

## **Disclaimers**

### **1. CONTRACTUAL STRUCTURE**

Following any Contract award, the University will require the successful Economic Operator/Tenderer to structure itself so that the following legal and organisational requirements are met:

- ❑ The Economic Operator/Tenderer is the single point of contact that takes contractual responsibility for interfacing with the University in managing and delivering the Contract requirements.
- ❑ The legal obligations and liabilities of the Economic Operator/Tenderer are borne by an entity or entities which satisfy the requirements of the procurement documents (including, where the Economic Operator/Tenderer so proposes, to any parent or ultimate holding company which will provide a guarantee or guarantees for that purpose).

### **2. DISCLAIMERS**

Only the express terms of any written agreement or Contract, if and when it is executed, shall have any contractual effect in connection with the matters to which it relates. Oral discussions will not be considered binding. An Economic Operator/Tenderer shall not make assumptions on any matter nor shall it rely on any statements or representations made to it at any time by persons acting on behalf of the University unless they are confirmed in writing via eSourcing NI.

These provisions extend to liability in relation to any statement, opinion or conclusion contained in, or any omission from, the procurement documents (including their appendices) and in respect of any other written or oral communication transmitted or otherwise made available to any person, and no representations or warranties are made in relation to such opinions, statements or conclusions. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the University.

Any persons considering making a decision to enter into contractual relationships with the University as a result of this Competition should make their own investigations and their own independent assessment of the Contractor's role and should seek their own professional financial, legal and other advice. No procurement document should be regarded as an investment recommendation made by the University. Each person considering making a decision to enter into contractual relationships with the University must rely on its own enquiries and on the terms and conditions set out in those contract(s) as and when finally executed, subject to such limitations and restrictions as may be specified in such contract(s). Neither the issue of any procurement documents nor any of the information presented or referred to in them should be regarded as a commitment or representation on the part of the University to enter into any contractual arrangement.

None of the information contained in any of the procurement documents shall constitute a contract or part of a contract in any way, and none of the information is or should be relied on as a promise or representation as to the University's ultimate decisions in relation to this Contract. No contractual rights, express or implied, arise out of the procedures set out in any of procurement documents.

Submitting a completed response does not guarantee that the Economic Operator/Tenderer will be invited to tender or participate in the later stage(s) of the Competition (where applicable). This Competition may be terminated or suspended at

any time without cost or liability to the University.

In the procurement documents, words such as "anticipate", "expects", "projects", "intends", "plans", "believes", "envisages", "will", and words and terms of similar substance, indicate the present expectation of future events, which are subject to a number of factors and uncertainties that could cause actual requirements to differ materially from those described.

The University reserves the right to disqualify any Economic Operator/Tenderer who:

- ☐ provides information or confirmations which later prove to be untrue or incorrect; and/or
- ☐ does not supply the information required by the procurement documents or as directed otherwise by the University at any stage during the Competition; and/or
- ☐ fulfils any one or more of the criteria detailed in Regulation 57 of the Regulations.

The University reserves the right to require the submission of any additional, supplementary or clarification information as it may, at its absolute discretion, consider appropriate and/or to update any information provided by the Economic Operator/Tenderer at any stage of the Competition.

The University reserves the right:

- ☐ to waive any requirements of this procurement process (to the extent permitted by law);
- ☐ to disqualify any Economic Operator/Tenderer who does not submit a compliant response in accordance with the instructions in any of the procurement documents;
- ☐ to withdraw this document or abandon this procurement process at any time or to re-invite responses on the same or any alternative basis;
- ☐ not to award any contract as a result of the Competition (including, but not limited to, where funding for the Contract is not available);
- ☐ to make whatever changes it sees fit to the timetable, structure or content of the Competition, dependent on the University approvals processes or for any other reason;
- ☐ to verify, prior to the award of any Contract, that there has been no material adverse change in the information provided by the Contractor in response to the procurement documents;

to eliminate an Economic Operator/Tenderer from the Competition if the University determines at any stage prior to Contract award that the Economic Operator/Tenderer does not have the economic and financial standing to perform the Contract.

The submission of a completed response will be deemed to imply the Economic Operator's/Tenderer's acceptance of the foregoing provisions without qualification.

### **3. PUBLICITY**

Economic Operator/Tenderers should note that, save as provided in Section 4 (Confidentiality) below, the University will have the right to publicise or otherwise disclose to any third party information regarding the Contract, Economic Operator/Tenderers (including, but not limited to, details of their respective members, representatives, advisors, consultants, contractors, proposed professional team, servants and/or agents), the Competition or the award of any contract at any time.

