



Brunel Pension Partnership

Invitation to Tender

Middle and Back Office Services for Private Markets

Appendix C Terms of Participation

July 2018

General

1. Any person who participates in this procurement exercise shall be deemed to accept these terms of participation (the **Terms of Participation**) and the terms and conditions of contract. These Terms of Participation constitute the entire agreement between the parties concerning the conduct of the exercise.
2. Brunel (**Brunel**) does not make any binding commitment to actual or potential suppliers (**Suppliers**) or to any other party about its conduct of this procurement exercise, other than to abide by its statutory obligations and these Terms of Participation. No other obligation on Brunel shall be implied into any contract which may arise between Brunel and any Supplier governing the conduct of this exercise.
3. Suppliers shall not, in connection with this procurement exercise, place any reliance upon any communication from Brunel (including without limitation any notice published by Brunel and any information published on any web site), unless it specifically states that it concerns this procurement exercise and bears the reference number stated on the front page of the Invitation to Tender. Suppliers shall not place any reliance on any communication which is not in writing.
4. Any notice from any person in connection with this procurement exercise shall be sent to the contact person identified in the Invitation to Tender.
5. In inviting potential Suppliers to participate in this procurement exercise, Brunel is not making an offer to enter into any contract for the supply of goods, services or works and does not bind itself to accept any offer it receives.
6. Brunel reserves the right at its sole discretion to change any aspect of, or to discontinue this procurement exercise at any point. If Brunel does discontinue the exercise, Brunel will not provide any Supplier with the scores allocated in any marking exercise already undertaken or the reasons for the allocation of those scores or the discontinuance.
7. Brunel will not, under any circumstances, be liable to pay Suppliers for any costs incurred by them as a result of their participating in this procurement exercise.
8. Brunel's only obligation to Suppliers concerning debriefing shall be to provide the Suppliers with a written statement, as approved by the chair of the evaluation panel.
9. Brunel may exclude from consideration any Supplier from this procurement exercise:
 - a. if the Supplier fails to provide a proposal that fully complies with the Terms of Participation and/or any instructions given during the procurement exercise;
 - b. if Brunel becomes aware that it has breached these Terms of Participation in any respect or that the Supplier's proposal contains a wilful omission or misrepresentation; or
 - c. in the circumstances described in paragraph 25.

10. Brunel's decision as to whether any Supplier has complied with the Terms of Participation or any instructions given during the procurement exercise shall be final. Brunel shall be under no obligation to consider any extenuating circumstance which may have arisen.

Tender Documentation

11. The Invitation to Tender and information provided with it (the **Tender Documentation**) has been supplied by Brunel is subject to constant updating and amendment in the future and is necessarily selective and is supplied for general guidance in the preparation of proposals.
12. The Tender Documentation has been prepared in good faith by Brunel for the purposes of the procurement exercise. It does not purport to contain all of the information which Suppliers may require and Suppliers must satisfy themselves by their own investigations about the accuracy of the information in the Tender Documentation.
13. While Brunel has taken all reasonable steps to ensure, as at the date of the Invitation to Tender, that the facts which are contained in the Tender Documentation are true and accurate in all material respects, Brunel does not make any representation or warranty as to the accuracy or completeness of the Tender Documentation, or the reasonableness of any assumptions on which any part of it may be based.
14. Brunel accepts no liability to Suppliers however arising and whether resulting from the use of the Tender Documentation provided, any omissions from or deficiencies in the Tender Documentation or otherwise. As such, Brunel cannot accept responsibility for any inaccurate information obtained by Suppliers.
15. Brunel reserves the right to clarify, amend, add to or withdraw all or any part of the Tender Documentation at any time during this procurement exercise.
16. All intellectual property rights in this Invitation to Tender and all materials provided by Brunel or its professional advisers, consultants or information provided in connection with this further competition are and shall remain the property of Brunel and/or its professional advisers, consultants and/or information providers. The information they contain shall be used only for the purpose of preparing a proposal and delivering any resulting contract.

Confidentiality and disclosure

17. The contents of the Invitation to Further Competition, together with all other information, materials, specifications or other documents provided pursuant or in the course of this procurement process as a whole, or prepared by the Suppliers specifically for such purposes, shall be treated at all times as confidential by the Suppliers. Suppliers shall not disclose any such information, materials, specifications or other documents to any third parties or to any other part of the Suppliers'

company or group or use them for any purpose other than for the preparation and submission of a response to this Invitation or other requirement of the procurement process, nor shall Suppliers publicise Brunel's name or the Invitation to Further Competition without the prior written consent of Brunel.

