

# DPS overview and guidance

## 1 Dynamic purchasing system (DPS) overview

- 1.1 Islington Council is setting up a DPS to use for the procurement of Supported Living Services for Adults with Learning Disabilities.
- 1.2 This procurement is being conducted in accordance with the Public Contracts Regulations 2015. The procurement is subject to the light-touch regime under Section 7 Social and Other Specific Services. Under Regulation 76 the council is free to establish a procedure, provided that procedure is sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators (service providers).
- 1.3 The DPS is a completely electronic process. All requests to participate in the DPS must be made via the London Tenders Portal (ProContract). Islington Council will also use the London Tenders Portal (ProContract) for each specific procurement under the DPS. Other local authorities permitted to award contracts under this DPS may use alternative electronic systems for each specific procurement under the DPS.
- 1.4 Applicants may apply for one, or more of the three different categories (lots) under this DPS:
  - Supported living for people with learning disabilities
  - Specialist supported living for people with profound and multiple learning disabilities
  - Specialist supported living for people with learning disabilities and behaviour that challenges

All applicants will be admitted to the lot(s) that they apply for if they satisfy the relevant selection criteria for that lot. The number of service providers admitted to each lot on the DPS shall not be limited.

- 1.5 All applicants will be notified of the outcome of the selection stage and if they have been successful or unsuccessful in being admitted on the DPS for each lot that they have applied for. Unsuccessful applicants will be given feedback in order to help improve any future application. Future applications from unsuccessful suppliers will not be accepted within a period of three months from the date of the feedback. This is to allow for sufficient time for implementation of improvements, or circumstances to change which would affect the supplier's responses to satisfy the selection criteria.
- 1.6 The DPS shall be valid for thirty six (36) months from the estimated start date of 1 April 2018 with option to extend up to a further twenty four (24) months. However, contracts awarded using the DPS may extend beyond the sixty (60) month period of validity of the DPS.
- 1.7 Following the initial evaluation of requests to participate at the DPS setup stage, the evaluation of any future requests to participate will be carried out in accordance with the selection criteria. The period of evaluation of any new requests to participate may be extended for up to thirty (30) working days following receipt of the application.
- 1.8 The contract conditions for the provision of the services being procured are published as part of the tender documentation. All procurements that are carried out using the DPS are subject to these contract conditions.
- 1.9 Suppliers who are admitted on the DPS may be invited to tender for contracts for individuals or for groups of individuals. Contracts may, or may not, require the supplier to provide accommodation. The requirements of each contract will be more clearly defined in the specific invitation to tender.
- 1.10 All suppliers that are admitted to a lot on the DPS shall be invited to submit a tender for each specific procurement for that lot. Each contract shall be awarded to tenderer that submits the best tender on the basis of the award criteria set out in the procurement documents. The council reserves the right for the award criteria, where appropriate, to be formulated more precisely in the invitation to tender (for example using sub-criteria).

## **2 General guidance**

- 2.1 Please ensure you read this document before completing the SQ document.
- 2.2 The only document you need to complete and submit at this stage is the selection questionnaire (SQ). Other documents have been provided for information only at this stage. You will only need to complete the other documents if you are admitted to the DPS and invited to tender for a specific procurement under this system.
- 2.3 You may wish to refer to our tendering guidance which is available on the Islington Council website: [www.islington.gov.uk](http://www.islington.gov.uk) (search for "tender resource pack")
- 2.4 Applicants are advised that all costs incurred either directly or indirectly in preparation, submission or otherwise related to this tender will be borne by them, and in no circumstances will the council be responsible for any such costs. Applicants are also advised that the council at its sole discretion acting reasonably and in good faith reserves the right to abandon the procurement at any stage prior to contract award.

- 2.5 The e-procurement system used by the council is the London Tenders Portal (LTP). Please note that tender documents submitted electronically will, upon being submitted, be deemed to have been signed electronically within the meaning of the Electronic Communications Act 2000.
- 2.6 All communications relating to this tender must be conducted via the LTP. All correspondence/notifications will be sent to the email address on the LTP as registered by your organisation.
- 2.7 Any communication between applicants and Islington Council employees regarding this tender during the tender process not conducted via the LTP could lead to individual bids being rejected or the entire process being abandoned.
- 2.8 Please use the “Messaging” facility for this tender on the LTP to raise any questions relating to this tender.
- 2.9 Do not upload questions in an attachment, please send all questions in the body of the message. If you have multiple questions, please clearly number each question.
- 2.10 ITT documentation is being issued for information only at this stage. Clarification questions on the ITT documentation should only be submitted after an Invitation to Tender has been issued which represents the second stage of this procurement process.
- 2.11 No employee other than an officer of the Strategic Procurement Team has the authority to make any representation or explanation to tenderers on any matter concerning this contract. All questions that are seeking to clarify any points in any of the tender documents should be posted on the LTP. Our answers will be posted on the LTP for all other bidding organisations to see, unless the question is considered to be confidential.
- 2.12 Please note that it is your responsibility to regularly review the Messaging section on the LTP for all questions and answers as well as any additional information that might have been posted.
- 2.13 Do not include additional appendices or supporting documents with your submission, unless specifically asked to do so. However, we may ask to see further documentation at a later stage.
- 2.14 Do not include any pictures, diagrams, tables, charts, etc. within your response unless specifically asked to do so. Your response should be text only.
- 2.15 SQs must be submitted via the LTP. For details of how to do this please see the Help section on LTP.

### **3 Confidentiality of information and documents**

- 3.1 Please be advised that Islington Council works in strict accordance with the Freedom of Information Act (2000) (FOIA) and as such will only keep confidential information that is properly confidential in its nature and then only for a reasonable amount of time. Any

information submitted to us may be subject to disclosure in response to a request under FOIA.

## **4 Evaluation**

- 4.1 Please note that failure to provide a satisfactory response to any of the questions in the SQ may result in Islington Council not proceeding further with your application.
- 4.2 The information supplied by the applicants will be checked initially for completeness and compliance before responses are evaluated.
- 4.3 You need to adequately satisfy the qualitative selection requirements of the council at each section in order for subsequent sections to be evaluated. All requirements have been deemed to be related and proportionate to the subject matter of this contract.
- 4.4 Each question will be assessed individually, therefore please include all the information required to provide a full response to each question. Any cross-reference to another answer will not be taken into consideration in the evaluation.
- 4.5 The evaluation panel will only consider information provided in response to the questions. Applicants should not assume that the evaluation panel has any prior knowledge of the applicant, its practices or reputation, or its involvement in existing services or projects.
- 4.6 Economic and financial standing - The council needs to ensure the continuous financial viability of any economic operator. By the contract commencement date or at any point during contract period, the council reserves the right to run an independent financial appraisal for the purposes of that financial reassurance.
- 4.7 The independent financial appraisal forms part of business continuity, but does not directly form part of the procurement evaluation. Independent financial appraisals provide convenient instant online access to partial accounts information of economic operators. Furthermore, they frequently identify where an economic operator is bankrupt, the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court or creditors. They may indicate through ratio analysis where further examination of an economic operator is required by the council. Where an independent analysis is carried out it shall be conducted by Dun & Bradstreet.
- 4.8 For the purposes of establishing economic and financial standing the council may take into account industry standard ratio such as:
- Performance ratios including gross profit, net profit, earnings before interest and tax, return on capital employed, return on assets;
  - Ownership ratios including gearing for total debt or fixed asset worth, long term liability to capital employed, and percentage of business;
  - Stability ratios including current ratios, interest cover, average trade for creditors/debtors and liquidity ratios;
  - Efficiency ratios including stock, acid test ratios, debtors, creditors and asset utilisation.

## **5 Part 3, Section 7 - Modern Slavery Act**

### 5.1 Guidance note:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/471996/Transparency\\_in\\_Supply\\_Chains\\_etc\\_A\\_practical\\_guide\\_final\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc_A_practical_guide_final_.pdf)

## **6 Mandatory Exclusion Grounds**

### 6.1 Information issued by Crown Commercial Services:

#### **Public Contract Regulations 2015 R57(1), (2) and (3) Public Contract Directives 2014/24/EU Article 57(1)**

#### **Participation in a criminal organisation**

Participation offence as defined by section 45 of the Serious Crime Act 2015

Conspiracy within the meaning of

- section 1 or 1A of the Criminal Law Act 1977 or
- article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983

where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime;

#### **Corruption**

Corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;

The common law offence of bribery;

Bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010, or section 113 of the Representation of the People Act 1983;

#### **Fraud**

Any of the following offences, where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the convention on the protection of the financial interests of the European Communities:

- the common law offence of cheating the Revenue;
- the common law offence of conspiracy to defraud;
- fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978;
- fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006;
- fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994;
- an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;
- destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969;
- fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006;

- the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act;

### **Terrorist offences or offences linked to terrorist activities**

Any offence:

- listed in section 41 of the Counter Terrorism Act 2008;
- listed in schedule 2 to that Act where the court has determined that there is a terrorist connection;
- under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by the previous two points;

### **Money laundering or terrorist financing**

Money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002

An offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996

### **Child labour and other forms of trafficking human beings**

An offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004;

An offence under section 59A of the Sexual Offences Act 2003

An offence under section 71 of the Coroners and Justice Act 2009;

An offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994

An offence under section 2 or section 4 of the Modern Slavery Act 2015

### **Non-payment of tax and social security contributions**

Breach of obligations relating to the payment of taxes or social security contributions that has been established by a judicial or administrative decision.

Where any tax returns submitted on or after 1 October 2012 have been found to be incorrect as a result of:

- HMRC successfully challenging the potential supplier under the General Anti – Abuse Rule (GAAR) or the “Halifax” abuse principle; or
- a tax authority in a jurisdiction in which the potential supplier is established successfully challenging it under any tax rules or legislation that have an effect equivalent or similar to the GAAR or “Halifax” abuse principle;
- a failure to notify, or failure of an avoidance scheme which the supplier is or was involved in, under the Disclosure of Tax Avoidance Scheme rules (DOTAS) or any equivalent or similar regime in a jurisdiction in which the supplier is established

### **Other offences**

Any other offence within the meaning of Article 57(1) of the Directive as defined by the law of any jurisdiction outside England, Wales and Northern Ireland

Any other offence within the meaning of Article 57(1) of the Directive created after 26<sup>th</sup> February 2015 in England, Wales or Northern Ireland

## **7 Discretionary exclusions**

7.1 Information issued by Crown Commercial Services:

## **Obligations in the field of environment, social and labour law**

Where an organisation has violated applicable obligations in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Directive (see copy below) as amended from time to time; including the following:-

- Where the organisation or any of its Directors or Executive Officers has been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years.
- In the last three years, where the organisation has had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds of alleged unlawful discrimination.
- In the last three years, where any finding of unlawful discrimination has been made against the organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or incomparable proceedings in any jurisdiction other than the UK).
- Where the organisation has been in breach of section 15 of the Immigration, Asylum, and Nationality Act 2006;
- Where the organisation has a conviction under section 21 of the Immigration, Asylum, and Nationality Act 2006;
- Where the organisation has been in breach of the National Minimum Wage Act 1998.

## **Bankruptcy, insolvency**

Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation's assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;

## **Grave professional misconduct**

Guilty of grave professional misconduct

## **Distortion of competition**

Entered into agreements with other economic operators aimed at distorting competition

## **Conflict of interest**

Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure

## **Been involved in the preparation of the procurement procedure.**

## **Prior performance issues**

Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.

## **Misrepresentation and undue influence**

The organisation has influenced the decision-making process of the contracting authority to obtain confidential information that may confer upon the organisation undue advantages in the procurement procedure, or to negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

## 8 Additional exclusion grounds

### 8.1 Information issued by Crown Commercial Services

#### **Breach of obligations relating to the payment of taxes or social security contributions. ANNEX X Extract from Public Procurement Directive 2014/24/EU**

#### **LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN ARTICLE 18(2) —**

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- ILO Convention 98 on the Right to Organise and Collective Bargaining;
- ILO Convention 29 on Forced Labour;
- ILO Convention 105 on the Abolition of Forced Labour;
- ILO Convention 138 on Minimum Age;
- ILO Convention 111 on Discrimination (Employment and Occupation);
- ILO Convention 100 on Equal Remuneration;
- ILO Convention 182 on Worst Forms of Child Labour;
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention)
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

#### **Consequences of misrepresentation**

A serious misrepresentation which induces a contracting authority to enter into a contract may have the following consequences for the signatory that made the misrepresentation:-

- The potential supplier may be excluded from bidding for contracts for three years, under regulation 57(8)(h)(i) of the PCR 2015;
- The contracting authority may sue the supplier for damages and may rescind the contract under the Misrepresentation Act 1967.
- If fraud, or fraudulent intent, can be proved, the potential supplier or the responsible officers of the potential supplier may be prosecuted and convicted of the offence of fraud by false representation under s.2 of the Fraud Act 2006, which can carry a sentence of up to 10 years or a fine (or both).
- If there is a conviction, then the company must be excluded from procurement for five years under reg. 57(1) of the PCR (subject to self-cleaning).