

# CONTRACT LETTING PROCESS AGREEMENT FOR THE EMERGENCY SERVICES NETWORK

## IMPORTANT NOTICE

### PLEASE READ CAREFULLY BEFORE CLICKING 'CONFIRM'.

BY CLICKING ON THE "CONFIRM" BUTTON YOU (DEFINED IN THESE TERMS AS THE "APPLICANT") AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. THE TERMS INCLUDE, IN PARTICULAR, CONFIDENTIALITY OBLIGATIONS AT CLAUSE 2, PROHIBITED GIFTS OBLIGATIONS AT CLAUSE 3, ANTI-COLLUSION OBLIGATIONS AT CLAUSE 4 AND PROVISIONS RESTRICTING PUBLICITY AT CLAUSE 5.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT CLICK 'CONFIRM'.

THE AUTHORITY WILL NOT PERMIT YOU TO PARTICIPATE IN THE PROCUREMENT OR SUBMIT A RESPONSE TO THE PQQ IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT.

YOU SHOULD PRINT A COPY OF THIS AGREEMENT FOR FUTURE REFERENCE.

## 1 Definitions and Interpretation

In this Agreement the following words and expressions have the following meanings:

**"Secretary of State"** means the Secretary of State for the Home Department whose principal place of business is 2 Marsham Street, London, SW1P 4DF;

**"Affiliate"** means any person who is:

- (a) a subsidiary, subsidiary undertaking or holding company of any Applicant (any such person a "relevant person"); or
- (b) a subsidiary, subsidiary undertaking or holding company of a relevant person;

**"Agreed Purpose"** means the purpose of the Applicant formulating the Letting Proposal and entering into dialogue, if selected so to do, with the Secretary of State for the letting of the Contract;

**"Alternative Applicant"** means any person other than an Applicant participating in the Contract Letting Process (whether individually or as part of a consortium) with a view to being selected to operate the Contract and any person submitting or proposing to submit alternative proposals for the letting of the Contract or the transfer to it of the Contract, or shares in an operator;

**"Applicant Information"** means all information of whatsoever nature whether oral, written or in any other form disclosed by the Applicant to the Secretary of State as part of or for the purposes of the Letting Proposal or the Contracting Letting Process, provided always that information originating from the Secretary of State shall not constitute Applicant Information;

**"Beneficiaries"** means the Crown, the Secretary of State for Health, the Secretary of State for Communities and Local Government and their respective Representatives;

**"Confidential Information"** means all information which is either Secretary of State Information or Applicant Information (or both);

**“Contract”** means one or more of the Contracts the Secretary of State proposes to let as part of the Emergency Services Mobile Communications Programme;

**“Contract Letting Process”** means the procedure (as varied from time to time) adopted by the Secretary of State for the selection of a contractor, including submission of pre-qualification documents, tenders, participation in dialogue with the Secretary of State, best and final offers (if required), and the negotiation and finalisation of a new contract and any documents to be entered into under or in relation to the new contract;

**“Letting Proposal”** means the proposal for the Contract submitted or to be submitted by the Applicants to the Secretary of State including any pre-qualification application, tender submission and best and final offer;

**“Parties”** means the Secretary of State and the Applicants;

**“Representatives”** means the officers, directors, employees, advisers, agents, contractors and sub-contractors of that person and, where the context admits, providers or potential providers of finance to the Applicant or any Affiliate in connection with the Letting Proposal and the representatives of such providers or potential providers of finance;

**“Secretary of State Information”** means:

- (a) information at any time deposited or contained in the electronic data site established by or on behalf of the Secretary of State for the purposes of the Contract Letting Process; and
- (b) all other information of whatsoever nature whether oral, written or in any other form (including the pre-qualification document and any invitation to tender) disclosed by the Secretary of State to the Applicants for the purposes of or pursuant to the Contract Letting Process;

**“Third Party”** means any person who is not a Party;

## **2 Confidentiality**

2.1 Subject to clause 2.3, the Applicant undertakes that the Applicant and its Representatives:

2.1.1 shall at all times (whether or not negotiation proceeds in relation to the Letting Proposal) keep all Secretary of State Information secret and confidential and shall not disclose any Secretary of State Information to any Third Party;

2.1.2 shall not disclose to any Third Party any information about the Contract Letting Process or any details relating to the status of any negotiations between the Secretary of State and the Applicant or any Alternative Applicant other than the fact that the Applicant is investigating the possibility of submitting, or has submitted, a Letting Proposal;

2.1.3 shall not disclose Secretary of State Information to the Representatives of the Applicant or any Affiliate except to the extent that such Representatives or such Affiliate need to know Secretary of State Information for the purposes of evaluating whether or not and on what terms the Applicant might proceed with the Letting Proposal;

- 2.1.4 shall not make contact with any operator of emergency services mobile communications services (not being an Affiliate) or any representatives or associates of such operators in connection with the Letting Proposal or the Contract Letting Process without the prior written consent of the Secretary of State;
- 2.1.5 shall, on written demand from the Secretary of State or if the Applicant withdraws or is ejected from the Contract Letting Process, return any Secretary of State Information in their possession or control to the Secretary of State without keeping any copies thereof and either hand over to the Secretary of State or destroy all notes, memoranda or other records (including electronic records) containing or reflecting any Secretary of State Information and, if required to do so by the Secretary of State, provide written confirmation of its compliance with this clause 2.1.5; and
- 2.1.6 shall inform any person to whom Secretary of State Information is to be disclosed under the terms of this Agreement of the restrictions contained in this Agreement and shall procure their compliance with the terms of this Agreement.
- 2.2 Subject to clauses 2.3 and 2.5, the Secretary of State undertakes that she and her Representatives shall at all times keep all Applicant Information secret and confidential and shall not disclose any Applicant Information to any Third Party.
- 2.3 The undertakings in clauses 2.1 and 2.2 shall not apply to any disclosure of Confidential Information:
- 2.3.1 expressly authorised by this Agreement or agreed in writing between the Parties;
- 2.3.2 by any Party or Beneficiary to its Representatives;
- 2.3.3 required by any applicable law or by any supervisory or regulatory body (including the Financial Services Authority, the Competition Commission, the National Audit Office and the Panel on Takeovers and Mergers) to whose authority the disclosing party (including its shares or securities) is subject or with whose rules the disclosing party is required to comply;
- 2.3.4 which is in or subsequently comes into the public domain (unless as a result of a breach of this Agreement or any undertaking given pursuant to this Agreement);
- 2.3.5 which is lawfully in the disclosing party's possession (as can be demonstrated by its written records) and, where the disclosing party is not a Beneficiary, was not acquired directly or indirectly from any Beneficiary;
- provided that should the Applicant or any of its Representatives become aware that it or they may become compelled by law or by any such supervisory or regulatory body to disclose any Secretary of State Information, the Applicant shall give prompt notice of that fact to the Secretary of State in writing so that she may (if she thinks fit) seek an appropriate remedy to prevent such disclosure and the Applicant will take, and will ensure that its Representatives take, such steps as the Secretary of State may reasonably require for that purpose and will keep the Secretary of State promptly and fully informed of all developments relating to such potential disclosure.
- 2.4 In the event that the Applicant or its Representatives become compelled by law or by any such supervisory or regulatory body to disclose any Secretary of State Information, the Applicant will give full details of any proposed disclosure to the Secretary of State in advance of such disclosure and, subject to the proviso at the end of clause 2.3, such disclosure will be

limited to the minimum amount of Secretary of State Information required to satisfy such disclosure obligation.

- 2.5 The undertakings in clause 2.2 shall not apply to any disclosure of Applicant Information by the Secretary of State:
  - 2.5.1 to a Beneficiary or any other stakeholding or governmental body.
  - 2.5.2 which is required to be made under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000;

### **3 Prohibited Gifts**

3.1 The Applicant shall not, and shall ensure that its Affiliates and Representatives do not, before the signing of the Contract or the satisfaction of any and all conditions precedent in relation to the Contract, whichever is the later, directly or indirectly without the prior written approval of the Secretary of State:

- (a) pay any sum to;
- (b) grant any concession or benefit to;
- (c) make any gift or entertainment of significant cost or value to; or
- (d) enter into any business relationship with

any Representative of any Beneficiary or Alternative Applicant, or undertake to do so or indicate to any person that it will or may do so.

3.2 The prohibitions in clause 3.1 do not prohibit any payments or other actions in the context of a pre-existing commercial relationship entirely independent of the subject matter of the Contract Letting Process.

### **4 Anti Collusion**

4.1 Subject to clause 4.2, the Applicant shall not, and shall ensure that its Representatives and Affiliates do not, at any time on or before the signing of the Contract or the satisfaction of any and all conditions precedent in relation to the Contract, whichever is the later:

- 4.1.1 fix or adjust under or in accordance with any agreement or arrangement with any Third Party the amount of any payment proposed in connection with the possible letting of the Contract to the Applicants;
- 4.1.2 communicate to any person other than as expressly permitted by the terms of this Agreement the amount or approximate amount of any payment so proposed;
- 4.1.3 enter into any agreement or arrangement with any person that such person shall refrain from making any proposal for the letting of the Contract or that such person should amend or withdraw any such proposal once offered or vary the amount of any payment proposed or to be proposed in connection with any such proposal;
- 4.1.4 pay, give or offer to pay or give any sum of money or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in

relation to any other proposal for the letting of the Contract any of the actions referred to at clauses 4.1.1 to 4.1.3 and 4.1.5; or

- 4.1.5 disclose to any person other than the Secretary of State and except as permitted by this Agreement the whole or any part or any details of the Letting Proposal.
- 4.2 The provisions of clause 4.1 shall not apply to the Applicant:
  - 4.2.1 to the extent that the Applicant discloses the approximate amount of any payment proposed in connection with the Letting Proposal in confidence in order to obtain any insurance premium quotations required for the purposes of and in compliance with any written requirement of the Secretary of State;
  - 4.2.2 to the extent that the Applicant discloses details of the Lettings Proposal in confidence to any person to whom such disclosure is necessary in order to achieve the Agreed Purpose; and
  - 4.2.3 to the extent agreed in writing by the Secretary of State.

## **5 Publicity**

- 5.1 The Applicant acknowledges that:
  - 5.1.1 the Contract Letting Process is of national significance within the United Kingdom and is likely to attract public and media attention; and
  - 5.1.2 such attention may have a materially adverse impact on the outcome of the Contract Letting Process.
- 5.2 The Applicant accordingly agrees that it shall not, and shall ensure that its Representatives and Affiliates do not, without the prior written consent of the Secretary of State, in relation to the Contract Letting Process or the Letting Proposal:
  - 5.2.1 issue any press notice or press release; or
  - 5.2.2 give or publish any announcement or notice to its officers, employees or contractors, otherwise than to those with a direct interest in such matters,before the Secretary of State publicly announces the identity of the Contractor selected pursuant to the Contract Letting Process.

## **6 Remedies**

- 6.1 Without prejudice to all other remedies and relief to which the Secretary of State or the Beneficiaries may be entitled under the common law or otherwise, the Secretary of State may in the event of any material breach of this Agreement:
  - 6.1.1 take such breach into account in evaluating any future application to participate in a contract letting process and any future tender on the part of any Applicant or any Affiliate;
  - 6.1.2 eject the Applicants from the Contract Letting Process;
  - 6.1.3 eject the Applicants, any Applicant and/or any Affiliate from any other contract letting process in which the relevant Applicant or Affiliate is involved; and/or

6.1.4 exclude the Applicants, any Applicant and/or any Affiliate from the pre-qualification stage of any future contract letting competition.

6.2 The Applicants acknowledge and agree that, without limitation, any breach of its obligations under clauses 3 (*Prohibited Gifts*), 4 (*Anti Collusion*), and 5 (*Publicity*) shall constitute a material breach of this Agreement.

## **7 Benefit of Undertakings**

The Applicants acknowledge and agree that the Secretary of State is entering into this Agreement for herself and as agent for each of the other Beneficiaries. The undertakings, acknowledgements, warranties and representations (whether or not expressed or described as such) made or given by the Applicants in this Agreement:

- (a) are so made or given for the benefit of, and may be enforced by, the Secretary of State and each of the other Beneficiaries; and
- (b) may be so enforced against any Applicant, or any number of them, at the sole discretion of the Secretary of State or relevant Beneficiary.

## **8 General**

8.1 This Agreement represents the entire agreement of the parties.

8.2 Delay or failure by the Secretary of State in exercising any right, power or privilege under this Agreement will not constitute a waiver by the Secretary of State of her rights or remedies.

8.3 If any part of this Agreement is held to be invalid or unenforceable, the validity or enforceability of the remainder will not be affected.

8.4 No Applicant shall be entitled to assign any of its rights or obligations under this Agreement.

8.5 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Agreement.

## **9 Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of England and the Parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.