



# **TERMS OF PARTICIPATION**

## **Hired Passenger Transport Services**

### **Attachment B2**

**Reference: DN243575**



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## **1. INTRODUCTION**

- 1.1 These Terms of Participation should be read in conjunction with the Invitation to Participate (ITP). Except for where the context does not allow, the words and expressions set out in these Terms of Participation shall have the meanings given to them in Attachment B1 – Instructions to Participants.
- 1.2 These Terms of Participation regulate the conduct of the Participant and the Council throughout the Procurement. These Terms of Participation also grant the Council specific rights and limit its liability.
- 1.3 Except for the words and expressions set out in paragraphs 9.1.1 and 15, the capitalised words and expressions used in these Terms of Participation shall have meanings given to them in the Invitation to Participate:
- 1.4 In these Terms of Participation any reference to 'person' includes, but is not limited to, any person, firm, body or association, corporate or incorporate.

## **2. CONDUCT**

The Participants agrees to abide by these Terms of Participation and any instructions given in the Invitation to Participate and agrees to ensure that any of its directors, office holders, staff, contractors, Sub-Contractors, economic operators within the Group of Economic Operators and advisers involved or connected with the Procurement abide by the same.

- 2.1 Contact during the Procurement exercise and canvassing
  - 2.1.1 The Participant must not directly or indirectly canvass any officer, public sector employee, member or agent regarding this Procurement or attempt to obtain any information from the same regarding the Procurement (except where permitted by the Invitation to Participate). Any attempt by the Participants to do so may result in the Participants disqualification from this Procurement.
- 2.2 Involvement in multiple ITPs
  - 2.2.1 If a Participant is connected with the submission of multiple ITPs for the same requirement or Lot (as applicable), including (without limit) where it submits a ITP in its own name and as a Sub-Contractor and/or within a Group of Economic Operators in a separate ITP or a ITP in its own name which is similar to a separate ITP from another Participant within its Group, then the Council retains the right to make further enquiries regarding each Participant to satisfy itself that such involvement does not cause potential or actual conflicts of interest, supplier capacity problems, restrictions or distortions in competition between Participants in the Procurement and/or among Suppliers who are competing for the award of a Call-Off Contract. The Council may require the Participant to amend or withdraw all or part of the ITP in which it is involved if, in the Council's reasonable opinion and at its sole discretion, any of the above issues have arisen or may arise.
- 2.3 Collusive Behaviour
  - 2.3.1 A Participant must not (and shall ensure that its directors, employees, Sub-Contractors, economic operators within the Group of Economic Operators, advisors or companies within its group do not):
    - 2.3.1.1 fix or adjust any element of the ITP by agreement or arrangement with any other person, except where, but subject always to paragraph 2.2, such prohibited acts are undertaken with persons who are also participants in the Participants' ITP, such as Sub-Contractors, economic operators within the Group of Economic Operators, advisors or companies within its Group, or where disclosure to such person is made in confidence in order to obtain quotations necessary for the preparation of the ITP or obtain any necessary security;

- 2.3.1.2 communicate with any person other than the Council (or the relevant Council) the value, price or rates set out in the ITP or information which would enable the precise or approximate value, price or rates to be calculated by any other person except where such communication is undertaken with persons who are also participants in the Participants' ITP, such as Sub-Contractors, economic operators within the Group of Economic Operators, advisers or companies within its Group, or where disclosure to such person is made in confidence in order to obtain quotations necessary for the preparation of the ITP or obtain any necessary security;
  - 2.3.1.3 enter into any agreement or arrangement with any other person, so that person refrains from submitting a ITP;
  - 2.3.1.4 share, permit or disclose to another person, access to any information relating to its ITP (or another ITP to which it is party); or
  - 2.3.1.5 offer or agree to pay or give or does pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any other person for doing or having done or causing or having caused to be done in relation to its ITP, any other ITP or proposed ITP, any act or omission.
- 2.3.2 If a Participant breaches paragraph 2.3.1, the Council may (without prejudice to any other criminal or civil remedies available to it) exclude the Participant from further participation in the Procurement.
- 2.3.3 The Council may require a Participant to put in place any procedures or undertake any such action(s) that the Council in its sole discretion considers necessary to prevent or curtail any collusive behaviour.

