

# Invitation to Tender for School Meals Framework Agreement

**Document 9a - Certificates and Declarations**

Contents

[1.1 Form Of Tender And Tender Certificate 2](#_Toc449610310)

[1.2 Non-Canvassing Certificate 5](#_Toc449610311)

[1.3 Non-Collusion Certificate 6](#_Toc449610312)

[1.4 Parent Company Guarantee 8](#_Toc449610313)

### 1.1 Form Of Tender And Tender Certificate

**Re**: Invitation To Tender dated [●enter date●] for the provision of**:**

**School Meals Framework Agreement**

**Reference number**: CAB 586

**To**: Gloucestershire County Council (the “Council”)

**Date**: [●enter date●]

**Provision of**: **School Meals Framework Agreement**

Having read carefully the Invitation to Tender and the Appendices thereto:

1. I/We do hereby offer to provide the services as specified in the Invitation to Tender and the Appendices thereto during the continuance of the Contract.
2. I/we agree that if this offer is accepted, I/we will execute the Contract in the form of set out in the Invitation to Tender together with such other documents as are specified in the Invitation to Tender and produce evidence that all relevant insurances and compliance certificates are held and in force within 10 days of being called on to do so.
3. I/We agree that before executing the Contract in the form set out in the Invitation to Tender, the formal acceptance of this Tender in writing by the Council or such parts as may be specified, together with the contract documents attached hereto, shall comprise a binding contract between the Council and [[●ENTER NAME●] Limited].
4. I/We further agree that this Tender shall constitute an irrecoverable, unconditional offer which may not be withdrawn for a period of 120 days from the deadline for receipt of Tenders and it shall remain binding and open for acceptance at any time prior to the expiration of that period.
5. I/We further agree with the Council in legally binding terms to comply with the provisions of confidentiality set out in paragraph 11 of Document 4 of the Invitation to Tender.
6. I/We acknowledge and understand that the Council is not bound to accept any Tender it receives and understand that the Council has no liability to defray expenses herewith nor be responsible for return of any document submitted for the purpose of tendering.
7. I/We are a subsidiary company within the meaning of Section 1159 of the Companies Act 2006 and undertake to provide a Parent Company Guarantee executed by our holding company in the form set out in Section 1.4 if we are awarded the Contract. [Delete square bracketed paragraph if not applicable]
8. I/We declare that to the best of our knowledge and belief no payments, gifts or other inducements have been or will be offered by us or our agents to board members, officers or employees of the Council for the purpose of obtaining any favour in connection with the award of the Contract.
9. I/We certify this is a bona fide tender and that I/We have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other Supplier.
10. I/We warrant, represent and undertake to the Council that:
	1. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by us or our staff or agents in connection with or arising out of the Tender are true, complete and accurate in all respects, both as at the date communicated and as at the date of this Tender submission;
	2. I/We have carried out my/our own investigations and research and satisfied myself/ourselves in respect of all matters (whether actual or contingent) relating to the Tender;
	3. I/We have full power and Council to enter into the Contract and to perform the obligations specified in the Contract Terms and will, if requested, produce evidence of such to the Council; and
	4. I/We are of sound financial standing and have and will have sufficient working capital, skilled staff, equipment and other resources available to perform the obligations specified in the Contract Terms.

I/we warrant that I/we have all requisite Council to sign this Tender and confirm that I/we have complied with all the requirements of the Invitation to Tender.

|  |  |
| --- | --- |
| Signature |  |
| Name and Position |  |
| Dated |  |
| Signature |  |
| Name and Position |  |
| Dated |  |
| For and on behalf of | [●NAME AND COMPANY NUMBER OF COMPANY/ PARTNERS / SOLE TRADER BUSINESS●] |

### 1.2 Non-Canvassing Certificate

**Name of Provider: [insert name]**

**Re**: Invitation To Tender dated [●enter date●] for the provision of

**School Meals Framework Agreement**

**Reference number**: **CAB 586**

**To**: Gloucestershire County Council (the “Council”)

**Date**: [●enter date●]

To: The Council

1. I/We hereby certify that we have not canvassed or solicited any officer, board member or employee of the Council or its advisers, agents or representatives in connection with this tender or in connection with any other tender or proposed tender for the Contract and that no person employed by us or acting on our behalf has done any such act.
2. I/We further hereby undertake that we will not in the future canvass or solicit any director, officer, member or employee of the Council or their advisers, agents or representatives in connection with this tender or in connection with any other tender or proposed tender for the Contract and that no person employed by us or acting on our behalf will do any such act.

|  |  |
| --- | --- |
| Signature |  |
| Name and Position |  |
| Dated |  |
| Signature |  |
| Name and Position |  |
| Dated |  |
| For and on behalf of | [●NAME AND COMPANY NUMBER OF COMPANY/ PARTNERS / SOLE TRADER BUSINESS●] |

Duly authorised to sign tenders and acknowledge the contents of the Non-Canvassing Certificate,

