



Valuation Office  
Agency

# **Invitation to Tender**

## **SPECIFICATION**

**VOA/2020/009**

**Ricketts (VO) v Savvis Ltd – RA/54/2019**

**2010 List Rateable Value Appeal**

## **1. INTRODUCTION**

### **The role of the VOA**

**1.1.** The Valuation Office Agency (VOA) is an executive agency of her Majesty's Revenue and Customs (HMRC). As the public sector's property valuation experts, we provide valuations and property advice to the government and local authorities in England, Scotland and Wales to support taxation and targeted financial support for families and individuals. The VOA also provide property valuation and surveying services to public sector bodies. Its work includes:

- compiling and maintaining lists of council tax bands for approximately 26 million domestic properties;
- compiling and maintaining lists detailing the rateable value of over 2 million commercial properties for business rates;
- determining Local Housing Allowance rates across England;
- advising local authorities of the maximum subsidy level payable for Housing Benefit claims under the local reference rent system;
- maintaining a register of fair rents for regulated tenancies in England;
- providing statutory valuations to support taxes administered by HMRC and the administration of benefits by the Department for Work and Pensions; and
- providing a range of independent property advice and valuations across the public sector.

**1.2.** Please see [www.voa.gov.uk](http://www.voa.gov.uk) for further details.

## **2. Requirement**

### **2.1 Non Domestic Rating (NDR) Context**

Valuation Officers (VOs) at the VOA are responsible for the compilation and maintenance of Local Rating Lists for each Local or Billing Authority in England and Wales. The Rating Lists contain Rateable Values in respect of the properties shown.

An important aspect in the determination of entries in a correct Rating List is identification of the appropriate 'parcel' or 'unit of assessment' of rateable property, (known as the 'hereditament'). This litigation principally concerns a question as to when such a 'hereditament' comes into existence in the context of a co-location hosted data centre.

When a hereditament comes into existence, or its extent, is a legal question and will be answered in each case by an application of the law to the facts established.

Expert input is required to assist in establishing the facts around the physical operation of data centres, how they are physically configured and the markets in which they operate.

### **2.2 Expert Opinion**

*The issue and basic requirements*

An expert witness is required in connection with an appeal to the Upper Tribunal (Lands Chamber) against the decision of the Valuation Tribunal for England (VTE).

The decision appealed against is linked here: [http://info.valuation-tribunals.gov.uk/decision\\_document.asp?Decision=&appeal=%2Fdecision%5Fdocuments%2Fdocuments%2FNDR%2F035025015043%2F537N10](http://info.valuation-tribunals.gov.uk/decision_document.asp?Decision=&appeal=%2Fdecision%5Fdocuments%2Fdocuments%2FNDR%2F035025015043%2F537N10)

The main facts and issues in this matter can be found in the published decision of the Valuation Tribunal, however a summary of the main points follows.

The subject property comprises a data centre formed out of 2 adjacent flexible warehouse units. It has been progressively developed as a data centre by the phased construction of data halls within the building's shell.

The question for the Upper Tribunal to determine, is whether certain parts of the property are 'ready for occupation' or not, so as to be part of the 'hereditament' to be valued for rating purposes.

The area of the VTE decision concerning the exclusion for rating purposes of the 'primary UPS modules' is not in dispute. But an issue as to the inclusion of certain other plant items has now been raised on appeal to the Upper Tribunal and expert input will be needed to establish the facts relating to that issue, in addition to the principal 'readiness for occupation' question. There are a series of dates at which the physical attributes of the property and its locality are to be taken into account and these are set out in the linked VTE decision, they range from 1 April 2010 to 13 March 2013

The date at which 'economic' or market factors are to be taken into account is 1<sup>st</sup> April 2008.