### **3. RIGHT TO VERIFY INFORMATION**

- 3.1 The Council may contact (or may require the Participant to contact on its behalf) any of the customers, Sub-Contractors or economic operators within the Group of Economic Operators to whom information relates in a ITP, to ask that they testify that such information is accurate and true.
- 3.2 The Council reserves the right to seek third party independent advice or assistance to validate information submitted by a Participant and/or to assist in the ITP evaluation process.
- 3.3 The Council reserves the right to conduct site visits of any premises indicated by the Participant to be used in connection with the Participant's provision of the Available Services and/or audits at any time during the Procurement.
- 3.4 The Council may require the Participant to clarify aspects of its ITP in writing and/or provide additional information. Failure to respond adequately may result in the rejection of the Participant's ITP and its elimination from further participation in all or part of the Procurement.

### **4. RIGHT TO CANCEL OR VARY THE PROCUREMENT**

- 4.1 The Council reserves the right, subject to the rules set out in the Regulations:
  - 4.1.1 to, without notice, change the basis of or the procedures for Procurement at any time;
  - 4.1.2 to amend, clarify, add to or withdraw all or any part of the Invitation to ITP at any time during the Procurement;

- 4.1.3 to vary any timetable or deadlines set out in the Invitation to ITP;
  - 4.1.4 not to award a contract nor conclude a Dynamic Purchasing System for some or all of the Services for which ITPs are invited; and
  - 4.1.5 to cancel all or part of the Procurement at any stage at any time.
- 4.2 Participants accept and acknowledge that the Council is not (in accordance with the Regulations) bound to accept any ITP or obliged to conclude a contract with any Participant at all.
- 4.3 If the Council deems that none of the ITPs are satisfactory, it reserves the right to terminate all or part of the Procurement.

## **5. RIGHT TO EXCLUDE**

- 5.1 The Council may exclude a ITP from this Procurement if a Participant fails to provide to the Council:
- 5.1.1 the information requested;
  - 5.1.2 a full and satisfactory ITP to any question;
  - 5.1.3 documentation referred to in an ITP and/or;
  - 5.1.4 an ITP, or respond to the Council's query(ies), within any specified timescales;
- 5.2 The Council may exclude a Participant from any participation in this Procurement at any stage, if:
- 5.2.1 the Participant fails to comply fully with the requirements of this Procurement as set out in the ITP;
  - 5.2.2 it becomes aware that the Potential Provider has breached these Terms of Participation; or
  - 5.2.3 it becomes aware of a wilful omission or misrepresentation in a Participant's ITP.
- 5.3 If the Council has the right to exclude a Participant under these Terms of Participation or any Invitation to Participate it may (in its sole discretion):
- 5.3.1 exclude only the affected ITP and allow the Participant to participate within a Group of Economic Operators or Sub-Contractor in another ITP; or
  - 5.3.2 completely exclude the Participant from any involvement in this Procurement in its own name or as a Sub-Contractor or within a Group of Economic Operators in another ITP.
- 5.4 The Council may exclude a Participant from participation in this Procurement where there is a change in identity, control, financial standing or other factor impacting on the selection and/or award process, which would affect or would have affected the Council's evaluation of the Participant's ITP in accordance with Regulations 56, 57 and 58 (of the Regulations).

