

## **TERMS OF PARTICIPATION**

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## **1. INTRODUCTION**

- 1.1 These Terms of Participation should be read in conjunction with the ITT and Declaration of Compliance (Annex1 to this Appendix 2).
- 1.2 These Terms of Participation set out the conditions of participation in this Procurement, including:
  - 1.2.1 Rules in relation to the conduct of Potential Providers; and
  - 1.2.2 Specific rights of GBSLEP and limits to GBSLEP's liability,which apply throughout this Procurement.

## **2. INTERPRETATION**

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

## **3. CONDUCT - GENERAL**

- 3.1 The Potential Provider shall abide by these Terms of Participation and any instructions given or terms within in the ITT.
- 3.2 An obligation on The Potential Provider to do, or to refrain from doing, any act or thing under the ITT including these Terms of Participation shall include an obligation upon The Potential Provider to procure that all its directors, office holders, staff, members of its Group of Economic Operators (if it acts as Lead Contact), companies within its Group, Sub-Contractors, advisers or agents involved or connected with this Procurement also do, or refrain from doing, such act or thing.

## **4. CONDUCT - SPECIFIC OBLIGATIONS**

- 4.1 Contact during this Procurement exercise and canvassing
  - 4.1.1 The Potential Provider must not directly or indirectly canvass any Minister, officer, public sector employee, member or agent regarding this Procurement or attempt to obtain any information from the same regarding this Procurement (except where and as permitted by the ITT). Any attempt by The Potential Provider to do so may result in The Potential Provider's disqualification from this Procurement.
- 4.2 Involvement in multiple tenders
  - 4.2.1 If The Potential Provider is connected with the submission of multiple tenders for the same requirement or Lot (as applicable), including (without limit) where:
    - 4.2.1.1 It submits a Tender in its own name and as a Sub-Contractor and/or a member of a Group of Economic Operators connected with a separate tender or
    - 4.2.1.2 It submits a Tender in its own name which is similar to a separate tender from another provider within its Group,Then GBSLEP retains the right to make further enquiries regarding each tender to satisfy itself that such involvement does not cause potential or actual conflicts of interest, supplier capacity problems, restrictions or distortions in competition between The Potential Providers in this Procurement. GBSLEP may require The Potential Provider to amend or withdraw all or part of its

Tender if, in GBSLEP's reasonable opinion and at its sole discretion, any of the above issues have arisen or may arise.

#### 4.3 Collusive Behaviour

##### 4.3.1 The Potential Provider must not:

- 4.3.1.1 Fix or adjust any element of its Tender by agreement or arrangement with any other person, except where, but subject always to paragraph 4.2, such prohibited acts are undertaken with persons who are also participants in The Potential Providers' Tender, such as members of its Group of Economic Operators (if it acts as a Lead Contact), companies within its Group or Sub-Contractors, or where disclosure to such person is made in confidence in order to obtain quotations necessary for the preparation of its Tender or obtain any necessary security;
- 4.3.1.2 Communicate with any person other than GBSLEP the value, price or rates set out in its Tender or information which would enable the precise or approximate value, price or rates to be calculated by any other person, except where such communication is undertaken with persons who are also participants in The Potential Providers' Tender, such as members of its Group of Economic Operators (if it acts as a Lead Contact), companies within its Group or Sub-Contractors, or where disclosure to such person is made in confidence in order to obtain quotations necessary for the preparation of its Tender or obtain any necessary security;
- 4.3.1.3 Enter into any agreement or arrangement with any other person, so that person refrains from submitting a tender;
- 4.3.1.4 Share, permit or disclose to another person, access to any information relating to its Tender (or another tender to which it is party); or
- 4.3.1.5 Offer or agree to pay or give or do pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any other person for doing or having done or causing or having caused to be done in relation to its Tender, any other tender or proposed tender, any act or omission.

4.3.2 If a The Potential Provider breaches paragraph 4.3.1, GBSLEP may (without prejudice to any other criminal or civil remedies available to it) exclude The Potential Provider from further participation in this Procurement.

4.3.3 GBSLEP may require The Potential Provider to put in place any procedures or undertake any such action(s) that GBSLEP in its sole discretion considers necessary to prevent or curtail any collusive behaviour.