### **2.3 The specific areas upon which expertise is sought are:**

- The nature, operation and requirements of the co-locating / hosting sector of the data centre market (which appears to be the nature of the operation in the subject property);
- How the co-locating / hosting sector differs if at all from any other sector of the market (e.g. 'owner-occupiers' of data centres, such as large multi-nationals who may need their own data centre);
- How the requirements of this sector of the market influence the design and fit out of the data centres (if at all), in particular regarding the flexibility required to accommodate the needs of various different end users in a single data hall;
- Market expectations and practice in respect of non-data hall uses in the data centre, e.g. office space let out to the users of the data halls.
- How the hereditament may have been designed to allow it to be occupied for the ratepayer's purpose.
- Reasons behind the installation of certain plant systems and how those system are used.

The expert will need to produce an 'Expert Witness Report' and at least one other report in rebuttal of the case advanced by the respondent industry expert. If the case proceeds to a hearing the expert appointed will also be required to give evidence in chief and be subject to rigorous cross examination by the appellant's counsel.

The expert will be required to attend any case conferences and exchange correspondence on the matters at issue.

The expert will also be required to collaborate with the appellant's industry expert in production of a statement of agreed facts and matters in dispute.

A timetable has been set down by the Tribunal as follows:

By 14<sup>th</sup> September 2020 the expert will have discussed matters sufficiently with the opposing expert in order to produce a list of issues and matters agreed between them;

By 12<sup>th</sup> October 2020 the expert will file their expert report;

By 7<sup>th</sup> December 2020 the expert will (if necessary) file their report in response to the opposing expert's report;

The expert must be available to attend a hearing in the time window 1<sup>st</sup> January 2021 – 31<sup>st</sup> March 2021. The final date for the hearing is yet to be confirmed. The duration of the hearing is likely to be approximately 3 days and will be at the Royal Courts of Justice in London.

### ***The Respondent's case: Savvis Ltd.***

The Appellant's principal case before the Upper Tribunal suggests that the extent of the rateable hereditament is less than the appellant Valuation Officer considers it to be because:

- A statutory Completion Notice has not been served so as to deem the property to be 'complete' for rating purposes.
- In the absence of such a Completion Notice, (and therefore deemed completion) parts of the property are not 'ready for occupation' so as to be capable of beneficial occupation for rating purposes.

### ***The Appellant's view [Valuation Officer]***

The Appellant's principal case is:

- That the data halls, machine rooms and offices are ready for occupation, since those halls are ready for the letting out of space to 3<sup>rd</sup> party clients by Savvis as 'proxy landlord'.

### ***The Expert's reports***

Reports should be concise, written in plain English and follow a standard format, and guidance will be given in this regard. We require high standards of presentation and expect all drafts and final versions to be complete and to have been proof-read before

being delivered. The Potential Supplier should assume that reports, discussion guides and presentations may require to be amended in the light of comments made by the VO and those who advise VO and a number of drafts may be required before the report is finalised.

VOA expect all summaries, reports, data and presentations to be provided in an electronic format, compatible with Microsoft Office applications.

**Should the dispute be resolved at any stage during the proceedings the Valuation Office Agency will reserve the right to terminate the contract at that stage.**

### **Acting as an Expert Witness**

The Supplier shall work on the basis that in providing any written reports to the Tribunal and giving evidence its duty is to help the Tribunal on matters within its expertise, and that this duty overrides any obligation to the VOA. The Supplier should understand that, once disclosed, its report will be made available to any party to the proceedings even if it does not give oral evidence at the hearing.

The VOA recognises that in litigation matters, the facts often only become available over an extended period of time. Should information come to the Supplier's attention after service of the Supplier's report that materially alters its opinions the Supplier will discuss this with the VOA at the earliest practical opportunity, and any requirement to revise its opinions that may be necessary.

In the paragraphs below certain aspects of the rights and duties of an expert witness under the Civil Procedure Rules are detailed that are considered worthy of further emphasis. Although these are tribunals rather than a standard court hearing, these rules should be applied to the Supplier's work before the Tribunal and providing they do not conflict with any specific rules or directions of the Tribunal.

