**THE LONDON BOROUGH OF RICHMOND UPON THAMES**

**SOFT MARKET TESTING EXERCISE (SMTE)**

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| **PROJECT** | **Provision of a Mini Golf Facility and Refreshment Kiosk on Palewell Common, Richmond-Upon-Thames (CPT 3182)** |

**Soft Market Testing for Mini Golf Facility Providers**

**1. Introduction**

This invitation is part of a Soft Market Testing Exercise (the “SMTE”) on behalf of the London Borough of Richmond upon Thames (the “Authority”) and relates to the potential packaging and tendering of a future contract for the Provision of Mini Golf and Kiosk Facilities on Palewell Common, SW14.

The aim of this exercise is for the Authority to gain a better understanding of how the supply market operates in relation to the provision of Mini Golf Services and ascertain whether the proposed service requirements are viable. The exercise will help to inform the scope and processes for securing service delivery in an evolving marketplace.

The SMTE focuses on the supply market as a whole rather than the merits of individual suppliers and does not commit the Authority to any further actions or involvement.

This is not a call for competition and the Authority are not obliged to follow any advice or guidance provided by Suppliers in this process.

**2. Scope and Process**

The intention of the SMTE will be to gather a range of qualitative data and information. The information collected during the SMTE process will not be used for any other purpose.

**Please read the document and if you feel that your organisation is able to contribute to this SMTE please complete Appendix 1 (Company Information), Appendix 2 (Questionnaire) and return them with the signed non-disclosure agreement (Appendix 3), via the Delta eSourcing portal or by emailing** **Nicola.Steggles@RichmondandWandsworth.gov.uk** **by** **12pm on 4 December 2023**.

For questions regarding this process, please contact the Procurement Team using the messaging facility within the Delta eSourcing portal.

For the avoidance of doubt, no information provided in response to this exercise will be used by the Authority in assessing providers during the open market tender process which will follow.

**3. Proposed Scope of the Project**

The London Borough of Richmond upon Thames (the ‘Authority’) currently operates a 9-hole pitch and putt golf course in Palewell Common. The site has a kiosk which takes bookings and offers light refreshments, and is currently contracted out to Continental Landscapes. The current contract expires on the 31 January 2025. The full address for the site is: Palewell Common Drive, London, SW14.

The Authority is considering a conversion of the existing pitch and putt golf course into a mini golf facility, with one or two 18-hole mini golf courses. Additionally, there would be a requirement for the refurbishment of the golf kiosk, so that refreshments and light food/snacks can be provided for those using the facility. The authority is exploring the market for providers able to create the mini golf course/s and to run the facility including the kiosk for refreshments.

**4. Confidentiality and Freedom of Information**

The Authority asks that participants in the SMTE sign a Non-Disclosure Agreement (Appendix 1). The purpose of the agreement is to protect both our and your confidential information. It also allows the Authority to engage in a meaningful dialogue and to make decisions based on the best information available.

Please be aware that the Authority is subject to the disclosure requirements of the Freedom of Information Act (FoIA) and that, potentially, any information the Authority hold is liable to disclosure under that Act. For this reason, the Authority would strongly advise that any information you consider to be confidential is labelled as such. In the event that a request is subsequently made for disclosure under the FoIA that request will be dealt with in accordance with the legislation and giving full regard to the Non-Disclosure Agreement.

You should keep a copy of your Non-Disclosure Agreement (NDA). You will need this if we need to clarify or discuss your answers with you.

**5. Criteria for further participation**

Where the Authority thinks further clarification would assist in informing this process and developing appropriate and innovative service specifications, the Authority may seek further discussion with those potential suppliers who complete and return the questionnaire and NDA as detailed and requested at Appendix 1, 2 and 3.