#### 5. RIGHT TO VERIFY INFORMATION

5.1 GBSLEP may contact (or may require The Potential Provider to contact on its behalf) any of The Potential Provider's customers, members of its Group of Economic Operators (if it acts as Lead Contact), Sub-Contractors or other third parties to whom information relates in The Potential Provider's Tender, to ask that they testify that such information is accurate and true.

5.2 GBSLEP reserves the right to seek third party independent advice or assistance to validate information submitted by a The Potential Provider and/or to assist in the tender evaluation process.

5.3 GBSLEP reserves the right to conduct site visits of any premises indicated by The Potential Provider to be used in connection with The Potential Provider's provision of the Goods and/or Services and/or to conduct audits at any time during this Procurement.

5.4 GBSLEP may require The Potential Provider to clarify aspects of its Tender in writing and/or provide additional information. Failure to respond adequately may result in the rejection of The Potential Provider's Tender and its elimination from further participation in all or part of this Procurement.

## **6. RIGHT TO CANCEL OR VARY THIS PROCUREMENT**

6.1 GBSLEP reserves the right, subject to the rules set out in the Regulations, to:

6.1.1 Change the basis of or the procedures for this Procurement at any time;

6.1.2 Amend, clarify, add to or withdraw all or any part of the ITT at any time during this Procurement, including varying any timetable or deadlines set out in the ITT; and:

6.1.3 Cancel all or part of this Procurement at any stage at any time, including for the reason stated in paragraph 6.3 below; and

6.1.4 Not award a contract for some or all of the Goods and/or Services for which tenders are invited

6.2 The Potential Provider accepts and acknowledges that, and in accordance with the Regulations, GBSLEP is not bound to accept any Tender or award a contract with any Potential Provider at all.

6.3 If GBSLEP deems that none of the tenders received in response to the ITT are satisfactory, it reserves the right to terminate all or part of this Procurement.

## **7. RIGHT TO EXCLUDE**

7.1 GBSLEP may exclude a Tender from this Procurement if The Potential Provider fails to provide to GBSLEP:

7.1.1 Any information requested;

7.1.2 A full and satisfactory response to any question or information request;

7.1.3 A response to the GBSLEP's queries, within any specified timescales; and/or

7.1.4 Documentation referred to in its Tender.

7.2 GBSLEP may exclude a The Potential Provider from any participation in this Procurement at any stage, if The Potential Provider:

7.2.1 Fails to comply fully with the requirements of this Procurement as set out in the ITT;

7.2.2 Has breached these Terms of Participation; or

7.2.3 Has committed a wilful omission or misrepresentation in its Tender.

7.3 If the GBSLEP has the right to exclude The Potential Provider under these Terms of Participation or the ITT it may (in its sole discretion):

7.3.1 Exclude the affected Tender but allow The Potential Provider to participate as member of a Group of Economic Operators or Sub-Contractor in another Tender; or

7.3.2 Completely exclude The Potential Provider from any involvement in this Procurement in its own name, or as member of a Group of Economic Operators or Sub-Contractor in another Tender.

- 7.4 GBSLEP may exclude The Potential Provider from participation in this Procurement where there is a change in identity, control, financial standing or other factor impacting on the selection and/or award process, which would affect or would have affected GBSLEP's evaluation of The Potential Provider's Tender in accordance with the Regulations.

## **8. STATUS OF THE INVITATION TO TENDER**

- 8.1 No information contained in the ITT or in any communication made between GBSLEP and The Potential Provider in connection with this Procurement shall be relied upon as constituting agreement or representation that any contract be entered into in accordance with The Potential Provider's Tender or at all.
- 8.2 GBSLEP shall not be committed to any course of action as a result of:
- 8.2.1 Issuing the ITT relating to this Procurement;
  - 8.2.2 Any communications with Potential Providers or their representatives, agents or advisers in respect of this Procurement; and/or
  - 8.2.3 Any communications between The Potential Providers, and any other party (whether directly or through their agents or representatives) in respect of this Procurement.
- 8.3 The ITT has been prepared in good faith but does not purport to be a comprehensive statement of all matters relevant to this Procurement nor has it been independently verified. Neither GBSLEP nor its advisers, directors, officers, members, employees or other staff or agents:
- 8.3.1 Accept any liability or responsibility for the adequacy, accuracy or completeness of the ITT,
  - 8.3.2 Make any representation or warranty, express or implied, with respect to the information the ITT contains nor shall any of them be liable for any loss of damage arising as a result of reliance on such information or any subsequent communication.
- 8.4 The Potential Provider shall form its own conclusions and make its own independent assessment of the requirements of the ITT and should seek its own financial and legal advice about the methods and resources needed to meet GBSLEP's requirements.
- 8.5 GBSLEP does not accept responsibility for The Potential Providers' assessment of the requirements of this Procurement.
- 8.6 The Potential Provider is responsible at its own expense, for obtaining all information required to prepare its Tender.
- 8.7 Any exclusions of liability of GBSLEP in this paragraph 8 do not apply to the extent of any deceit or fraudulent misrepresentation made by or on behalf of GBSLEP.

