clearly indicate by highlighting specific text, figures and diagrams, etc., which parts of their SQ Response submission are to be considered commercially sensitive and confidential and why they are considered to be so, along with the time period for which they will remain confidential in nature.** The use of blanket protective markings such as ‘commercial in confidence’ will not be acceptable. In addition, marking any material as commercially sensitive andconfidential or equivalent should not be taken to mean that the Authority accepts any duty of confidentiality by virtue of such marking. It should be noted that even where Applicants have indicated that information is confidential the Authority may be required to disclose it under the FOIA and/or the EIR if a request is received.
   4. In certain circumstances, and in accordance with the Code of Practice issued under section 45 of the FOIA or the EIR, the Authority may consider it appropriate to ask Applicants for their views as to the release of any information before a decision on how to respond to a request is made. In dealing with requests for information under the FOIA, the Authority must comply with a strict timetable and the Authority would, therefore, expect a timely response to any consultation within two Business Days.
   5. The decision as to which information will be disclosed is reserved to the Authority, notwithstanding any consultation with any Applicant(s).
8. Disqualification/Rejection
   1. The Authority shall disqualify any Applicant if any of the mandatory grounds for exclusion under Regulation 38 of the 2016 Regulations apply in accordance with Part 2 (SQ Selection Methodology) of the SQ.
   2. The Authority reserves the right at its sole discretion to disqualify or reject an Applicant where:
      1. the Applicant fails to comply with the requirements and conditions of the Authority set out in the SQ;
      2. the Applicant (or, where relevant, the Lead Applicant (and Consortium members/Significant Sub-Contractor(s)) is guilty of a serious misrepresentation in relation to its application and/or the procurement process;
      3. there is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the Applicant (or, where relevant, the Lead Applicant and Consortium members/Significant Sub-Contractor(s));
      4. any of the discretionary grounds for exclusion under Regulation 38 of the 2016 Regulations apply in accordance with paragraph 23 of Part 2 (SQ Selection Methodology) of the SQ;
      5. the Applicant fails to provide a satisfactory response to any questions in the SQ or inadequately or incorrectly completes any question; or
      6. the Applicant fails to submit its completed SQ Response before the Deadline.
   3. The Authority reserves the right to:
      1. cancel the SQ at any stage and the selection process at any stage;
      2. require an Applicant to clarify any part of its SQ Response in writing and/or provide additional information (the Authority reserves the right to reject or disqualify an Applicant which fails to respond to any such request adequately or by the deadline set by the Authority);
      3. amend the terms, conditions and/or requirements of the SQ/Selection Methodology/procurement process or timetable; and/or
      4. abandon or recommence this procurement at any stage.
9. Accuracy of the information supplied
   1. The information contained within and supplied with the SQ and the Draft Procurement Documents has been prepared by the Authority in good faith but does not purport to be comprehensive, complete and exhaustive or to have been independently verified nor to contain all of the information that a prospective Applicant may require.
   2. Applicants should not rely on the information supplied and should carry out their own due diligence checks and verify the accuracy of the information provided by the Authority. No information is warranted by the Authority or its advisers nor shall any information be deemed a promise or representation as to the future. Applicants shall further be deemed to have carried out all necessary research, investigations and due diligence and all necessary enquiries in order to have satisfied themselves as to the nature, extent, volume and requirements of the Contract and any other matter which may affect their responses to the SQ.
   3. The Authority does not and its directors, officers, members, partners, employees, staff, agents or advisors do not:

* make any representation or warranty (express or implied) as to, or accept any liability or responsibility in relation to, the adequacy, accuracy, reasonableness or completeness of the information provided or any part of it (including but not limited to loss or damage arising as a result of reliance by the Applicant on the information); Applicants should make their own investigations and their own independent assessment of the resources required for the commercial risk associated with the Contract and should seek their own professional technical, financial and legal advice;
* accept any responsibility for the information contained in the SQ or the Draft Procurement Documents or for its accuracy or completeness, or at any other stage of the procurement process leading up to the execution of the Contract, nor shall any of them be liable for any loss, damage or expense (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication. Only the express terms of any written Contract relating to the subject matter of this procurement, as and when it is executed shall have any contractual effect in connection with the matters to which it relates;
* accept liability for any costs incurred by any Applicant responding to the SQ, whether incurred by them directly or their advisers or Sub-Contractors. This applies whether or not an Applicant is successful and whether the procurement reaches a conclusion, however many stages it involves or if it is abandoned or recommenced.
  1. Applicants considering entering into a contractual relationship with the Authority should make their own enquiries and investigations of the Authority’s requirements beforehand.
  2. The Authority makes no representations or warranties regarding the Applicant’s financial status or stability, technical competence or ability in any way to carry out the Contract.