In accordance with the Civil Procedure Rules, any expert's report the Supplier is asked to provide will be addressed to the Tribunal and include, inter-alia, the following matters:

- a) A summary of the range of opinions on matters dealt with in the report together with the reasons for those opinions.
- b) An express statement that the expert understands their duty to the Tribunal and they have complied and will continue to comply with that duty.
- c) A statement setting out the substance of all material facts and instructions that the expert has received (whether written or oral), which are material to the opinions expressed in their report or upon which their opinions are based.
- d) The expert will specifically state if a question or issue falls outside their expertise.
- e) A Statement of Truth will be made at the end of the expert's report in accordance with paragraph 3.3 of the Practice Direction to Part 35 of the Civil Procedure Rules confirming that the facts stated therein are true and the opinions expressed are correct and as also required by The Valuation Tribunal (VT) or Upper Tribunal (UT) practice statements, regulations, rules or directions.

Furthermore, if, after exchange of reports, the expert changes their opinion on a material matter such a change of opinion should be communicated to the other side (through the VO's legal representatives) without delay.

The Supplier will also be required to respond to the opposing expert's questions on its report within the time allowed, should they be made.

In standard court proceedings, an expert has the right to file a written request to the Court for directions to assist him in carrying out their work if they consider this necessary. Should the Tribunal apply such a right and should the expert need to exercise any such right the Supplier shall provide the VOA with a copy of the proposed request for directions at least seven days before it is filed with the Tribunal; and will ask the VOA to provide a copy to the Appellant's solicitors at least four days before it is filed. It is understood that the Tribunal may (if adopting court practice) direct that any party to the proceedings shall be served with a copy of the request for those directions and the Court's directions in response.

### **Key Dates & Timescales**

- A site inspection and meetings with the Respondent's expert to take place as soon as possible.
- Issues between experts to be set out, and (as far as possible), facts to be agreed by 14<sup>th</sup> September 2020
- Expert Report to be completed by 12<sup>th</sup> October 2020.
- Rebuttal Report to be complete by 7<sup>th</sup> December 2020.
- Final Statement of agreed facts and issues to be produced jointly at two weeks before the hearing.
- Three day hearing to be held at some stage in the timeframe 1<sup>st</sup> January 2021 to 31<sup>st</sup> March 2021.

### ***Conflicts of Interest***

The supplier shall not accept outside instructions to act against the VOA in circumstances where the matter relates to the subject matter of this contract. This requirement shall apply during the term of the Contract and shall survive after the Contract is terminated in respect of any matter on which the supplier has advised or acted for the VOA.

The supplier shall notify the VOA of any possible or potential conflict of interest which may result from other activities, and shall only commence such other activities after obtaining written approval of the VOA (which may not be unreasonably withheld).

The supplier shall carry out conflict of interest checks on an ongoing basis and take all reasonable steps to remove or avoid the cause of any conflict of interest.

The VOA reserves the right to deem any suppliers (and other sub-contractors and consortium) party to the same frameworks as the VOA as posing automatic conflicts of interest

## **3 Contract Management**

The successful supplier will be required to appoint a contract manager who will act as the principal point of contact for VOA.

The VOA contract manager must be kept informed of progress and be involved in key decisions. These may include (but are not restricted to) proposed changes in supplier staffing (at all levels) or deviations from the agreed work programme, which must be discussed and agreed with the VOA contract manager in advance.

#### *Reviews & Management Information*

The nature of contract management reviews and management information will be agreed between the VOA Contract Manager and Supplier Contract Manager post-contract award. Due to the nature of the service provided, reviews will be scheduled as a minimum on a monthly basis.

## **4 Invoicing & Payments**

**4.1.** Payments will be made via an electronic payments system, SAP Ariba P2P (MYBuy). Invoices should be provided for each milestone within one month of agreement of deliverables and sent to **voainvoices.ap@hmrc.gsi.gov.uk** copying in contract manager email address (including the purchase order provided). Payments will be made into the bank account provided by the supplier.

