



Home Office

Procurement for the Provision of:

Alcohol Misuse and Domestic Abuse
Training Pack.

Appendix A – Terms of Participation



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1. INTRODUCTION

- 1.1 These Terms of Participation should be read in conjunction with the full other issued documents which comprise the Invitation to Tender (ITT) and Declaration of Compliance (Annex1).
- 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 Suppliers; and
 - 1.2.2 Specific rights of the Authority and limits to the Authority'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 Supplier shall abide by these Terms of Participation and any instructions given in the ITT.
- 3.2 An obligation on the Potential Supplier 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 Supplier 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 Supplier 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 Supplier to do so may result in the Potential Supplier's disqualification from this Procurement.



4.2 Involvement in multiple tenders

4.2.1 If a Potential Supplier 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 Potential Supplier within its Group,

Then the Authority 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 Potential Suppliers in this Procurement. The Authority may require the Potential Supplier to amend or withdraw all or part of its Tender if, in the Authority'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 A Potential Supplier 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 Suppliers' 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 the Authority 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 Suppliers' 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 Potential Supplier breaches paragraph 4.3.1, the Authority may (without prejudice to any other criminal or civil remedies available to it) exclude the Potential Supplier from further participation in this Procurement.

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

5. RIGHT TO VERIFY INFORMATION

- 5.1 The Authority may contact (or may require the Potential Supplier to contact on its behalf) any of the Potential Supplier'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 Supplier's Tender, to ask that they testify that such information is accurate and true.
- 5.2 The Authority reserves the right to seek third-party independent advice or assistance to validate information submitted by a Potential Supplier and/or to assist in the tender evaluation process.
- 5.3 The Authority reserves the right to conduct site visits of any premises indicated by the Potential Supplier to be used in connection with the Potential Supplier's provision of the Goods and/or Services and/or audits at any time during this Procurement.
- 5.4 The Authority may require the Potential Supplier 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 Supplier'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 The Authority 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 Potential Suppliers accept and acknowledge that, and in accordance with the Regulations, the Authority is not bound to accept any Tender or award a contract with any Potential Supplier at all.
- 6.3 If the Authority 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 The Authority may exclude a Potential Supplier's Tender from this Procurement if the Potential Supplier fails to provide to the Authority:
- 7.1.1 Any information requested;
 - 7.1.2 A full and satisfactory response to any question or information request;
 - 7.1.3 A Tender, or response to the Authority's queries, within any specified timescales; and/or
 - 7.1.4 The documentation referred to in its Tender.
- 7.2 The Authority may exclude a Potential Supplier from any participation in this Procurement at any stage if the Potential Supplier:
- 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 Authority has the right to exclude a Potential Supplier 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 Supplier to participate as member of a Group of Economic Operators or Sub-Contractor in another Tender; or

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

7.4 The Authority may exclude a Potential Supplier 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 the Authority's evaluation of the Potential Supplier'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 the Authority and a Potential Supplier in connection with this Procurement shall be relied upon as constituting agreement or representation that any contract is entered into in accordance with the Potential Supplier's Tender or at all.

8.2 The Authority 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 Suppliers or their representatives, Authorities or advisers in respect of this Procurement; and/or

8.2.3 Any communications between Potential Suppliers, the Authority and/or any relevant Contracting Authority and any other party (whether directly or through their Authorities 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 the Authority nor its advisers, directors, officers, members, employees or other staff or Authorities:

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



or damage arising as a result of reliance on such information or any subsequent communication.

- 8.4 The Potential Supplier shall form its own conclusions and make its own independent assessment of the requirements of the Contract Terms and Conditions Services, Annex C and should seek its own financial and legal advice about the methods and resources needed to meet the Authority's requirements.
- 8.5 The Authority does not accept responsibility for the Potential Suppliers' assessment of the requirements of this Procurement.
- 8.6 The Potential Supplier is responsible at its own expense, for obtaining all information required to prepare its Tender.
- 8.7 Any exclusions of liability of the Authority or the Authority in this paragraph 8 do not apply to the extent of any deceit or fraudulent misrepresentation made by or on behalf of the Authority.