1. Costs and expenses
   1. All Applicants are solely responsible for their costs and expenses incurred in connection with the preparation and submission of the SQ Response, all future stages of the selection, evaluation and award process. Under no circumstances will the Authority, or any of its advisers, be liable for any costs or expenses borne by the Applicant or its associated relevant organisations or any of its advisers in this process whether the Applicant is successful or otherwise and nor if the procurement is abandoned, amended, cancelled, aborted or re-procured.

Appendix A: Glossary

Words and phrases with an initial capital letter used in the SQ shall have the meaning given in the glossary below.

| Term | Meaning |
| --- | --- |
| Applicant(s) (or “you”) | an economic operator (whether a single bidding organisation or a Consortium) who submits or intends to submit a SQ Response. Reference to Applicant also includes any Consortium member or Sub-Contractor in a proposed Consortium as the context requires; |
| Authority | The Royal Borough of Kensington and Chelsea; |
| Tenderer | an Applicant who submitted a SQ and who is selected to tender for the Contract(s); |
| Business Days | means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London; |
| Consortium | a group of economic operators as described in Regulation 19(3); |
| Contract | the contract to be awarded for the Provision of Leisure Management Services as described in the Draft Procurement Documents to be entered into between the Authority and the Contractor; |
| Contractor | the successful Tenderer who will enter into the Contract with the Authority for the delivery of the Services; |
| Draft Procurement Documents | the draft procurement documents uploaded on the Portal made available to Applicants for the purpose of Regulation 53; |
| Invitation to Submit Final Tenders (or ISFT) | [the Authority’s invitation to submit Final Tenders which is issued to Tenderers;] |
| Invitation to Submit Initial Tender (or ISIT) | the Authority’s invitation to submit an Initial Tender which is issued to Tenderers; |
| Lead Applicant | the named Lead Applicant in a Consortium, as identified in the SQ Response, that is responsible for the overall preparation and submission of the SQ Response and any subsequent Tender on behalf of all the Consortium; |
| Minimum Standards | the Authority’s minimum standards of economic and financial standing and/or technical and professional ability for the purposes of Regulation 38 of the 2016 Regulations as set out in the SQ; |
| OJEU Contract Notice | the contract notice published in the Official Journal of the European Union for the Contract; |
| Portal | means Capital E-Sourcing portal - www.capitalesourcing.com |
| SQ or Selection Questionnaire | the Authority’s Selection Questionnaire for completion by Applicants wishing to express interest in the Contract; |
| SQ Response | a completed response to the SQ submitted by an Applicant in accordance with the instructions and conditions in the SQ; |
| Prime Contractor | means a Lead Applicant of a Consortium which intends that only the Lead Applicant will enter the Contract with the Authority and the other members of the Consortium will participate as Sub-Contractors; |
| Regulations | The Public Contracts Regulations 2015 as amended by the Public Procurement (Amends, Repeals and Revocations) Regulations 2016 (and references to any Regulation is a reference to a Regulation in the Regulations unless stated otherwise); |
| Selection Methodology | the way in which the Authority intends to assess each Applicant’s SQ Response; |
| Services | means the Leisure Management services; |
| Significant Sub-Contractor | where an Applicant has proposed a sub-contracting arrangement, it means a proposed Sub-Contractor where that proposed Sub-Contractor will be contributing significantly to the Contract, either in terms of value or importance; |
| SPV | a special purpose vehicle (a legal entity) established or to be established by or on behalf of an Applicant/Tenderer for the purpose of delivering the Contract; |
| Sub-Contractor | means a member of a Consortium that would not enter the Contract with the Authority but would participate as a sub-contractor to the Prime Contractor; |
| Tender | a tender comprising a Tenderer’s offer and proposed solution to provide the Services. |

Annex One

**Mandatory Exclusion Grounds**

**Public Contract Regulations 2015 Reg 57(1), (2) and (3); Concession Contracts Regulation 2016 reg 38(8)-(10)**

**Public Contract Directives 2014/24/EU Article 57(1)**

**Participation in a criminal organisation**

Participation offence as defined by section 45 of the Serious Crime Act 2015

Conspiracy within the meaning of

* section 1 or 1A of the Criminal Law Act 1977 or
* article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983

where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime;

**Corruption**

Corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;

The common law offence of bribery;

Bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010, or section 113 of the Representation of the People Act 1983;

**Fraud**

Any of the following offences, where the offence relates to fraud affecting the European Communities’ financial interests as defined by Article 1 of the convention on the protection of the financial interests of the European Communities:

* the common law offence of cheating the Revenue;
* the common law offence of conspiracy to defraud;
* fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978;
* fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006;
* fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994;
* an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;
* destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969;
* fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006;
* the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act;

**Terrorist offences or offences linked to terrorist activities**

Any offence:

* listed in section 41 of the Counter Terrorism Act 2008;
* listed in schedule 2 to that Act where the court has determined that there is a terrorist connection;
* under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by the previous two points;

**Money laundering or terrorist financing**

Money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002

An offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996

**Child labour and other forms of trafficking human beings**

An offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004;

An offence under section 59A of the Sexual Offences Act 2003

An offence under section 71 of the Coroners and Justice Act 2009;

An offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994

An offence under section 2 or section 4 of the Modern Slavery Act 2015

**Non-payment of tax and social security contributions**

Breach of obligations relating to the payment of taxes or social security contributions that has been established by a judicial or administrative decision.

Where any tax returns submitted on or after 1 October 2012 have been found to be incorrect as a result of:

* HMRC successfully challenging the potential supplier under the General Anti – Abuse Rule (GAAR) or the “Halifax” abuse principle; or
* a tax authority in a jurisdiction in which the potential supplier is established successfully challenging it under any tax rules or legislation that have an effect equivalent or similar to the GAAR or “Halifax” abuse principle;
* a failure to notify, or failure of an avoidance scheme which the supplier is or was involved in, under the Disclosure of Tax Avoidance Scheme rules (DOTAS) or any equivalent or similar regime in a jurisdiction in which the supplier is established

**Other offences**

Any other offence within the meaning of Article 57(1) of the Directive as defined by the law of any jurisdiction outside England, Wales and Northern Ireland

Any other offence within the meaning of Article 57(1) of the Directive created after 26th February 2015 in England, Wales or Northern Ireland

**Discretionary exclusions – reg 38(15) – (16) of the Concession Contracts Regulations 2016**

**Obligations in the field of environment, social and labour law.**

Where an organisation has violated applicable obligations in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Directive (see copy below) as amended from time to time; including the following:-

* Where the organisation or any of its Directors or Executive Officers has been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years.
* In the last three years, where the organisation has had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds of alleged unlawful discrimination.
* In the last three years, where any finding of unlawful discrimination has been made against the organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or incomparable proceedings in any jurisdiction other than the UK).
* Where the organisation has been in breach of section 15 of the Immigration, Asylum, and Nationality Act 2006;
* Where the organisation has a conviction under section 21 of the Immigration, Asylum, and Nationality Act 2006;
* Where the organisation has been in breach of the National Minimum Wage Act 1998.

**Bankruptcy, insolvency**

Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation’s assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;

**Grave professional misconduct**

Guilty of grave professional misconduct

**Distortion of competition**

Entered into agreements with other economic operators aimed at distorting competition

**Conflict of interest**

Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure

**Been involved in the preparation of the procurement procedure.**

**Prior performance issues**

Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.

**Misrepresentation and undue influence**

The organisation has influenced the decision-making process of the contracting authority to obtain confidential information that may confer upon the organisation undue advantages in the procurement procedure, or to negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

Additional exclusion grounds

**Breach of obligations relating to the payment of taxes or social security contributions.**

**ANNEX X Extract from Public Procurement Directive 2014/24/EU**

**LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN ARTICLE 18(2) —**

* ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
* ILO Convention 98 on the Right to Organise and Collective Bargaining;
* ILO Convention 29 on Forced Labour;
* ILO Convention 105 on the Abolition of Forced Labour;
* ILO Convention 138 on Minimum Age;
* ILO Convention 111 on Discrimination (Employment and Occupation);
* ILO Convention 100 on Equal Remuneration;
* ILO Convention 182 on Worst Forms of Child Labour;
* Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
* Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
* Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention)
* Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

**Consequences of misrepresentation**

A serious misrepresentation which induces a contracting authority to enter into a contract may have the following consequences for the signatory that made the misrepresentation:-

* The contracting authority may sue the supplier for damages and may rescind the contract under the Misrepresentation Act 1967.
* If fraud, or fraudulent intent, can be proved, the potential supplier or the responsible officers of the potential supplier may be prosecuted and convicted of the offence of fraud by false representation under s.2 of the Fraud Act 2006, which can carry a sentence of up to 10 years or a fine (or both).

1. Where the accounts are not in pounds sterling Applicants must confirm which currency their turnover is measure in and the Authority will use the Bank of England’s sport rate of exchange on the submission date of the SQ to convert the currency into pounds sterling in order to carry out these checks [↑](#footnote-ref-1)