



## Pre-Tender Market Engagement

### Planning Decisions Technical Advice CPD4124081

**Authority:** Department for Levelling Up, Housing, Communities (DLUHC) (“the Authority”).

**Date Response required:** 12:00 pm (GMT) – 2<sup>nd</sup> September 2022

## 1 PURPOSE

- 1.1 The Department for Levelling Up, Housing and Communities (DLUHC) requires specialist technical advice on matters related to planning proposals (and potential proposals) and planning consents. This advice will support the work of the Department primarily (but not exclusively) relating to providing advice on the application of the Special Development Order (SDO) regime under the Town and Country Planning Act 1990.
- 1.2 The nature of the advice required will depend upon the planning proposals that may be submitted by other government departments (OGDs) for consideration by, or on behalf of, the Secretary of State for Levelling Up, Housing and Communities (SSLUHC). Planning proposals may also be submitted by others working in, on behalf of, or with DLUHC. All advice, however, will need to focus on supporting the Secretary of State in his role as decision maker. No advice will be procured under this contract on behalf of the promoters of a planning proposal.
- 1.3 This Pre-Tender Market Engagement (PTME) seeks information to support the potential procurement of a Supplier (herein referred to as a “**Potential Supplier**”) to provide expert specialist technical advice on planning, environmental, and habitats matters related to planning proposals (and potential proposals) that advance the government’s priorities and that will support the economic growth of the country. The purpose of this PTME is to:
  - a) help define the requirement.
  - b) help provide a better understanding of the feasibility of the requirement.
  - c) understand the best approach.
  - d) understand the capacity of the market to deliver, within very challenging timescales, and the possible risks involved.
  - e) provide the market with an opportunity to ask questions, raise queries and identify any issues so that they can be addressed at an early stage.
  - f) help provide a better understanding of the potential costs for these services.
- 1.4 The Authority shall maintain commercial confidentiality of information received during the PTME.

## 2 INTRODUCTION

- 2.1 DLUHC supports communities across the UK to thrive, making them great places to live and work. The Secretary of State for Levelling Up, Housing and Communities (SSLUHC) is the Minister with responsibility for the planning system in England, supported by officials in the Department’s Planning Directorate.
- 2.2 The Planning Response Unit (“the PRU”) is a small team within the Planning Directorate that comprises policy and planning professionals from the Civil Service and secondees from the Planning Inspectorate. The purpose of the PRU is to provide a response function that can react to situations that require professional planning expertise, and decision

making on specific planning proposals that the Government requires to meet its objectives.

- 2.3 To make sure that robust planning decisions are made by Ministers and officials, the PRU can require specialist technical advice on matters related to development to which the Planning Acts (particularly the Town and Country Planning Act 1990) and a variety of associated regulatory regimes (such as the environmental, habitats, hazardous substances, and health and safety, regulatory and permit regimes) apply.
- 2.4 DLUHC does not have the in-house knowledge and skills to provide this advice. There is a need, therefore, for a Potential Supplier who can provide the range of services that PRU may require, and deliver high quality products, often at short notice and to hard deadlines. Further details of the requirement and the range of services are given below.
- 2.5 The PRU's work generally covers four types of activity:
  - a) Pre-proposal research and informal planning advice. Any pre-proposal advice provided to other government departments will not comprise a formal decision and is without prejudice to any formal consideration of a proposal.
  - b) Advice to Ministers on whether to grant planning consent for proposed development and the preparation of any legislation that may be required following the Planning Minister's decisions.
  - c) Discharge of any conditions attached to a planning consent.
  - d) Making sure that any activity is in accordance with the relevant planning consent and consider appropriate action where this may not be the case.
- 2.6 The PRU requires a call-on-call-off arrangement to access specialist technical advice, independent of those promoting the development. The advice is expected to be primarily related to activities b) – d) above.
- 2.7 As noted above, the nature of the advice will depend upon the planning proposals that may be submitted by OGDs for consideration by, or on behalf of, the SSLUHC. As the PRU is a response team that must react to situations, there is a significant degree of uncertainty over both the volume and timing of work that will require technical advice. There are, however, some planning decisions for which the SSLUHC is currently the planning decision taker and where, therefore, the PRU may require technical services as set out in Section 4. We have provided hypothetical scenarios setting out the types of situations where the PRU may require specialist technical advice, the nature of the advice, and the time within which any advice may be required (see Section 6).