18. The Suppliers shall ensure that all third parties to whom disclosure is made shall keep any such information, materials, specifications or other documents confidential and not disclose them to any other third party except as set out above.
19. Suppliers must seek the approval of Brunel before providing to third parties any information provided in confidence by Brunel or its professional advisers or consultants and must maintain a register of all employees and third parties who have access to such information. If so requested by Brunel, Suppliers must make such a register available for immediate inspection by Brunel or its duly authorised representatives.
20. Any working documents produced by Brunel in the course of evaluation shall remain confidential to, and the property of, Brunel and need not be retained by Brunel.
21. Brunel is subject to laws concerning access to information including the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Audit Commission Act 1998 and may - notwithstanding any claim made by any Supplier that any information is provided in confidence or is confidential in nature – release any information provided to it in accordance with the law, subject to Brunel's discretion concerning any applicable exemption or the application of any public interest test. It is important to note that information may be commercially sensitive for a time, for example, during a quote process, but afterwards it may not be. The timing of any request for information may be extremely important in determining whether or not information is exempt. However, Suppliers should note that no information is likely to be regarded as exempt forever.
22. Suppliers may notify Brunel of information they wish, acting reasonably, to designate as confidential and the reasons why. Suppliers shall not apply any blanket designation of confidentiality to their entire bid and Brunel will not pay any regard to any such designation.

Anti-corruption

23. Suppliers shall not enter into any agreement or arrangement with any other person with the intent that the other person shall refrain from responding to this Invitation to Further Competition.
24. Suppliers should not, in connection with the proposed contract:
 - a. offer any inducement, fee or reward to any officer, employee of Brunel or of the commissioning organisations, nor any other person engaged by Brunel for the purposes of conducting this procurement exercise;

- b. do anything which would constitute a breach of section 117(2) of the Local Government Act 1972 or Bribery Act 2010; or
 - c. canvass any of the persons referred to in a) in connection with the response about any aspect of the proposed contract or for soliciting information in connection therewith.
25. If any Supplier or any employee of any Supplier or any third party acting on behalf of any Supplier commits an act detailed in clauses 23 to 24 inclusive or offers, promises or gives any bribe or inducement or makes any improper threat or colludes (or offers or agrees to collude) with any other Supplier in connection with this procurement exercise then, in addition to any criminal sanction such conduct may attract, Brunel may:
- a. immediately exclude that Supplier's offer from consideration;
 - b. exclude that Supplier from future procurement exercises;
 - c. terminate any contract entered into with that Supplier; and
 - d. recover from that Supplier the reasonable costs of re-running this procurement exercise and any consequential losses (including loss of anticipated savings) which result from any delay in letting a contract.
26. If any person approaches any Supplier seeking any bribe or making any offer to collude in respect of this procurement exercise, that Supplier is to contact Brunel's Chief Compliance and Risk Officer immediately.
27. Any qualifications made by Suppliers in regard to the Invitation to Further Competition or documentation produced will not be accepted by Brunel and the right is reserved to exclude any proposals with qualifications attached.
28. Brunel will not accept any variation to these Terms of Participation and, if any Supplier submits any response which seeks to vary the above conditions, such purported variation shall be void, even if Brunel considers the proposal.

Form of contract

29. Each Supplier undertakes that, if its response to the Invitation to Tender is accepted by Brunel, the Supplier will, within 10 calendar days (or any other period of time as determined by Brunel in its sole discretion) of being called upon to do so by Brunel, provide Brunel with the form of its proposed administration services contract, which must incorporate:
- a. all mandatory terms outlined within Appendix D: Legal Provisions;
 - b. all required principles outlined within Appendix D: Legal Provisions;
 - c. the contents of its response to the Invitation to Tender, insofar as they relate to the proposed contractual terms.

30. For the purposes of paragraph 29:
- a. mandatory terms are those defined as such within Appendix D: Legal Provisions, which must be transposed as worded into the form of proposed administration services contract; and
 - b. required principles are those defined as such within Appendix D: Legal Provisions, which must be reflected in the form of proposed administration services contract and finalised and agreed between Brunel and the Supplier.
31. Following provision of the proposed form of administration services contract, Brunel will review it to confirm that it complies with paragraph 29. Brunel will then engage with the successful Supplier for such period as Brunel (in its absolute discretion) determines for the purposes of finalising the form of administration services contract. Brunel reserves the right to terminate that process and re-run this procurement exercise if the form of administration services contract is not finalised within such period.