Economic Operators/Tenderers will not make any public statement in relation to the

Contract or the Competition in general (whether given orally or in writing and including, for example, through statements to the media) without the prior written consent of the University. In this paragraph the word 'media' includes (but is not limited to) trade and specialist press, radio, television, newspapers, the internet and email accessible by the public at large and the representatives of such media.

#### 4. CONFIDENTIALITY

All documents issued in connection with this Competition shall remain the property of the University and shall be used only for the purposes of this Competition.

In this Section 4 the definition of 'person' includes but is not limited to any person, firm, body or association, corporate or incorporate.

The University may disclose detailed information relating to responses to its officers, employees, agents or advisers and the University may make any of the responses available for private inspection by its officers, employees, agents or advisers.

- a) Subject to paragraph (b) below of this Section 4, the contents of the procurement documents are made available by the University on condition that:
  - i) Economic Operators/Tenderers shall at all times treat the contents of that documentation and any related documents (together called the Information) as confidential, save in so far as they are already in the public domain;
  - ii) Economic Operators/Tenderers shall 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;
  - iii) Economic Operators/Tenderers shall not use any of the Information for any purpose other than for the purposes of submitting (or deciding whether to submit) a response; and
  - iv) Economic Operators/Tenderers shall not undertake any publicity activity within any section of the media.
- b) Economic Operators/Tenderers may disclose, distribute or pass any of the Information to the Economic Operator's/Tenderer's advisers, sub-contractors or to another person provided that either:
  - i) this is done for the sole purpose of enabling a response to be submitted and the person receiving the information undertakes in writing to keep the information confidential on the same terms as if that person were the Economic Operator/Tenderer; or
  - ii) the Economic Operator/Tenderer obtains the prior written consent of the University in relation to such disclosure, distribution or passing of Information; or
  - iii) the disclosure is made for the sole purpose of obtaining advice from external lawyers in relation to the procurement or to the contract arising from it; or
  - iv) the Economic Operator/Tenderer is legally required to make such a disclosure.
- c) The onus shall be on Economic Operators/Tenderers to specify and clearly identify any information contained in their submissions or otherwise provided to or discussed with the University or the University's servants or agents which the Economic Operator/Tenderer considers to be commercially sensitive, confidential and/or, if publicly released, is likely to prejudice their commercial interests (**Confidential Information**). If information is considered to be of this nature, Economic

Operators/Tenderers should identify the nature and duration of any such sensitivity or confidentiality. The University will not disclose Confidential Information communicated as such to it by any Economic Operators/Tenderers to any third party other than its advisors, servants and agents, subject to the provisions of the procurement documents and these disclaimers. Unless information is specified to the University and determined to be Confidential Information it shall be treated by the University as non-confidential and not commercially sensitive and may be disclosed publicly. Economic Operators/Tenderers should note that standard disclaimers on e-mail communications are not sufficient for these purposes.

- d) The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (and all subordinate legislation and related guidance and codes of practice) impose duties of openness on the University, which will have an effect upon how it treats information relating to or obtained in the course of this Competition.
- e) Notwithstanding the provisions set out at paragraph (c) above, any decision to disclose Confidential Information shall be at the absolute discretion of the University, save in the event that the University is required to disclose any information relating to or contained in a submission (whether identified by the Economic Operator/Tenderer as confidential or otherwise) under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004. The University will, when possible, notify an Economic Operator/Tenderer if a disclosure of Confidential Information relating to it will be made and where time permits, the University may consider any representation of the Economic Operator/Tenderer concerned, subject to the University's obligations pursuant to the above-mentioned legislation.
- f) Economic Operators/Tenderers should each satisfy themselves as to the implications of the Freedom of Information Act 2000 and Environmental Information Regulations 2004 and seek legal advice as necessary.