## **5 Timetable**

The estimated timetable for delivery is set out below.

| <b>DATE</b>                           | <b>ACTIVITY</b>   |
|---------------------------------------|---|
| <b>15<sup>th</sup> June 2020</b>      | Publication of ITT  |
| <b>15<sup>th</sup> June 2020</b>      | Clarification period starts   |
| <b>5 pm 22<sup>nd</sup> June 2020</b> | Clarification period closes (" <b>Tender Clarifications Deadline</b> ")                 |
| <b>23<sup>rd</sup> June 2020</b>      | Deadline for the publication of responses to Tender Clarification questions             |
| <b>3pm 29<sup>th</sup> June 2020</b>  | Deadline for submission of Tenders to the Agent (" <b>Tender Submission Deadline</b> ") |
| <b>30<sup>th</sup> June 2020</b>      | Bids Compliance Checks  |
| <b>w/c 6<sup>th</sup> July 2020</b>   | Commencement of Evaluation Process  |
| <b>w/c 20<sup>th</sup> July 2020</b>  | Proposed Award Date of Contract   |
| <b>27<sup>th</sup> July 2020</b>      | Expected commencement date for Contract   |

### **Length of Contract**

The contract term will be from **27<sup>th</sup> July 2020 until 26th July 2021** subject to changes in the UT (LC) timetable and the case not being resolved prior to the hearing dates. An extension of a further 12 - 24 months by mutual agreement may be negotiated to accommodate this requirement.

## 6. Evaluation Criteria

### **Quality Questions - will form 80% of the evaluation**

- 6.1 Please confirm that you have no conflict of interest to deliver this Specification **[Pass / Fail]**  
*Tenderers that fail Q.6.1 will not be considered for further evaluation.*
- 6.2 Please outline your recent expertise in, and knowledge of, the data centre co-location and hosting marketplace - **one page maximum [12.5%]**
- 6.3 Please outline your recent experience regarding the physical requirements of data centre occupiers – **one page maximum [12.5%]**
- 6.4 Please give up to three examples of work you were involved in demonstrating your experience (it may be helpful if at least one example should be in a rating or legal dispute context) – **one page per example maximum [15%]**
- 6.5 It is essential to the full scope of this contract award that you would be able to give evidence of the Data centre industry within the context of the appeal and speak to your report in tribunal, should this be required. Please provide up to two examples to demonstrate your experience of undertaking an expert witness role– **one page maximum [20%]**
- 6.6 Please give up to two examples of your report writing skills demonstrated over the last 10 years one page maximum. – **Maximum one page per example [10%]**
- 6.7 Have you ever been cross examined at a formal hearing of any kind? Please provide details including the case reference – **one page maximum [10%]**

**Pricing Criteria - this will form 20% of the evaluation** - Prices should be submitted in pounds Sterling inclusive of any expenses but exclusive of VAT.

- 6.8 Please provide a Day Rate and estimated number of days for the delivery of the specification based on an 8 hour day.
- 6.9 Please provide price estimates relating to the four sections of the requirement:
- The Report;
  - The Services;

Please note that Travel undertaken must comply with VOA Travel Policies and reimbursements will only be made in accordance with Travel rates and approvals. See Appendix B.

A full estimate of further costs should be provided including hour/day rates and estimates of total charges for the work beyond the initial report.

## 7. Summary of Requirements

Tenders should include the following information:

- A proposal to meet the specification of work and answers to all tender questions. This should include details of the proposed methodology to achieve work requirements.



- The Proposal should state who will act as the VOA's expert ("the expert witness") and be the person responsible for this engagement, and will appear before the Upper Tribunal if so required.
- In order to contain costs the "expert witness" may delegate to other members of their staff should they deem it appropriate to the nature of the work required. A change of expert witness can only be made with the approval of the VOA. The Supplier will also use specialist skills in different parts of the firm as required to assist them in their work.
- Expertise and experience of key personnel proposed, their status within the company, area of expertise and details of their individual chargeable hourly/day rates.
- Confirmation delivery timescales can be met.
- A firm price bid (exclusive of VAT) for the "Expert Witness Report" above is required plus the full estimated amount of hours/days for the full specification of work, with hourly rate breakdown and charges.
- Any further costs identified (including travel). Provide a statement of the expert's availability to give evidence.