## **9. CONCLUDING THE CONTRACT**

- 9.1 The Potential Provider undertakes that, in the event of a Potential Provider's Tender being accepted by GBSLEP and GBSLEP confirming in writing such acceptance to The Potential Provider, The Potential Provider shall execute the Contract as amended to accommodate aspects of the Tender within 10 calendar days, (or any other longer period of time as determined by GBSLEP at its sole discretion) of being called upon to do so by GBSLEP.

## **10. COSTS**

- 10.1 GBSLEP will not reimburse any costs incurred by a The Potential Provider (including the costs or expenses of any members of its Group of Economic Operators (if acting

as a Lead Contact), Sub-Contractors or advisors) in connection with the preparation and/or submission of The Potential Provider's Tender, including (without limit) where:

- 10.1.1 This Procurement is cancelled, shortened or delayed for any reason (including, without limitation, where such action is necessary due to non-compliance or potential non-compliance with the law, including the Regulations);
- 10.1.2 All or any part of the ITT is at any time amended, clarified, added to or withdrawn for any reason;
- 10.1.3 A contract is not awarded in respect of some or all of the Goods and/or Services for which tenders are invited; or
- 10.1.4 The Potential Provider and/or its Tender is disqualified from participation in this Procurement for any reason, including breach of these Terms of Participation.

## **11. CONFIDENTIALITY**

- 11.1 Subject to the exceptions referred to in paragraph 11.2, the contents of the ITT are being made available by GBSLEP on the conditions that The Potential Provider:
  - 11.1.1 Treats the ITT and its Appendices and Annexes as confidential at all times, unless the Information is already in the public domain;
  - 11.1.2 Does not disclose, copy, reproduce, distribute or pass any of the Information to any other person at any time or allow any of these things to happen, except where, and to the extent that, the Information has been publicised in accordance with paragraph 12 (Freedom of Information) or paragraph 13 (Transparency);
  - 11.1.3 Only uses the Information for the purposes of preparing a Tender (or deciding whether to respond); and
  - 11.1.4 Does not undertake any promotional or similar activity related to this Procurement within any section of the media during this Procurement.
- 11.2 The Potential Provider may disclose, distribute or pass any of the Information to its members of its Group of Economic Operators (if acting as a Lead Contact), Sub-Contractors, advisers or to any other person provided that:
  - 11.2.1 This is done for the sole purpose of enabling The Potential Provider to submit its Tender and the person receiving the Information undertakes in writing (such written undertaking to be made available to GBSLEP on GBSLEP's request) to keep the Information confidential on the same terms imposed by these Terms of Participation; or
  - 11.2.2 It obtains the GBSLEP's prior written consent in relation to such disclosure, distribution or passing of Information; or
  - 11.2.3 The disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to this Procurement; or
  - 11.2.4 The Potential Provider is legally required to make such a disclosure; or
  - 11.2.5 The Information has been published in accordance with paragraphs 12 (Freedom of Information) and 13 (Transparency).
- 11.3 GBSLEP may disclose information submitted by The Potential Providers during this Procurement to its officers, employees, agents or advisers or other government departments who are stakeholders in this Procurement.