**Appendix 1**

**COMPANY INFORMATION**

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| --- | --- |
| **A1.** | **ORGANISATION DETAILS** |
| 1.1 | Organisation Name:  |
| Address:  |
| Postcode:  |
| Website  |
| **A2.** | **CONTACT DETAILS (for communications about this questionnaire)** |
| 2.1 | Contact’s name:  |
| Position:  |
| Telephone number: |
| Mobile phone number:  |
| Email address:  |

**Appendix 2**

**QUESTIONNAIRE**

Answers to the following questions will assist the Authority in the development of a business proposal. Any such proposal would be subject to the development and approval of a business case by the Authority procurement team and, as such, this exercise implies no commercial commitment.

Please respond in the boxes provided. There is no maximum or minimum word count for these answers. Responses to the questions below will not be evaluated and will not influence the evaluation of any tender submissions.

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| --- | --- |
| 1. | **CONTRACT SCOPE:** Would your organisation be interested in delivering the redevelopment of one or two 18-hole mini golf courses on Palewell Common, as well as the refurbishment of the golf kiosk and then running the golf kiosk, providing refreshments and light food/snacks for those using the golfing facility? Alternatively, which aspects would be of interest? |
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| 2. | **CONTRACT TERM:** The Authority is seeking to establish a contract term for the contract, to ensure that contractor(s) can amortise capital expenditure. Please provide your comment on optimum contract durations and add any further market insights you may have on contract term. |
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| 3. | **MOBILISATION:** What is the optimum mobilisation period for this development? In your response consider staffing, construction lead-times, equipment requirements, etc. |
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| 4. | **MOBILISATION COSTS:**  The Authority wishes to understand the level of upfront investment required for this project. Please provide details of expected costs to inform the Authority as they refine the specification. |
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| 5. | **STAFFING:** How many staff would be required to run the Refreshment Kiosk? How would the staff-members be managed and retained? |
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| 6. | **INCOME:** The Council wish to generate income via this venture. Please provide preferences as to how this could work? Consider rebates and profit share options. |
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| 7. | **SUSTAINABILITY:** Has your organisation plans in place for the Zero Emissions by 2030 target? Please share details and any considerations that the Authority should take into account. |
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| 8. | **GENERAL:** Any other comments you wish to add |
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**UNDERTAKING BY THE PROVIDER**

We certify that the information supplied is accurate to be best of our knowledge and that we accept the conditions and undertakings requested in the questionnaire.

|  |  |
| --- | --- |
| Name\*: |  |
| Signed: | Duly authorised on behalf of the Provider |
| Position: |  |
| Date: |  |

\*Please note the term “Provider” refers to sole proprietor, partnership, incorporated company, and cooperative as appropriate. The undertaking should be signed by a partner or authorised representative in her/his own name and on behalf of the Provider.

**Appendix 3**

**NON-DISCLOSURE AGREEMENT**

relating to PROPOSALS FOR Ground Maintenance Services

between

The Authority

*(London Borough of Richmond upon Thames)*

And

(Insert Organisation Name)

THIS AGREEMENT is dated [DATE] PARTIES

(1) The London Borough of Richmond upon Thames, Civic Centre, 44 York Street, Twickenham TW1 3BZ, and

(2) The London Borough of Wandsworth, The Town Hall, Wandsworth High Street, Wandsworth SW18 2PU

and,

(3) [FULL COMPANY NAME] incorporated and registered in England with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the Organisation).

**BACKGROUND**

The Authority is conducting a Soft Market Testing Exercise (SMTE) in order to seek the market’s views on the scope and packaging of its Grounds Maintenance Services, the capacity of the market to supply these services, and the level of interest in this proposed procurement activity. The Organisation has agreed to participate in the SMTE.

For this purpose, information will be shared between the parties. The parties agree to disclose information to each other only as in accordance with the terms of this Agreement.

**1. INTERPRETATION**

1.1The definitions and rules of interpretation in this clause apply in this agreement. Confidential Information: has the meaning given in clause 2.2.

Copies: copies of Confidential Information including any document, electronic file, note, extract, analysis or any other way of representing or recording and recalling information which contains, reflects or is derived from Confidential Information.

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

Holding company and subsidiary: mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections

1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.