## **6. STATUS OF THE INVITATION TO PARTICIPATE**

- 6.1 No information contained in the Invitation to ITP or in any communication made between the Council and the Participant in connection with the Procurement shall be relied upon as constituting a contract, agreement or representation that any contract shall be entered into or a framework agreement concluded in accordance with the ITP or at all.
- 6.2 The Council shall not be committed to any course of action as a result of:
- 6.2.1 issuing any Invitation to Participate relating to the Procurement;
  - 6.2.2 communicating with Participants or their representatives, agents or advisers in respect of this Procurement; or

- 6.2.3 any communications between Participants, the Council and/or any relevant Council (whether directly or by their agents or representatives) and any other party in respect of this Procurement.
- 6.3 The Invitation to Participate and any attachments or references have been prepared in good faith but do not purport to be a comprehensive statement of all matters relevant to the Procurement nor has it been independently verified. Neither the Council nor its advisers, directors, officers, members, employees or other staff or agents:
- 6.3.1 accept any liability or responsibility for the adequacy, accuracy or completeness of the Invitation to Participate,
- 6.3.2 make any representation or warranty, express or implied, with respect to the information the Invitation to Participate contains nor shall any of them be liable for any loss of damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication.
- 6.4 The Participant shall form its own conclusions and make its own independent assessment of the contract and should seek its own financial and legal advice about the methods and resources needed to meet the Council's requirements.
- 6.5 The Council does not accept responsibility for the Participants' assessment of the requirements of this Procurement.
- 6.6 The Participant is responsible at its own expense, for obtaining all information required to prepare its ITP.
- 6.7 The exclusions in this paragraph 6 do not apply to the extent of any deceit or fraudulent misrepresentation made by or on behalf of the Council.

## **7. CONCLUDING THE CONTRACT**

- 7.1 The Participant undertakes that, in the event of the ITP being accepted by the Council and the Council confirming in writing such acceptance to the Participant, the Participant shall execute the contract as amended to accommodate aspects of the ITP within 10 calendar days, (or any other period of time as determined by the Council at its sole discretion) of being called upon to do so by the Council.

## **8. COSTS**

- 8.1 The Council will not reimburse any costs incurred by a Participant (including the costs or expenses of any Sub-Contractors, economic operators within the Group of Economic Operators or advisors) in connection with preparation and/or submission of the Participant's ITP, including (without limit) where:
- 8.1.1 this Procurement is cancelled, shortened or delayed for any reason (including without limitation where such action is necessary due to non-compliance or potential non-compliance with the law governing procurement and/or the Regulations;
- 8.1.2 all or any part of the Invitation to ITP is at any time amended, clarified, added to or withdrawn for any reason;
- 8.1.3 a contract for some or all of the goods and/or services for which ITPs are invited is not concluded; or
- 8.1.4 the Participant and/or its ITP is disqualified from participation in the Procurement for any reason.

## **9. CONFIDENTIALITY**

- 9.1 Subject to the exceptions referred to in paragraph 9.2, the contents of the Invitation to ITP are being made available by the Council on the conditions that the Participant:

- 9.1.1 treats the Invitation to ITP as confidential at all times, unless it is already in the public domain;
  - 9.1.2 does 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, except where, and to the extent that, the Information has been publicised in accordance with paragraph 10 (Freedom of Information) or paragraph 11 (Transparency);
  - 9.1.3 only uses the Information for the purposes of preparing a ITP (or deciding whether to respond); and
  - 9.1.4 does not undertake any promotional or similar activity related to the Procurement within any section of the media during the Procurement.
- 9.2 A Participant may disclose, distribute or pass any of the Information to its advisers, Sub-Contractors, economic operators within the Group of Economic Operators or to any other person provided that:
- 9.2.1 this is done for the sole purpose of enabling the Participant to submit a ITP and the person receiving the Information undertakes in writing to keep the Information confidential on the same terms imposed by these Terms of Participation; or
  - 9.2.2 it obtains the Council's prior written consent in relation to such disclosure, distribution or passing of Information; or
  - 9.2.3 the disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to the Procurement; or
  - 9.2.4 the Participant is legally required to make such a disclosure; or
  - 9.2.5 the Information has been published in accordance with paragraphs 10 and 11 (Freedom of Information and Transparency respectively).
- 9.3 The Council may disclose information submitted by Participants during the Procurement to its officers, employees, agents or advisers.
- 9.4 For these purposes, the Council may disclose within the Council any of the Participants documentation / information (including any that the Contractor considers to be confidential and / or commercially sensitive such as specific bid information) submitted by the Participant to the Council during this procurement. Participants taking part in this competition consent to these terms as part of the competition process.