9. CONCLUDING THE CONTRACT

- 9.1 The Potential Supplier undertakes that, in the event of a Potential Supplier's Tender being accepted by the Authority and the Authority confirming in writing such acceptance to the Potential Supplier, the Potential Supplier 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 the Authority at its sole discretion) of being called upon to do so by the Authority.

10. COSTS

- 10.1 The Authority will not reimburse any costs incurred by a Potential Supplier (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 Supplier'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 Supplier 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 the Authority on the conditions that the Potential Supplier:
- 11.1.1 Treats the ITT and its Appendices 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 A Potential Supplier 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 Supplier to submit its Tender and the person receiving the Information undertakes in writing (such written undertaking to be made available to the Authority on the Authority's request) to keep the Information confidential on the same terms imposed by these Terms of Participation; or
 - 11.2.2 It obtains the Authority'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 Supplier is legally required to make such a disclosure; or
 - 11.2.5 The Information has been published in accordance with paragraphs 12 (Freedom of Information) and 13 (Transparency).



- 11.3 The Authority may disclose information submitted by Potential Suppliers during this Procurement to its officers, employees, Authorities 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, the Authority may disclose within HM Government any of the Potential Supplier's documentation or information (including any that the Potential Supplier considers to be confidential and/or commercially sensitive such as specific information in its Tender) submitted by the Potential Supplier to the Authority during this Procurement. Potential Suppliers 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 paragraph 10 of the ITT), all information submitted to the Authority may be disclosed under a request for information made pursuant to the FoIA and the EIR (as defined in the glossary in paragraph 10 of the ITT).
- 12.2 A Potential Supplier 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 Supplier considers any part of its Tender or any other, information it submits to be confidential or commercially sensitive, the Potential Supplier 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 Supplier identifies that part of its Tender or other information it submits is confidential or commercially sensitive, the Authority in its sole discretion will consider whether or not to withhold such information from publication. The Potential Suppliers should note that even where information is identified as confidential or commercially sensitive, the Authority may be required to disclose such information in accordance with the FoIA or the EIR.
- 12.5 The Authority is required to form an independent judgement of whether the Potential Supplier'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. The Authority cannot guarantee that any information indicated as being confidential or commercially sensitive by the Potential Supplier will be withheld from publication.
- 12.6 If the Potential Supplier 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 Authority.

13. TRANSPARENCY

- 13.1 In accordance with the Government's policy on transparency, the Authority reserves the right to make all or part of the Information (which, for the avoidance of doubt, includes the Contract Terms and Conditions for Services, Annex C publicly available (subject to any redactions made at the discretion of the Authority 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. Potential Suppliers should note that the terms of the proposed Contract will permit the Authority to publish the full text of such Contract concluded with the Potential Supplier after considering (at the Authority's sole discretion respectively) any representations made by the Potential Supplier regarding the application of any relevant FoIA or EIR exemptions.

- 13.2 The Potential Supplier acknowledges and agrees that information contained within its Tender may be incorporated by the Authority into any contract awarded to the Potential Supplier 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 the Authority and shall be used by the Potential Supplier only for the purposes of this Procurement.



- 14.2 The Potential Supplier grants the Authority 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 the Authority's business activities. This licence shall also permit the Authority to sublicense the use of the Potential Supplier's Tender to its advisers or sub-contractors or other Contracting Bodies for the same purposes.

15. NO INDUCEMENT OR INCENTIVE

The Potential Supplier acknowledges and agrees that nothing contained within the ITT shall constitute an inducement or incentive nor shall have in any other way persuaded a Potential Supplier 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

POTENTIAL SUPPLIER – 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 (Annex A).
- 1.2 The word “we” in paragraph 2 of this Declaration of Compliance refers to the Potential Supplier.

2. Declarations

- 2.1 We offer to provide Services as specified in the Statement of Requirements in accordance with the terms and conditions of the Draft Contract Document in Annex C.
- 2.2 We have made sufficient enquiries and have received sufficient information from the Authority 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 the Authority 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 A.
- 2.5 We warrant that, in furtherance of our obligation under paragraph 3.2 of the Terms of Participation (in Annex A) 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 authority to sign our Tender and this Declaration of Compliance.