## 8. Scoring

Scoring will be kept within bands and scores allocated for each question in line with scoring scheme contained in the following table. The maximum total score will be 100. Please See Appendix A

The contract will be awarded on the basis of supplier ability to evidence required quality aspects of the VOA requirement. Whilst contract price will be an important consideration, it is only one of a range of important factors affecting any decision to award a contract. VOA reserve the right not to accept the lowest priced (or any) tender.

## 9. Tender Queries & Submission

Enquiries and requests for clarification are welcomed and must be submitted at the latest by **5pm on the 22<sup>nd</sup> of June 2020 by e-mail to [tenders@voa.gsi.gov.uk](mailto:tenders@voa.gsi.gov.uk)** - please annotate all query emails with a subject box saying "**Cyxtera 2010 List Appeal Expert**".

You should send a PDF or read-only electronic copy of your tender proposal by e-mail to **[tenders@voa.gsi.gov.uk](mailto:tenders@voa.gsi.gov.uk)**, to arrive no later than **3pm on the 29<sup>th</sup> of June 2020** (unless the date is subsequently amended in writing by the VOA).

Please annotate all tender emails with a subject box saying "**Tender for Cyxtera 2010 List Appeal Expert**".

**No hard copies of the tender are required.**

## 10. TERMS AND CONDITIONS



Model Short Form  
VOA Ts&Cs\_2020.do

## Appendix A – Evaluation Scoring Criteria

| Score      | ‘Closed’ Question Criteria   | ‘Open’ Question Criteria  |
|------------|--|---|
| <b>100</b> | Excellent answer which meets all of the requirements and provides all of the required detail.                            | An excellent response that: <ul style="list-style-type: none"> <li>• is completely relevant, addressing all of the requirements;</li> <li>• demonstrates an excellent understanding of the requirements, is comprehensive, robust and unambiguous;</li> <li>• provides highly credible supporting evidence, benefits or innovation; and/or</li> <li>• meets the requirements in all aspects, with no ambiguity or weaknesses identified and no clarification required.</li> </ul> |
| <b>80</b>  | Good answer which meets all of the requirements but lacks some minor detail  | A good response that: <ul style="list-style-type: none"> <li>• is highly relevant, addressing all of the requirements;</li> <li>• demonstrates a good understanding of the requirements and is comprehensive;</li> <li>• provides supporting evidence of sufficient detail; and/or</li> <li>• meets the requirements in all aspects, but contains minor weaknesses or a small amount of ambiguity.</li> </ul>   |
| <b>60</b>  | Satisfactory answer, which meets the requirements in many aspects, but fails to provide sufficient detail in some areas. | A satisfactory response that: <ul style="list-style-type: none"> <li>• is relevant, addressing most or all of the requirements;</li> <li>• demonstrates a satisfactory understanding of the requirements;</li> <li>• provides supporting evidence but lacks detail in some areas; and/or</li> <li>• meets the requirements in most aspects, but contains manageable weaknesses or some ambiguity and may require some</li> </ul>  |
| <b>40</b>  | Limited answer which satisfies some aspects of the requirements, but fails to meet the specification in the whole.       | A limited response that: <ul style="list-style-type: none"> <li>• is mostly relevant, addressing most of the requirements;</li> <li>• demonstrates a limited understanding of the requirements;</li> </ul>  |

| Score     | 'Closed' Question Criteria   | 'Open' Question Criteria   |
|-----------|--|--|
|           |  | <ul style="list-style-type: none"> <li>provides supporting evidence but lacks detail in some or most areas; and/or</li> <li>contains weaknesses or ambiguity which suggest that the requirements would not be met unless clarified.</li> </ul>   |
| <b>20</b> | Poor answer which significantly fails to meet the requirements.  | <p>A poor response that:</p> <ul style="list-style-type: none"> <li>is only partially relevant, addressing some of the requirements;</li> <li>demonstrates a poor understanding of the requirements;</li> <li>provides supporting evidence that is of limited/insufficient detail or explanation; and/or</li> <li>contains multiple and/or significant weaknesses or ambiguity that suggest the requirements would not be met.</li> </ul>  |
| <b>0</b>  | <p>The response is not considered relevant.</p> <p>The response is unconvincing, flawed or otherwise unacceptable.</p> <p>Response fails to demonstrate an understanding of the requirement.</p> <p>No evidence is provided to support the response.</p> <p>Or nil response.</p> | <p>An unacceptable response that:</p> <ul style="list-style-type: none"> <li>is not fully relevant, addressing some or none of the requirements;</li> <li>demonstrates very limited or no understanding of the requirements;</li> <li>provides little or no supporting evidence that is of insufficient detail or explanation; and/or</li> <li>is unconvincing, flawed or otherwise inadequate, suggesting that the requirements will not be met.</li> </ul> <p>Or nil response.</p> |

## Appendix B - Expenses policy

The aim of VOA is to make our travel practices more sustainable by:

- reducing our business travel footprint;
- choosing alternatives to travel (such as telephone or video conference);
- adopting more sustainable ways of travelling when it is necessary to do so (public transport over private vehicles).

**To help VOA meet its target of reducing carbon emissions from business travel by at least 10% please consider:**

- Avoiding travel by using telephone and video conferencing as the default medium.
- Only using private cars as the last option after public transport and hire cars.

1. Travel to and from the Primary Location will be met from the day rate.
2. Expenses are payable where travel to other locations is required as part of the assignment forming part of this agreement. Where an overnight stay is required VOA will pay for actual bed and breakfast costs within the current maximum limits detailed below. Any other subsistence or incidental expenses are not payable save for an Evening Meal Allowance (see below). Receipts must be provided.

| Short-term Night Subsistence Allowances<br>Bed & Breakfast Capped Rates<br>Effective from 01/06/10 |                      |
|--|----------------------|
| Location   | Maximum Nightly Rate |
| London / within M25  | £120                 |
| Bristol; Heathrow  | £90                  |
| Oxford; Portsmouth   | £85                  |
| Elsewhere in UK  | £80                  |
| Travel   |                      |
| Mileage Allowance  | 45 pence per mile    |
| Rail Travel  | Standard Class       |
| Air Travel   | Economy Class        |

3. Hotel Reservation and Tickets shall be booked via VOA's travel and hotel booking service. Further information will be provided by the VOA Work Manager. Bookings should always be approved by the VOA Work Manager.
4. All other expenses will be payable at the discretion of VOA. The Contractor shall not incur any such expenses without the prior approval of the VOA Work Manager. Any expense incurred by the Contractor without prior approval shall not be reimbursed.

| Allowances<br>Description | (The<br>maximum)<br>Amount | Receipts Required Plus Additional Guidance. |
|---------------------------|----------------------------|---|
|---------------------------|----------------------------|---|

|   |               |  |
|---|---------------|--|
| <p><b>Evening Meal Allowance</b><br/> <i>up to the maximum shown in the Maximum Amount Column).</i></p> | <p>£23.50</p> | <p>Receipts are required in all cases.<br/> This can be claimed when you are staying away from home overnight and where you have to pay separately for your evening meal because it is not included within your accommodation package.<br/> If you meet the criteria in the first paragraph, you may only claim the amount that you have spent, up to the maximum stated.<br/> This can include gratuities, provided that they are shown within the bill for the meal as gratuities are subject to tax. You cannot claim back the cost of any tips or gratuities that are not included within the bill for the meal.</p> |
|---|---------------|--|