## **10. FREEDOM OF INFORMATION**

- 10.1 In accordance with the obligations and duties placed upon public authorities by the FoIA and the EIR and in accordance with any government Code of Practice on the discharge of public authorities' functions under the FOIA, all information submitted to the Council may be disclosed in ITP to a request for information made pursuant to the FoIA and the EIR.
- 10.2 The Participants should note that the information disclosed in ITP to a FoIA or EIR request may include, but is not limited to, the disclosure of its ITP (including any attachments or embedded documents) and/or any score or details of the evaluation of a ITP.
- 10.3 If the Participant considers any part of its ITP or any other information it submits to be confidential or commercially sensitive, the Participant should:
- 10.3.1 clearly identify such information as confidential or commercially sensitive;
  - 10.3.2 explain the potential implications of disclosure of such information taking into account and specifically addressing the public interest test as set out in the FoIA; and
  - 10.3.3 provide an estimate of the period of time during which it believes that such information will remain confidential or commercially sensitive.
- 10.4 If the Participant identifies that part of its ITP or other information it submits is confidential or commercially sensitive, the Council in its sole discretion will consider whether or not to withhold such information from publication. The Participants should note that, even where information is identified as confidential or commercially sensitive, the Council may be required to disclose such information in accordance with the FoIA or the EIR.



- 10.5 The Council is required to form an independent judgement of whether the Participant's information referred to in paragraph 10.4 is exempt from disclosure under the FoIA or the EIR and whether the public interest favours disclosure or not. The Council cannot guarantee that any information indicated as being confidential or commercially sensitive by the Participant will be withheld from publication.
- 10.6 If the Participant receives a request for information under the FoIA or the EIR during and in relation to the Procurement, it should be immediately referred to the Council.

## **11. TRANSPARENCY**

- 11.1 In accordance with the Government's policy on transparency, the Council reserves the right to make all or part of the Information (which for the avoidance of doubt includes the Contract) publicly available (subject to any redactions made at the discretion of the Council by considering and applying relevant exemptions under the FoIA).
- 11.2 A ITP will not be published unless such disclosure is required in accordance with paragraphs 10.1 or 11.3.
- 11.3 Participants should note that the terms of the proposed contract will permit:
- 11.3.1 the Council to publish the full text of such Contract concluded with the Participant, after considering (at the Council's or the Council's sole discretion) any representations made by the Participant regarding the application of any relevant FoIA or EIR exemptions.
- 11.4 The Participant acknowledges and agrees that information contained within its ITP may be incorporated by the Council into any contract awarded and concluded with the Participant and as a result, it may be published in accordance with this paragraph 11.

## **12. IPR**

- 12.1 All Invitation to ITP issued in connection with this Procurement shall remain the property of the Council and shall be used by the Participant only for the purposes of this Procurement.
- 12.2 The Participant grant the Council an irrevocable, perpetual, non-exclusive licence to copy, amend and reproduce any intellectual property contained within the ITP for the purposes of carrying out this Procurement; complying with the law and/or any government guidance; and/or carrying out the Council's business activities. This licence shall also permit the Council to sublicense the use of the ITP to its advisers or Sub-Contractors or other Contracting Bodies for the same purposes.

## **13. NO INDUCEMENT OR INCENTIVE**

The Participant acknowledges and agrees that nothing contained within the Invitation to ITP shall constitute an inducement or incentive nor shall have in any other way persuaded a Participant to submit a ITP or enter into the Contract or any other contractual agreement.