- 11.4 All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross Government role delivering overall Government Policy on public procurement – including ensuring value for money and related aspects of good procurement practice.
- 11.5 For these purposes, GBSLEP may disclose within HM Government any of The Potential Provider's documentation or information (including any that The Potential Provider considers to be confidential and/or commercially sensitive such as specific information in its Tender) submitted by The Potential Provider to GBSLEP during this Procurement. The Potential Providers taking part in this competition consent to such disclosure as part of their participation in the competition process.

## **12. FREEDOM OF INFORMATION**

- 12.1 In accordance with the obligations and duties placed upon public authorities by the FoIA and the EIR and in accordance with any government Code of Practice on the discharge of public authorities' functions under the FoIA (as defined in the glossary in Annex 2 of this Appendix 2 of the ITT), all information submitted to GBSLEP may be disclosed under a request for information made pursuant to the FoIA and the EIR (as defined in the glossary in Annex 2 of this Appendix 2 of the ITT).
- 12.2 A The Potential Provider should note that the information disclosed pursuant to a FoIA or EIR request may include, but is not limited to, the disclosure of its Tender (including any attachments or embedded documents) and/or any score or details of the evaluation of its Tender.
- 12.3 If The Potential Provider considers any part of its Tender or any other information it submits to be confidential or commercially sensitive, The Potential Provider should:
- 12.3.1 Clearly identify such information as confidential or commercially sensitive;
  - 12.3.2 Explain the potential implications of disclosure of such information taking into account and specifically addressing the public interest test as set out in the FoIA; and
  - 12.3.3 Provide an estimate of the period of time during which it believes that such information will remain confidential or commercially sensitive.
- 12.4 If The Potential Provider identifies that part of its Tender or other information it submits is confidential or commercially sensitive, GBSLEP in its sole discretion will consider whether or not to withhold such information from publication. The Potential Providers should note that, even where information is identified as confidential or commercially sensitive, GBSLEP may be required to disclose such information in accordance with the FoIA or the EIR.
- 12.5 GBSLEP and/or the Agent is required to form an independent judgement of whether The Potential Provider's information referred to in paragraph 12.4 is exempt from disclosure under the FoIA or the EIR and whether the public interest favours disclosure or not. GBSLEP and/or the Agent cannot guarantee that any information indicated as being confidential or commercially sensitive by The Potential Provider will be withheld from publication.
- 12.6 If The Potential Provider receives a request for information under the FoIA or the EIR during and in relation to this Procurement, it should be immediately referred to the GBSLEP.

## **13. TRANSPARENCY**

- 13.1 In accordance with the Government's policy on transparency, GBSLEP reserves the right to make all or part of the Information (which, for the avoidance of doubt, includes

the Appendices and Annexed information and Contract for services, publicly available (subject to any redactions made at the discretion of GBSLEP by considering and applying relevant exemptions under the FoIA).

A Tender will not be published unless such disclosure is required in accordance with paragraphs 12 or 13. The Potential Providers should note that the terms of the proposed Contract will permit GBSLEP to publish the full text of such Contract concluded with The Potential Provider after considering (at the Agent's or the Customer's sole discretion respectively) any representations made by The Potential Provider regarding the application of any relevant FoIA or EIR exemptions.

- 13.2 The Potential Provider acknowledges and agrees that information contained within its Tender may be incorporated into any contract awarded to The Potential Provider and as a result, it may be published in accordance with this paragraph 13.

#### **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 The ITT issued in connection with this Procurement shall remain the property of GBSLEP and shall be used by The Potential Provider only for the purposes of this Procurement.
- 14.2 The Potential Provider grants GBSLEP an irrevocable, perpetual, non-exclusive licence to copy, amend and reproduce any intellectual property contained within its Tender for the purposes of carrying out this Procurement; complying with the law and/or any government guidance; and/or carrying out GBSLEP's business activities. This licence shall also permit GBSLEP to sublicense the use of The Potential Provider's Tender to its advisers or sub-contractors or other Contracting Bodies for the same purposes.

#### **15. NO INDUCEMENT OR INCENTIVE**

The Potential Provider acknowledges and agrees that nothing contained within the ITT shall constitute an inducement or incentive nor shall have in any other way persuaded a The Potential Provider to submit a Tender or enter into any other contractual agreement.

#### **16. LAW AND JURISDICTION**

- 16.1 Any dispute (including non-contractual disputes or claims) relating to this Procurement shall be governed by and construed in accordance with the laws of England and Wales.
- 16.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Procurement (including non-contractual disputes or claims).