### 1.3 Non-Collusion Certificate

**Name of Provider: [insert name]**

**Re**: Invitation To Tender dated [●enter date●] for the provision of

**School Meals Framework Agreement**

**Reference number**: **CAB 586**

**To**: Gloucestershire County Council (the “Council”)

**Date**: [●enter date●]

To: The Council

The essence of the public procurement process is that the Council shall receive bona fide competitive tenders from Suppliers. In recognition of this principle we hereby certify that this is a bona fide tender, intended to be competitive, and that we have not fixed or adjusted the amount of the tender or the rates or prices quoted by or under or in accordance with any agreement or arrangement with any other Supplier. We have not and insofar as we are aware neither has any other supply chain member:

1. entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made;
2. informed any other person, other than the person calling for this tender, of the detail including but not limited to the amount of the tender, except where the disclosure, in confidence, of the amount of the tender was necessary to obtain quotations necessary for the preparation of the tender for insurance, professional or consultancy advice required for the preparation of the tender;
3. caused or induced any person to enter into such an agreement as is mentioned in paragraphs 1 and 2 above or to inform us of the amount or the approximate amount of any rival tender for the ITT or had the benefit, in the preparation of this tender of any inside information about the intentions of any other Supplier;
4. committed any offence under the Bribery Act 2010 or under Section 117 of the Local Government Act 1972;
5. offered or agreed to 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 any other tender;
6. contacted any member or officer of, or any person engaged as an adviser by the Council about any aspect of the tender in a manner not permitted by the ITT including (but without limitation) for the purposes of discussing the possibility of their future employment for or engagement by the Supplier.

I/We also undertake that we shall not procure the doing of any of the acts mentioned in paragraphs 1 to 6 above nor (in the event of the tender being accepted) shall we do so while the resulting contract continues in force between us (or our successors in title) and the Council.

I/We understand that if we have been involved in the conduct described above and/or falsely complete this certificate and/or we fail to declare any circumstances described above then the Council shall be entitled to exclude us and the tender from this procurement process.

In this certificate the word "person" includes any person, body or association, corporate or incorporate and "agreement" includes any arrangement whether formal or informal and whether legally binding or not.

|  |  |
| --- | --- |
| Signature |  |
| Name and Position |  |
| Dated |  |
| Signature |  |
| Name and Position |  |
| Dated |  |
| For and on behalf of | [●NAME AND COMPANY NUMBER OF COMPANY/ PARTNERS / SOLE TRADER BUSINESS●] |

### 1.4 Parent Company Guarantee

**This is for information at this stage and should not be completed. The successful Supplier, will be required to complete this only if they required the Parent Company to meet the Financial and Economic Standing minimums as described in Document 5a.**

FORM OF PARENT COMPANY GUARANTEE

**THIS DEED OF GUARANTEE** is made the day of 20●●

**BETWEEN**:

(1) **GLOUCESTERSHIRE COUNTY COUNCIL** of Shire Hall Gloucester GL1 2TH (hereinafter called the "Council"); and

*(2)* ***[●●●●●] LIMITED*** *(company number:●●●●●) having its registered office at [●●●●●] (hereinafter called the "Guarantor").*

**WHEREAS**

(A) [●●●●●] Limited (registered in England number: ●●●●●) (hereinafter called the "Contractor") is a subsidiary of the Guarantor for the purposes of [Section 1159 of the Companies Act 2006].

(B) This Guarantee is supplemental to a Contract (hereinafter called the "Contract") dated [●●●●●] between the Council of the one part and the Contractor of the other part whereby the Contractor has agreed to provide [services] to the Council upon the terms, conditions and requirements contained or referred to therein.

(C) The Guarantor has agreed to guarantee the due and proper performance of the Contract.

**NOW IT IS HEREBY AGREED** as follows:-

1. In consideration of the Council entering into the Contract with the Contractor, the Guarantor hereby irrevocably and unconditionally guarantees and undertakes to the Council the due observance and proper and punctual performance by the Contractor of each and all of the obligations, duties, undertakings, covenants and conditions on the part of the Contractor under the Contract ("the Obligations") when and if such Obligations shall become due and performable according to the terms of the Contract, which guarantee shall for the avoidance of doubt extend to include any variation or addition to the Contract.
2. If the Contractor shall in any respect (whether material or otherwise) fail to perform the Obligations or commit any breach (whether material or otherwise) of the Contract (otherwise than in circumstances in which the Contractor is relieved from performance by any provision of the Contract, by statute or by decision of a court or tribunal of competent jurisdiction) or shall cease to exist then the Guarantor shall (as a separate and independent obligation and liability from its obligations and liabilities under clause 1) indemnify the Council forthwith on demand in full and without any set-off deduction or counterclaim against all losses, damages, liabilities, costs and expenses which may be incurred by the Council as a result thereof.
3. Without prejudice and in addition to its rights under clause 2 the Council may at its sole discretion in the event of the failure for any reason of the Contractor to carry out and/or complete the “Services” described in the Contract in accordance with the Contract require the Guarantor to carry out and complete the Services or to procure the carrying out and completion of the Services and the Guarantor shall be bound by the terms of the Contract as though it were a party to the same.
4. The obligations of the Guarantor hereunder shall not be affected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate the Guarantor from its obligations hereunder or affect such obligations including without limitation and whether or not known to the Council:
	1. any time or indulgence granted to or composition with the Contractor;
	2. the taking, variation, compromise, renewal or release of or refusal or neglect to perfect or enforce any right or remedy against the Contractor;
	3. any legal limitation, disability, incapacity or other circumstances relating to the Contractor or any other person or amendment to or variation of the terms of the Contract or any other document or security;
	4. the liquidation, bankruptcy, administration, absence of legal personality, dissolution, incapacity or any change in the name, composition or constitution of the Contractor or Guarantor; or
	5. any irregularity, unenforceability or invalidity of any of the Obligations with the intent that the Guarantor's obligations under this Guarantee shall remain in full force and this Guarantee will be construed accordingly as if there were no such irregularity, unenforceability or invalidity;