### **3 HIGH LEVEL OUTLINE PROJECT OUTCOMES REQUIRED**

- 3.1 As noted above, specialist technical advice is likely to be needed to support planning decisions under the planning Acts, and a variety of associated regulatory regimes.
- 3.2 This advice could include (but is not limited to) advice on one or more of the broad technical areas:
  - a) Noise and Vibrations
  - b) Lighting
  - c) Air quality
  - d) Waste and materials management
  - e) Flood risk and surface water management
  - f) Ground water and ground water management
  - g) Habitats sites, protected and other species, and biodiversity

- h) Protected areas
- i) Civil engineering in relation to site investigations
- j) Traffic management, access, and highway design
- k) Heritage
- l) Archaeology
- m) Design
- n) Hazardous substances.
- o) Health and Safety
- p) Contaminated land
- q) Socioeconomic and human health

3.3 Additionally, the Potential Supplier may be required to provide a broad range of specialist engagement and communication advice and services in relation to considering planning proposals including, but not necessarily limited to:

- a) advise on communications handling, design, targeting, management and messaging
- b) communications planning and stakeholder management
- c) management of engagement and consultation activity including events
- d) design of communication material and management of social media.
- e) analyse feedback from engagement processes.

## 4 OUTPUTS / DELIVERABLES

- 4.1 New border controls have been introduced for goods moving between Great Britain and the European Union (EU). These controls are being introduced in stages. Additional infrastructure and processes are required to control the border and facilitate checks and compliance activities. Where ports operators are unable to provide the necessary facilities by the necessary point in time, the Government has committed to directly providing temporary inland “off-port” facilities for border control infrastructure, referred to as Inland Border facilities (IBFs). These facilities require planning approval. On 3 September 2020, the then Secretary of State for Housing, Communities and Local Government granted temporary planning permission for the development of Inland Border Facilities (IBFs). The relevant legislation can be found here: <https://www.legislation.gov.uk/ukxi/2020/928/contents/made>.
- 4.2 The planning approval for IBFs is subject to conditions that include a requirement for a border department to secure the approval of the SSLUHC to use and develop a specific site. The border departments are the Department for the Environment, Food and Rural Affairs, Her Majesty’s Revenue and Customs, the Department for Transport and the Department for Business, Energy, and Industrial Strategy. The PRU advises the SSLUHC on requests from the border departments to use specific sites for IBFs and is responsible for making sure that any activity is in accordance with the relevant planning approval.
- 4.3 More information on IBFs can be found here: <https://inlandborderfacilities.uk/>. The Sevington IBF in Kent provides an example of the material that may be submitted to DLUHC for a decision, details of which can be found here: [https://inlandborderfacilities.uk/?page\\_id=61](https://inlandborderfacilities.uk/?page_id=61).

### Ways of working

- 4.4 Due to the unpredictable nature of a response team’s work programme, the known activity and the scenarios below should only be used as an illustration of the type of advice we may need at short notice rather than a definitive list of the work PRU will require support on. Should a competitive tender exercise follow on from this PTME and a contract be awarded, individual tasks will be commissioned as they are required. The Potential

Supplier would be asked to provide an estimate of the price cap for each commission before starting work.

- 4.5 The PRU would also regularly engage with the Potential Supplier to provide the most up to date position on work volumes, and timings, and would continue to communicate any changes to these over the lifetime of the contract. The PRU would work with the Potential Supplier to establish a mutually agreed communication pattern for a call-on call-off facility.
- 4.6 The Potential Supplier would be expected to:
  - a) Attend meetings (virtual and in person) with the PRU, promoters of the development and public bodies with a functional interest in the proposed or actual development.
  - b) Carry out site visits and investigations.
  - c) Provide written desk top studies; reports; advice; and recommendations.
  - d) Support the PRU in engaging and negotiating with regulatory bodies.

## **Expectations**

- 4.7 It is expected that, at peak times, work may be required outside of usual work hours, including evenings, weekends, and Bank Holidays. The Potential Supplier would be advised in advance where this is considered necessary, (for example, to adhere to a Ministerial commitment of 10 days for planning decisions on IBFs, from the point at which a planning proposal is received by DLUHC), and timelines for delivery agreed accordingly.
- 4.8 The Potential Supplier will be required to provide advice and research to support DLUHC in working with the promotor of a proposal through the relevant stages of making recommendations to the decision maker; discharge of conditions monitoring; and where necessary, ensuring compliance with any relevant approvals.

## **Support decision making**

- 4.9 Specific support on one or more aspect of screening directions and scoping directions under the Town and Country Planning (Environmental Impact) Assessment Regulations 2017 (“the EIA Regulations”). This may include analysis and recommendations to enable screening directions and scoping directions to be provided to those promoting development, and making recommendations that inform decisions on whether proposed development is Environmental Impact Assessment development as defined in the EIA Regulations.
- 4.10 Support formal decision making by carrying out an Appropriate Assessments under the Conservation of Species and Habitats Regulations 2017 (“the Habitat Regulations”) and making recommendations to that will support decisions on specific proposals.
- 4.11 The advice is most likely to involve a review of aspects of proposals and associated evidence formally submitted to the SSLUHC for decision.

## **Conditions and limitations to planning consent**

- 4.12 Where the SSLUHC takes the decision to grant planning consent under the Special Development Order regime the necessary secondary legislation, a statutory instrument, needs to be prepared (a Development Order to be made under sections 59 and 60 of the Town and Country Planning Act 1990). This legislation will usually specify the descriptions of land to which it applies, details the development permitted and the land to which the permission applies, together with any conditions and limitations that apply to

the planning approval. The PRU may require specialist technical advice to inform the drafting of conditions and limitations that may be applied to development granted approval through a Special Development Order.

### **Provide advice and support on consequential decisions**

- 4.13 This may include (but not limited to) specialist technical advice on aspects of:
- a) Construction and Environmental Management Plans (CEMP) relating to planning proposals.
  - b) Operational matters relating to planning proposals.
  - c) Reinstatement matters relating to planning proposals.
- 4.14 Examples of the subject specific advice that may be required include the appropriate limits on levels of noise and emissions to air that should be adhered to during the operation of a proposed development, together with recommendations on the monitoring and management measures that the PRU should require in order to make sure that those levels are adhered to.

### **Compliance with planning approval**

- 4.15 The Secretary of State has broadly the same discretionary enforcement powers as a local planning authority. Once a site is operational, the PRU arrange periodic spot checks to establish that activity is in accordance with the planning approval. Any alleged or apparent breach of planning control is investigated to establish whether there is a breach, determining the degree of harm, and assess the risk that arises from an actual, or potential, breach of planning control. The PRU is also responsible for establishing who is responsible for resolving any breach.
- 4.16 The Potential Supplier will need to be able to mobilise at short notice and provide specific technical advice to support the PRU to investigate site specific potential or actual breaches of planning control. It is anticipated that any technical advice is likely to include:
- a) Onsite investigations and risk assessment.
  - b) Document analysis.
  - c) Consideration of any interaction with other regulatory regimes (e.g. waste permits, preventing pollution to surface water) and engagement with any relevant regulatory bodies.
  - d) Assessment of options for resolving issues, and recommendations.
- 4.17 This may require very rapid advice (within 24 hours) where there is a potential risk to life or risk of significant environmental harm.

## **5 KEY DATES & TENDERING PROCESS**

- 5.1 If it is decided this service is required, it is anticipated that a procurement may start November with the contract to commence early 2023. These indicative dates are for information purposes only. The Authority reserves the right to amend these dates at any time, and Potential Suppliers rely on them entirely at their own risk.
- 5.2 It is envisaged that this contract will be tendered via the Homes England Multi-Disciplinary Framework. This means that only suppliers registered on this framework will be eligible to tender once the Invitation To Tender (ITT) is released. Please note, the Authority reserves the right to alter its route to market and may not proceed to tender under this framework.

- 5.3 The Inland Border Facilities are temporary facilities that will cease operation by 31 December 2025, with reinstatement complete by 31 December 2026. There is the potential for advice to be needed during this phase of the sites' lifetime, it is anticipated that this requirement will cease by 31 December 2026.
- 5.4 We anticipate specific periods of intense activity across several workstreams followed by a slower pace. As noted above, should a competitive tender exercise follow on from this PTME and a contract be awarded, the PRU would regularly engage with the Potential Supplier to provide the most up to date position on work volumes, and timings.
- 5.5 Although the detailed timing for future projects is unknown at this stage, speed in mobilising expertise and delivery of products will be required.

## 6 RESPONSE

- 6.1 Please respond by email to [Commercial@Levellingup.gov.uk](mailto:Commercial@Levellingup.gov.uk), with answers to the following questions by 12:00 pm (GMT) – 2<sup>nd</sup> September 2022 (the “Response Deadline”).

Q1 Would you be interested in tendering for this project?

Q2 For each of the following example scenarios please:

- Set out the team you would use to provide the required advice, including the relevant professional skills required (noting those areas where legislation requires a suitably qualified professional and/or a permit by those carrying out the works), and the allocation of responsibilities.
- Set out your approach and methodology (to include the types of technical assessments, surveys as appropriate) for delivering each commission.
- Estimate how long would it take you to mobilise resources to produce the suggested products and at what cost, providing a full breakdown of costs including the associated rates for expertise required.

### a) Example Scenario 1: Road safety

**Context:** Proposal is for an Inland Border Facility to be located on a business park. The proposal site is circa 10 hectares in size. The development comprises circa 100 parking spaces for large goods vehicles (HGVs) plus inspection sheds and office accommodation. The existing activity at the business park includes a range of warehouses, out of town retail facilities, and leisure uses (i.e. it is used by both businesses and members of the public and therefore a range of vehicles). The IBF is proposed to operate 24/07 and be visited primarily by those driving heavy goods vehicles, both left- and right-hand drive. The daily volumes of vehicle movements at the facility are forecast to be 1,500. The proposal includes the construction of new access / egress connected to an existing roundabout and then onto an A road via a junction that has a poor safety record.

**Technical service:** The Authority requires a review of the submitted material in terms of road safety and an independent road safety audit. The Authority expects the Supplier to provide their professional judgment, with reasons, on whether the junction is, or is not, acceptable in planning terms.

**Timing:** The advice and recommendations must be provided in time to inform the Authority's written advice and recommendations to the Minister. The Authority has 8 working days from receiving a proposal to the submission of written advice to the Minister. The road safety audit and advice are only one part of a wider package of written advice,

so the audit and advice need to be completed in time to complete this wider advice i.e. within three working days.

b) **Example Scenario 2: Health and safety**

**Context:** An earth bund has been constructed on a site where the Authority is the relevant planning authority. Having carried out a site visit following a period of heavy rain, the Authority is concerned that the bund may be unstable. The Authority recently received correspondence suggesting that a landslide or creep of material from the bund has allegedly damaged trees in its vicinity. Initial enquires suggest that a full history of documents detailing the design and calculations for the bund, design drawings, construction method, materials, and material placement and compaction, are not available.

**Technical service:** The land is an active construction site and workplace and can be accessed by the public from a near-by public right of way. The Authority requires urgent advice on the stability of the bund and any risks that the structure might pose to the public and those working on the site, together with advice on the steps, including any immediate steps, that should be taken in light of that assessment (including any further investigations and associated technical assessments).

**Timing:** As there is a potential for risk to life, initial advice is required within 24 hours of the request for advice being made, a site visit is required to inform that advice. Advice and recommendations on any further technical assessments required (including methodology and fee estimate) are required within three working days.

c) **Example Scenario 3: Designated sites and protected species**

**Context:** The authority understands that it will receive a planning proposal for development on land where protected species under the Wildlife and Countryside Act 1981 are suspected to be present, and that forms part of a Special Area of Conservation (SAC). A preliminary site assessment suggests that great crested newts, slow worms, and grass snakes may be present and breeding on the land. The Authority is aware that it is an offence to take, injure, kill, and disturb a protected species and an offence to disturb places used for shelter and protection. The other government department promoting the development intends to submit draft material ahead of formal submission and has requested for pre-proposal advice from the Authority; formal submission is expected very shortly afterwards. The Authority anticipates that it will need to carry out an appropriate assessment of the implications for the site, in view of the site's conservation objectives. The results of this assessment may, therefore, represent a 'red line' on whether nationally important development can proceed (noting that Regulation 79 of the Habitats Regulation 2017 will apply).

**Technical service:** The Authority wishes to receive early advice on whether the mitigation measures in the draft material submitted are sufficient to avoid or reduce any direct adverse effects that may be caused by the proposal, to ensure that it does not have an adverse effect on the integrity of a habitats site. And that the any measures proposed to secure the proposed mitigations can be sufficiently secured and likely to work in practice. The Authority also wished advice on whether the measures are suitable to avoid or minimise any harm to protected species during any works and to ensure that the proposed development does not result in any long-term detrimental effect on the animals' local population. Finally, the Authority wants recommendations on the steps it should take to comply with its duties under the 1981 Act.

**Timing:** Within 5 days of commission to inform planning advice that must be provided to the Minister within eight days of receiving a formal proposal.

d) **Example Scenario 4: Appropriate noise levels to inform the drafting of a Special Development Order**

**Context:** Advice to inform early research and scoping work on the drafting of a Special Development Order (SDO). The SDO would be in response to a proposal for the permanent development of a greenfield site for advanced manufacturing with ancillary storage, research and development, and office accommodation on a permanent basis. The site size is circa. 100+ hectares and a circa. 6mill sq. ft of manufacturing and ancillary development is proposed for the site. In addition to the uses set out the development is likely to comprise parking, and a new access connecting from the strategic road network. The required statutory instrument would need to be tailored to the specific development on a specific site.

The Authority wishes to minimise the number of post decision conditions attached to the SDO and that would require the submission of detailed studies and reports in order to consider a request to 'discharge' a condition. The Authority wishes to do this by setting, as a conditions of the planning consent, specific outcomes to be adhered during the construction and operation of the facility. Failure to adhere to these outcomes could constitute a potential or actual breach of the planning consent.

**Technical service:** The Authority wants advice and recommendations on the appropriate noise levels to be adhered to as a condition of any planning consent and that may, therefore, form part of a Special Development Order.

**Timing:** The Authority would want to receive the advice and recommendation within 21 working days of the commission. An in-person discussion with the Authority will follow receipt of the advice.

e) **Example Scenario 5: Scoping Direction under the Town and Country Planning (Environmental Impact) Assessment Regulations 2017**

**Context:** The proposed development is for an advanced manufacturing building (footprint of approximately 250,000 sqm) with supporting ancillary buildings and structures for the production of lithium-ion batteries. Battery processing involves the use of hazardous substances. The range of ancillary development includes, but is not limited to, research and development facilities, parking (1,150 car parking spaces), sustainable drainage systems, landscaping, water abstraction, lighting, and a new access connecting from the strategic road network.

The site of the proposed development is former 200-hectare RAF base. The site consists of flat, low-lying land located in Zone 2 and 3 Flood Risk Area of the Environment Agency flood mapping. The immediate area is rural in character and a system of relatively large, open, agricultural fields surround the site (Grade 3 i.e. of Good to Moderate agricultural value). There are pockets of residential development situated to the south-west and south-east of the Site. Other localised features include a railway line to the north of the site which continues south along the eastern boundary. A line of electricity transmission pylons crosses the Site generally along its western boundary in a north-south direction. There are no listed buildings or Conservation Areas within the site although there are heritage assets within the vicinity of the site including Scheduled Ancient Monument.

Surveys indicate that great crested newts and dormice are present on the site, and that there are only low levels of bat activity over the site, with no roosts present. Two water courses are found within the site that flow into an area of a National Nature Reserve (NNR) just within the Site boundary. Within 5km of the Site there is an internationally designated nature conservation sites, a Special Protection Area and Ramsar Site, designated for its important assemblages of wintering wildfowl and waders. There are four Local Wildlife Sites (LWS) located, or partially located, within the site boundary.

**Technical advice:** The Authority requires the Supplier to clarify and make recommendations on what it considers the main effects of the development are likely to be and, therefore, the aspects on which the promoter's Environmental Statement should focus.

**Timing:** The Secretary of State must make a scoping direction within 5 weeks beginning with the date of receiving a request. Given the nature of the proposal that comes to the PRU a response within an earlier timescale is highly likely. It should be assumed that recommendations to inform the SSLUHC's direction will be required within 10 working days.

Q3 Is what the Authority asking for clear?

Q4 What, if anything, has the Authority missed or overlooked in setting out their requirement?

Q5 Is there anything here which is irrelevant, outdated, or unnecessary?

Q6 Please advise if you would likely be facilitating the requirement independently or as part of a consortium?

## 7 QUESTIONS AND CLARIFICATIONS

- 7.1 Potential Suppliers may raise questions or seek clarification regarding any aspect of this PTME document at any time prior to the Response Deadline. Questions must be submitted via email to [commercial@levellingup.gov.uk](mailto:commercial@levellingup.gov.uk) with the subject title "CPD4124081 – Planning Decisions Technical Advice".
- 7.2 To ensure that all Potential Suppliers have equal access to information regarding this PTME exercise, responses to questions raised by Potential Suppliers will be published in a "Questions and Answers" document, which will also be circulated by email, with updates appearing at regular intervals (approximately two to three working days).
- 7.3 Responses to questions will not identify the originator of the question.
- 7.4 If a Potential Supplier wishes to ask a question or seek clarification without the question and answer being revealed, then the Potential Supplier must state this in their email and provide its justification for withholding the question and any response. If the Authority does not consider that there is sufficient justification for withholding the question and the corresponding response, the Potential Supplier will be invited to decide whether:
  - 7.4.1 the question/clarification and the response should in fact be published; or
  - 7.4.2 it wishes to withdraw the question/clarification.

## 8 GENERAL CONDITIONS

- 8.1 This PTME will help the Authority to refine the requirements and to understand the potential level of interest in the delivering of requirements. It will also aid Potential

Supplier's understanding of the requirements in advance of any formal competitive tender exercise.

- 8.2 The Authority reserves the right to change any information contained within this PTME at any time, and Potential Suppliers rely upon it entirely at their own risk.
- 8.3 The Authority reserves the right not to proceed with a competitive tender exercise after this PTME or to award any contract.
- 8.4 Any and all costs associated with the production of such a response to this PTME must be borne by the Potential Supplier.
- 8.5 No down-selection of Potential Suppliers will take place as a consequence of any responses or interactions relating to this PTME.
- 8.6 The Authority expects that all responses to this PTME will be provided by Potential Suppliers in good faith to the best of their ability in the light of information available at the time of their response.
- 8.7 No information provided by a Potential Supplier in response to this PTME will be carried forward, used or acknowledged in any way for the purpose of evaluating the Potential Supplier, in any subsequent formal procurement process.