## **5. NON-COLLUSION**

Any Economic Operator/Tenderer who, in connection with this Competition:

- a) fixes or adjusts the manner or context of its submission by or in accordance with any agreement or arrangement with any other Economic Operator/Tenderer;
- b) enters into any agreement or arrangement with any other Economic Operator/Tenderer that it shall refrain from participating in the Competition or any part of it;
- c) causes or induces any person to enter such agreement as is mentioned in this paragraph or to inform the Economic Operator/Tenderer of its submission and its contents or obtains details of the submission of another Economic Operator/Tenderer;
- d) offers or agrees to pay or give or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to the Contract which is likely to affect Competition or any other submission or proposed submission;
- e) communicates to any person other than the University the contents of its submission (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the submission e.g. for insurance, a contract guarantee bond or performance bond); or
- f) carries out any other co-operation or collusion which the University considers has actually or potentially undermined competition,

may be disqualified (without prejudice to any other civil remedies available to the University and without prejudice to any criminal liability which such conduct by an Economic Operator/Tenderer may attract). Economic Operators/Tenderers should ensure that the obligations set out in this paragraph are brought to the attention of their relevant organisations, sub-contractors and suppliers and associated companies and that contracts entered into with such parties are entered into on the same basis.

Consortium members are permitted to discuss, agree and communicate such matters with other members of the same consortium as necessary for the preparation of part of that Economic Operator's/Tenderer's submission.

## **6. CANVASSING**

Any Economic Operator/Tenderer who directly or indirectly canvasses any official within the University with regard to the Competition, or who directly or indirectly obtains or attempts to obtain information from such officials concerning the proposed or any other competition will be disqualified.

## **7. COSTS AND EXPENSES**

The University will not be liable for any bid costs, expenditure, work or effort incurred by Economic Operators/Tenderers in proceeding with or participating in this Competition, including if the procurement process is terminated or amended by the University.

## **8. COMPLIANCE WITH CRITERIA**

Economic Operators/Tenderers should note that the University reserves the right to seek confirmation from an Economic Operator/Tenderer that it continues to meet the criteria set out in the procurement documents at any stage during the procurement process. Economic Operators/Tenderers that fail to meet and maintain the minimum standards set in the procurement documents may be rejected from this Competition.

In addition, the University reserves the right to require the submission of any additional, supplementary or clarification information, at its absolute discretion, that it considers appropriate.

## **9. ECONOMIC OPERATOR'S/TENDERER'S WARRANTIES**

By its participation in the Competition, each Economic Operator/Tenderer warrants, represents and undertakes to the University that:

- (a) all information, representations and other matters of fact communicated or to be communicated (whether in writing or otherwise) to the University by the Economic Operator/Tenderer, its staff or agents in connection with or arising out of any submission are true, complete and accurate in all respects, both as at the date communicated and as at the relevant deadline date;
- (b) it has made or will make its own investigations and has undertaken or will undertake its own research and due diligence, and has satisfied or will satisfy itself in respect of all matters (whether actual or contingent) relating to all submissions and that it has not completed or will not complete any submission in reliance upon any information, representation or assumption which may have been made by or on behalf of the University (with the exception of any information which is expressly warranted by the University); and
- (c) it has full power and authority to participate in this Competition and will, if

requested, produce evidence of same to the University.

## **10. DATA PROTECTION LEGISLATION**

The terms Controller, Data Subject and Personal Data used in this Section shall have the meanings given to them in the Data Protection Legislation.

**Data Protection Legislation** means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (EU) 2016/679) (**GDPR**) and any other directly applicable European Union regulation relating to privacy.

**UK Data Protection Legislation** means any data protection legislation from time to time in force in the UK, including the Data Protection Act 2018 or any successor legislation.

The Economic Operator/Tenderer hereby acknowledges that it will share Personal Data with the University for the purposes of enabling the University to evaluate its response.

The Economic Operator/Tenderer and the University will be acting as independent Controllers in relation to any Personal Data which the Economic Operator/Tenderer shares with the University.

The Economic Operator/Tenderer shall, in respect of any Personal Data which it shares with the University, ensure that it provides clear and sufficient information to the Data Subjects, in accordance with the Data Protection Legislation, relating to the fact that their Personal Data will be transferred to a third party. Such information will include the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer.

The Economic Operator/Tenderer shall, prior to sharing any Personal Data with the University, ensure that any such Personal Data is accurate and that it has appropriate internal procedures in place to notify the University of any updates to the Personal Data which it has shared.

## **11. LAW AND JURISDICTION**

This document shall be construed in accordance with and governed by the laws of Northern Ireland. The Courts of Northern Ireland shall have exclusive jurisdiction in relation to any disputes arising from or in connection with this document, the Competition or the Contract and by participating in the Competition, each Economic Operator/Tenderer submits irrevocably to that jurisdiction and those Courts. The Contract between the University and the successful Economic Operator/Tenderer shall be governed by the laws of Northern Ireland.