 and the Guarantor shall not be released from its obligations hereunder by any agreement, arrangement or alteration of terms being entered into by the Council with the Contractor in relation to the Obligations or by any other act, matter or thing done or omitted to be done by the Council in relation to the Obligations by or as a result of which the Guarantor as surety only would or might be released.

1. This Guarantee shall be a continuing guarantee and shall remain in full force and effect until such time as the Obligations and all the obligations of the Guarantor pursuant to this Guarantee have been performed and satisfied in full either by the Contractor or by the Guarantor pursuant to this Guarantee and the Guarantor hereby further agrees that in the event of any assignment, novation or other transfer of the Contract this Guarantee shall remain in full force and effect unless and until the Guarantor has procured from a parent company of the assignee (provided such assignee is a subsidiary for the purposes of Section 1159 of the Companies Act 2006) first approved in writing by the Council a guarantee in substantially identical form to this Guarantee.
2. Until the Obligations have been performed or satisfied in full:
	1. the Guarantor shall not by paying off any sum recoverable by the Council from the Guarantor hereunder or by any other means or on any other ground claim any set off or make any counterclaim against the Contractor in respect of any liability or obligation on the part of the Guarantor to the Contractor; and
	2. the Guarantor shall not claim or prove against the Contractor in competition with the Council in respect of any payment made by the Guarantor to the Council under this Guarantee; and
	3. the Guarantor shall not claim or have the benefit of any set off, counterclaim or proof against the Contractor or of any dividend, composition or payment by the Contractor or of any other security to which the Council may be entitled in respect of the Obligations or any share therein.
3. The Guarantor hereby undertakes with the Council as a separate and independent obligation and liability that if any sum of money which is payable by the Guarantor to the Council pursuant to the foregoing provisions of this Guarantee is not recoverable pursuant to such provisions on the footing of a guarantee by reason of any legal limitation, disability or incapacity or the unenforceability for any reason of the Obligations or any other fact, matter or circumstance whether known to the Council or not such sum shall nevertheless be recoverable from the Guarantor as a sole or principal debtor in respect thereof and shall be paid by the Guarantor to the Council forthwith upon demand by way of indemnity against the Contractor's failure to perform and satisfy the Obligations.
4. Any demand under this Guarantee shall (without prejudice to any other mode of service) be deemed to be sufficiently made if it is delivered by hand or sent to the Guarantor by first class prepaid recorded delivery service and shall be deemed to be made when delivered by hand or 24 hours after posting by such service at its address stated in this Guarantee and proof that a correctly stamped and addressed envelope containing such a demand was posted by such service shall be sufficient proof of the making of that demand.
5. This Guarantee is in addition to and not in substitution for any other security that the Council may from time to time hold in respect of the Obligations and the Council may deal with any such other security as it thinks fit without affecting or releasing the liabilities of the Guarantor hereunder in any way.
6. The Guarantor waives any right which it may have of first requiring the Council to proceed against or enforce any guarantee or security of or claim payment from the Contractor.
7. If any provision of this Guarantee is held by any competent Council to be invalid, unlawful or unenforceable in whole or in part the validity, lawfulness and enforceability of the other provisions of this Guarantee and the remainder of the provision in question shall not be affected thereby.
8. Nothing in this Guarantee is intended to confer on any third party any benefit or right to enforce any term of this Guarantee which that party would not have had but for the Contracts (Rights of Third Parties) Act 1999.
9. All other terms whether statutory or otherwise are hereby excluded and this Guarantee constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes and replaces all previous negotiations whether oral or written and each party acknowledges to the other that neither has given or relied upon any warranties, representations, covenants, undertakings or other statements whatever other than those set out herein.
10. This Guarantee shall be governed by and construed in accordance with English law and the parties hereby submit themselves to the jurisdiction of the English courts.

***IN WITNESS*** *whereof the parties have executed and delivered this Guarantee as a Deed the day and year first before written*

THE COMMON SEAL OF

**GLOUCESTERSHIRE COUNTY**

**COUNCIL** was hereunto affixed

in the presence of:

Head of Legal Services

EXECUTED and Delivered as a DEED)

on behalf of **[●●●●●]** )

by: )

 Director

 Director/Secretary