Permitted Purpose: considering and evaluating the options available to the

Authority under the SMTE

1.2 Clause and schedule headings do not affect the interpretation of this agreement.

1.3 A person includes a corporate or unincorporated body.

1.4 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5 Writing or written includes faxes and e-mail.

1.6 Unless the context otherwise requires, words in the singular include the plural and, in the plural, include the singular.

**2. CONFIDENTIALITY OBLIGATIONS**

2.1 In return for the parties giving each other Confidential Information, each party shall:

(a) keep Confidential Information secret. (b) use it only for the Permitted Purpose.

(c) not directly or indirectly disclose it in whole or in part to any person (or allow it to be disclosed) or make Copies of it unless permitted by this agreement.

(d) use all reasonable endeavours to ensure that no one discovers Confidential

Information unless authorised; and

(e) inform the other party immediately upon becoming aware or suspecting that an unauthorised person has become aware of Confidential Information.

2.2 Confidential Information means:

(a) all information in whatever form (including without limitation, written, oral, visual or electronic form, or on tape or disk) relating to the Authority, that is directly or indirectly disclosed to the Organisation or any of its representatives by any agent or employee of the Authority or which comes to the Organisation’s attention in connection with the Permitted Purpose; and

(b) all information in whatever form (including without limitation, written, oral, visual or electronic form, or on tape or disk) relating to the Organisation, or any company that is (or was at the date of this agreement) in the Organisation Group, that is directly or indirectly disclosed to the Authority or any of its representatives by any agent or employee of the Organisation Group or which comes to the Authority attention in connection with the Permitted Purpose,

but excludes the information in clause 2.3.

2.3 Information is not Confidential Information if:

(a) it is or subsequently becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of this agreement;

(b) either party can establish to the reasonable satisfaction of the other party that it found out the information from a source not connected with the other party or its Group and that the source is not under any obligation of confidence in respect of the information;

(c) either party can establish to the reasonable satisfaction of the other party that the information was known to the first party before the date of this agreement and that it was not under any obligation of confidence in respect of the information;

(d) the parties agree in writing that it is not confidential.

2.4 Each party may disclose Confidential Information only:

(a) to such officers, employees, or professional advisers as are strictly required to have access for the Permitted Purpose;

(b) to people whom the other party agrees in writing may receive the information; or

(c) to the extent permitted by clause 4.

2.5 The Authority may disclose Confidential Information to other parties participating in the SMTE only where to do so does not identify the Organisation or where the focus and/or subject of the Confidential Information is the Authority’s and/or its proposed future actions and not the Organisation itself.

2.6 Each party shall:

(a) inform anyone to whom it discloses Confidential Information that the information is confidential; and

(b) procure that anyone to whom it discloses the Confidential Information (other than disclosures under clause 4) complies with this agreement as if they were a party

and, if the other party to this agreement so requests, that they enter into a confidentiality agreement with the other party on terms equivalent to those contained in this agreement.

2.7 Each party may make only such Copies as are strictly necessary for the

Permitted Purpose and shall:

(a) clearly mark all Copies as confidential;

(b) ensure that Copies supplied to it or made by it can be separately identified from its own information; and

(c) use all reasonable endeavours to ensure that Copies within its control are protected against theft or unauthorised access and that no one discovers Confidential Information unless authorised.

2.8 Each party shall immediately upon the other's written request supply the other party with a list showing to the extent reasonably practicable:

(a) where Copies supplied by the other party are held;

(b) Copies that it has made or that people to whom it has disclosed the Confidential Information have made (except where the Copies contain insignificant extracts from or references to Confidential Information) and where they are held; and

(c) the names and addresses of the people to whom Confidential Information has been disclosed and a copy of the confidentiality agreements signed by them complying with clause 2.6(b).

2.9 Upon conclusion of the SMTE, a senior officer of each party shall, immediately upon the written request of the other party, confirm in writing that it has destroyed or permanently erased all Copies supplied to it or made by it, or by the persons to whom it has supplied Copies, other than Copies that:

(a) contain insignificant extracts from, or references to, Confidential Information;

(b) it is, or the persons to whom the Confidential Information has been disclosed are, required to keep by law or to satisfy the rules or regulations of a regulatory body or stock exchange; or

(c) were disclosed to another party in accordance with the requirements of the

Freedom of Information Act 2000

(d) contain no Confidential Information other than information disclosed under clause

4.