**ANNEX 1****THE POTENTIAL PROVIDER – DECLARATION OF COMPLIANCE****1. Interpretation**

- 1.1 Except where specified or the context requires, capitalised expressions in this Declaration of Compliance shall have the meaning given to them in the glossary to the ITT and the Terms of Participation (Appendix 2).
- 1.2 The word “we” in paragraph 2 of this Declaration of Compliance refers to The Potential Provider.

**2. Declarations**

- 2.1 We offer to provide the Services as specified in the ITT in accordance with the terms and conditions of the Draft Contract Terms document in Appendix 3.
- 2.2 We have made sufficient enquiries and have received sufficient information from GBSLEP to fully understand the requirements of this Procurement and agree to provide the Services in accordance with the Draft Contract Terms and Conditions.
- 2.3 We warrant that all the information contained in our Tender (including any attachments) is accurate and true and we undertake to notify GBSLEP of any changes as soon as practicable.
- 2.4 We warrant that we have complied with all the requirements set out in the ITT, including the Terms of Participation in Annex 2.
- 2.5 We warrant that, in furtherance of our obligation under paragraph 3.2 of the Terms of Participation (in Appendix 2) we have supplied a copy of the ITT including the Terms of Participation to all members of our Group of Economic Operators (if bidding as a Lead Contact) and/or Sub-Contractors (if we have named any Sub-Contractors in our Tender) and/or members of our Group (if we belong to a Group).
- 2.6 We warrant that we have all the requisite corporate agency to sign our Tender and this Declaration of Compliance.

Please sign to agree to this Declaration of Compliance	
Full name	
Name of organisation	
Role in organisation	
Signature (electronic is acceptable)	
Date	

**ANNEX 2 – GLOSSARY**

Appendix	means a document made available to Potential Providers in relation to this Procurement;
Contract	means the contractually-binding terms and conditions set out at Appendix 3 of this ITT to be entered into between GBSLEP and the successful Potential Provider(s) at the conclusion of this Procurement;
Contract Schedule	means a schedule to the Contract;
EIR	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
Evaluating Officers	means a committee of people who have declared any potential conflicts of interest and who have declared a competency to evaluate tender submissions on behalf of the GBSLEP;
Final Score	means the score achieved by a Tender at the conclusion of the Evaluation process calculated in accordance with Section 9 and Stage 2;
FoIA	means the Freedom of Information Act 2000 as amended and any subordinate legislation made thereunder from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
Invitation to Tender or ITT	means this invitation to tender document together with its Attachments, Annexes and Appendices, published by the GBSLEP in relation to this Procurement;
Marking Scheme	means the range of marks that may be given to a Potential Provider by the GBSLEP in accordance with the terms of this ITT;
Potential Provider	means a goods or service provider submitting a proposal to this Procurement;
Price Evaluation	means the process used to evaluate the charges tendered by a Potential Provider;
Price Score	means the score awarded to a Potential Provider at the conclusion of the Price Evaluation process calculated in accordance with the terms of this ITT;
Procurement	means the process used to establish a Contract that facilitates the supply of the Services;
Public Contracts Directive	means Directive 2014/24/EU of the European Parliament and of the Council;

Quality Evaluation	means the qualitative evaluation of a Tender undertaken during the Evaluation process;
Quality Score	means the score awarded to a Potential Provider at the conclusion of the Quality Evaluation process calculated in accordance with paragraph 6.3;
Regulations	means the Public Contracts Regulations 2015 ( <a href="http://www.legislation.gov.uk/uksi/2015/102/contents/made">http://www.legislation.gov.uk/uksi/2015/102/contents/made</a> ), as amended from time to time;
Services	means the services that may be provided by Suppliers, as set out at Appendix 1, Detailed Service Specification and Provider Profile and the Tender Information section of the ITT document;
Supplier	means a Potential Provider with whom the Customer has concluded a Contract;
Tender	means the Potential Provider's formal offer in response to the Invitation to Tender;
Tender Clarifications Deadline	means the time and date set out in paragraph 2.3 for the latest submission of clarification questions;
Tender Submission Deadline	means the time and date set out in paragraph 1.1 for the latest uploading of Tenders.