## **14. LAW AND JURISDICTION**

- 14.1 Any dispute (including non-contractual disputes or claims) relating to this Procurement shall be governed by and construed in accordance with the laws of England and Wales.
- 14.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Procurement (including non-contractual disputes or claims).

**15. GLOSSARY**

FoIA	means the Freedom of Information Act 2000 as amended and any subordinate legislation made thereunder from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
EIR	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;



Form of Participation  
Hired Passenger Transport

ITP Reference: DN243575

Attachment B2

**All ITP documents and submissions will be treated as strictly  
private and confidential**

## CONTENTS

1. Participant's Contact Details - to be completed by the Participant
2. Acknowledgement and Undertaking - to be completed by the Participant
3. Offer - to be completed by the Participant
4. Statement of Interest - to be completed by the Participant

- The Form of Participation is in four parts: the Participant's contact details, the acknowledgement and undertaking, the offer and the statement of interest.
- You must complete and return all four parts.
- Each part must be completed in ink and signed by hand by representatives who are authorised to make the ITP on your behalf.
- The completed and signed form of participation must be a scanned original, e-signatures will not be accepted and the scanned copy must be sent to the Council.

# Form of Participation

## PART 1 PARTICIPANT'S CONTACT DETAILS

Name of Participant:
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Registered office address :

Business address (if different) :

Name of Contact :
Telephone
E-mail address :

## **PART 2**

### **ACKNOWLEDGEMENT AND UNDERTAKING**

- 1: We acknowledge that Hounslow Council has invited us to participate for admission to the Dynamic Purchasing System (DPS) for Hired Passenger Transport as described in the Category Specifications set out in Attachment D and the Agreement containing the Terms and Conditions set out in Attachment B1 of the instruction to participants.
2. We acknowledge that we have examined the category Specifications and the Agreement and have had the opportunity to ask Hounslow Council for clarification before we submit our ITP.
3. We acknowledge that we have received notice of any changes to the Specifications or the Agreement or both that Hounslow Council are prepared to accept, if any.
4. We acknowledge that Hounslow Council has made clear to us that it will not enter into any negotiations whatsoever on the Category Specifications or the Agreement after the latest date for submission of ITPs.
5. In consideration of Hounslow Council inviting us to ITP for this contract, we agree and declare that our ITP is not qualified by or conditional upon any changes to the Specifications or the Agreement, other than those (if any) which Hounslow Council has advised us it is prepared to accept.
6. We undertake that, if our ITP is acceptable to Hounslow Council, we will not seek to introduce or negotiate any changes either to the Specifications or to the Agreement nor to delay execution or signature of the contract documents by reason of any such changes.
7. We acknowledge that we have had the opportunity to take legal, commercial and insurance advice from our professional advisers before making this ITP.

Signed:
Name INCAPITALS:
Position in company:
This signatory is authorised to sign this Acknowledgement and Undertaking for and on behalf of the
Date :

## PART 3

# OFFER FOR ADMISSION TO THE DYNAMIC PURCHASING SYSTEM FOR HIRED PASSENGER TRANSPORT

To: The Council of the London Borough of Hounslow, Civic Centre, Hounslow, TW3 4DN