2.10 For the avoidance of doubt, the Parties agree that given the Permitted Purpose that the Authority may use information gathered as part of the SMTE and in accordance with this Agreement to inform any subsequent and related procurement process

3.  **AUTHORISED CONTACT**

3.1 All communications with the Authority about the Permitted Purpose should be addressed to the Central Procurement Team, Room 305, Wandsworth Borough Council, Town Hall, Wandsworth High Street, SW18 2PU

**4. FORCED DISCLOSURE**

4.1 Each party may disclose Confidential Information to the extent required by: (a) any order of any court of competent jurisdiction or any competent judicial,

governmental or regulatory body; or

(b) the rules of any listing authority or stock exchange on which the shares of any company in its Group are listed; or

(c) the laws or regulations of any country with jurisdiction over the affairs of the parties including where disclosure is required under the Freedom of Information Act

2000

4.2 Before either party discloses any information under this clause, it shall use its best endeavours to inform the other party of the full circumstances of the disclosure and the information that will be disclosed; and to consult with the other party as to reasonable steps to avoid or limit disclosure and take those steps where they would not result in significant adverse consequences to the first party.

4.3 If either party is unable to inform the other party before Confidential Information is disclosed, it shall inform the other party immediately after the disclosure of the full circumstances of the disclosure and the information that has been disclosed.

**5. DISCLAIMER AND WARRANTY**

5.1 No rights or obligations in Confidential Information are granted other than as expressly provided under this agreement.

5.2 Each party warrants its right to disclose Confidential Information and to authorise the use by the other or by third parties in accordance with the terms of this agreement of the Confidential Information for the Permitted Purpose.

**6. ANNOUNCEMENTS**

Any announcement or written notice relating to the Permitted Purpose or the existence or subject matter of this Agreement shall subject to clause 4 be made only by the Authority, and not by the Organisation, and the Authority shall endeavour to advise the Organisation of any such announcement or notice in advance.

**7. INDEMNITY**

Each party shall (in addition to, and without affecting, any other rights or remedies the other party may have whether under statute, common law or otherwise) indemnify and keep indemnified the other and hold the other harmless from and against all actions, claims, demands, liabilities, damages, costs, losses or expenses (including without limitation, consequential losses, loss of profit, loss of reputation and all interest, penalties, legal and other professional costs and expenses) resulting from any breach or non-performance by the first party or any person to whom it has disclosed or given access to any part of the Confidential Information or any Copies, of any of the provisions under this agreement.

**8. COSTS**

Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this agreement, and any documents referred to in it, shall be borne by the party that incurred the costs.

**9. ASSIGNMENT**

9.1 Except as provided otherwise, no person may assign any of its rights under this agreement or any document referred to in it.

**10. ACTING AS PRINCIPAL**

Each party is acting as principal and not as a broker or agent.

**11. THIRD PARTY RIGHTS**

11.1 This agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

**12. SEVERANCE**

12.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

12.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**13. VARIATION AND WAIVER**

13.1 A variation of this agreement shall be in writing and signed by or on behalf of all parties.

13.2 A waiver of any right under this agreement is only effective if it is in writing and

it applies only to the person to which the waiver is addressed and the circumstances for which it is given.

**14. LANGUAGE**

14.1 If this agreement is translated, the English language text shall prevail.

**15. GOVERNING LAW AND JURISDICTION**

15.1 This agreement and all disputes and claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

15.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

**Signed on behalf of the Authority:**

Name printed ………………………………………………

Signature ………………………………………………..

Position ..................................................................

Date ….………………………….

**Signed on behalf of Company:**

Company Name …………………………….…………………

Position (Director) …………………………………. ……………

Signature …………………………………. ………………….

Name printed .................................................

Date …………….…………………….