1. We have examined the instructions to Participants, specifications, conditions of contract, and all other Invitation to participate documents issued by the Council for the supply of services in connection with the above contract.
2. Whereby we offer and undertake to provide the services throughout the duration of the contract in conformity with the specifications, the conditions of contract, our ITP proposals and all appendices; pricing documents and other ITP documents submitted herewith.
3. Should our ITP be accepted, we undertake to execute a formal agreement incorporating the documents mentioned above. Until such an agreement is executed, this Form of ITP and the acceptance hereof by the Council shall constitute a binding contract between us incorporating the above mentioned documents.
4. We acknowledge and understand that the insertion by us of any conditions qualifying our ITP or any unauthorised alteration to any of the ITP documents shall cause our ITP to be rejected.
5. We understand and accept the Council's requirement for genuine competition in ITP procedures, in order to achieve best value. In consideration of your inviting us to participate, we undertake not to do any of the acts (a) to (f) mentioned below. We understand that you will reject our ITP if you have reason to believe we have done any of those acts, or have otherwise jeopardised the genuine competition of the ITP procedure and that you may report us to the Office of Fair Trading or the Metropolitan Police or both. We understand that you may take steps, including proceedings through the courts, to recover from us any costs or losses incurred by the Council as a result of our anti-competitive behaviour.
6. We certify that this is a bona fide ITP and we have not:
  - (a) entered into any agreement with any other person with the aim of preventing ITPs being made or as to the amount of any ITP or the conditions upon which any ITP is made;
  - (b) informed any other person of the amount or approximate amount of our ITP or any other details of our ITP, except where such disclosure was necessary to obtain insurance quotations required for the preparation of the ITP or to take advice from our legal and financial advisers;
  - (c) caused or induced any person to enter into such an agreement' as mentioned in paragraph (a) above or to inform us of the amount or approximate amount of any other ITP for the contract;

- (d) sought or obtained any confidential information from an employee, ex-employee, consultant or member of the Council;
  - (e) directly or indirectly canvassed any member, officer, servant or agent of the Council concerning the acceptance of any ITP or directly or indirectly obtained or attempted to obtain from any member or officer, information concerning any other Participant or any ITP submitted by another Participant;
  - (f) 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 in relation to this ITP or any other ITP or proposed ITP for the Services any act of the sort described in paragraphs 4(a), (b), (c), (d) or (e).
7. We also undertake not to do any of the acts mentioned in paragraphs 4(a), (b), (c), (d), (e) or (f) before the latest date and time specified for return of ITPs for the contract. In this paragraph, "person" includes companies, firms and unincorporated associations and "agreement" includes any arrangement, whether formal or informal and whether legally binding or not.
  8. We also certify that we are not a party to any scheme or arrangement under which any other Participant may be reimbursed any part of his/her ITP cost.
  9. We agree that the Council may, at its sole discretion, contact any third parties quoted in our ITP proposals and may, if it so wishes, make inspections of completed projects, the details of which will be provided, if required by the Council.
  10. We acknowledge that you are not bound to accept the lowest or any ITP you may receive and that you will not pay any expenses incurred by us in connection with the preparation and submission of this ITP.
  11. We acknowledge that the Freedom of Information Act 2000 gives a general right of access to information held by public authorities and that the Council's decision on what information will be released in response to an access request is final. We understand that the Council may apply relevant exemptions in appropriate cases.

1. Signed :
Name INCAPITALS :
Position in company :



This signatory is authorised to make this Offer for and on behalf of the Participant

2. Signed :

Name IN CAPITALS :

Position in company :

This signatory is authorised to make this Offer for and on behalf of the Participant

Date of Offer

## PART 4

### STATEMENT OF INTEREST

Any provider failing to disclose relationships may be disqualified from being invited to quote /participate.

1. I / we confirm that no officer, employee or consultant of our organisation is an employee or ex-employee of the Council.
2. I / we confirm that no officer, employee or consultant of our organisation is connected to an employee or ex-employee of the Council.
3. I / we confirm that no officer, employee or consultant of our organisation is an elected member of the Council or someone who has been an elected member in the last 4 years.
4. I / we confirm that no officer, employee or consultant of our organisation is related to or otherwise connected with an elected member of the Council
5. I / we confirm that no officer, employee or consultant of our organisation is involved directly, or indirectly, in providing services to the Council -
6. I / we confirm that no officer, employee or consultant of our organisation, is involved in any other organisation/company that may be interested in bidding for the Council's services under this quotation /ITP procedure

Please use this space to declare any interests that are in conflict with the above statements:

Signed:
PrintName:
Company Name:
Date: