BEEHIVE, HONITON, DEVON
PRE-QUALIFICATION STANDARD QUESTIONNAIRE : ANNEX A
GUIDANCE ON THE SELECTION STAGE PROCESS

LEASE OF THE BEEHIVE, HONITON, DEVON

PRE-QUALIFICATION OF LESSEES

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1. ANNEX A – GUIDANCE ON THE SELECTION STAGE PROCESS

Annex A - Guidance on the Selection Stage Process, including Standard Selection Questions.

Annex A (Guidance on the Selection Stage Process, including Standard Selection Questions) covers:

- a **summary** of the key points;
- more detailed advice on particular aspects, including:
  - general guidance on scope, format, and deviations; and
  - guidance on particular subsections of the standard selection questions;
- a **list** of standard selection questions;
- a **supplier** questionnaire template; and
- a **list** of exclusion grounds.

Summary of Key Points

1. Potential lessees should use the selection questions and submit responses to the Town Council.
2. The selection questions are the same for all potential lessees.
3. As a minimum the following are required:

- Responses to Part 1 and 2 questions have to be provided, and declarations received.
- If any of the exclusion grounds apply (other than in respect of non-payment of taxes), an explanation from the potential lessee on how the measures they have taken demonstrate their reliability is requested. These measures can include paying compensation, actively collaborating with investigating authorities and taking measures to prevent further occurrences (this is called ‘self-cleaning’).
- Completed Part 3 of the standard questions, declarations and evidence of meeting the economic and financial standing selection criteria and declarations in relation to the technical and professional ability selection criteria.
- Responses to the questions in Part 1 and Part 2 of the questionnaire are required of all organisations which form part of the potential lessees bidding group/consortium, as well as any subcontractors that the potential lessee relies

on to meet the selection criteria.

4. A potential lessee is not required to produce supporting documentary evidence or certificates until specifically requested to do so. Evidence will be required from the successful lessee before awarding the lease, as part of the Council's due diligence process. If the successful lessee is unable to provide this evidence it will not be awarded the lease.

5. However, the Council can ask for evidence from any potential lessee at an earlier stage if it is needed to ensure proper conduct of the procedure. This is likely to be appropriate:

- for economic and financial standing where a full assessment can only be undertaken where evidence is provided;
- if a competitive dialogue or negotiation procedure is implemented. It is recognised that the burden of taking a potential lessee through dialogue/negotiation only to reject them at the final stage (once evidence is provided) may be disproportionate; and
- where timescales are necessarily short and it is appropriate to review evidence concerning exclusion and selection in parallel with evaluation.

General rules

6. Declarations relating to the exclusion grounds and relevant selection criteria have to be provided with offers.

7. The document provides details on how the self-declarations relating to the exclusion grounds are to be accessed (ie from this document), lists the required selection questions and a positive response to the questions constitutes the selection criteria requirements for participation. Potential lessees are asked to complete answers to questions Parts 1 (information), 2 (exclusion grounds) and 3 (selection) and preferably submit an electronic copy. Responses must come to the Town Council as instructed.

Guidance on Part 1 (General Information) and Part 2 (Exclusion Grounds[1]) - Key Principles

8. It is mandatory for a potential supplier to complete the formal declarations relating to the exclusion grounds listed in either the relevant questions in part 1 and

1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf

part 2 of the questionnaire.

9. Part 1 and Part 2 of the selection questions must be completed by all organisations that form part of the potential lessee's bidding group/consortium.

10. The completed Part 1 and Part 2 provides the formal declaration relating to the exclusion grounds, and are therefore required for each organisation that forms part of the potential lessee's bidding group/consortium (including where the potential lessee is a group, including joint ventures and partnerships created (or to be created) for the purpose of the lease), as well as each subcontractor the potential lessee relies on to meet the selection criteria.

11. Where a potential lessee is relying on another member of its corporate group or a subcontractor to meet the selection criteria, that entity should be treated as being part of the potential lessee's group/consortium and must complete parts 1 and 2.

12. The Council may continue to exclude a supplier under discretionary exclusion grounds, including grave professional misconduct. This may include convictions for offences relating to fraud where the circumstances leading to the conviction constitute evidence of such a ground being met.

13. Potential lessees must complete the self-declarations in relation to the mandatory exclusion grounds on behalf of all relevant persons and entities. Each potential lessee must decide which entities and persons are relevant.

14. There are two categories of persons and entities that are relevant:

a) Members of the potential lessee's administrative, management or supervisory board. This category will typically cover company directors and members of an executive board.

b) Entities and persons who have powers of representation, decision or control in the lessee. This could be:

   i) entities or persons with a 25% or more shareholding;
   ii) entities or persons with less than 25% shareholding who have the relevant powers depending on their particular rights;
   iii) a potential lessee's ultimate parent company;
   iv) intermediate parent companies of the potential lessee that do not have a direct shareholding;
   v) directors or members of an executive board of their immediate parent company (for example, in the case of a Special Purpose Vehicle set up specifically to bid for a particular lease);
   vi) holders of mortgages or liens.

15. It is not necessary for potential lessees to list which entities and persons they think are relevant. However, they must be satisfied that the declaration is made in respect of all of those that are relevant.

Subcontractors

16. Part 1 asks for details of all subcontractors which have been identified by the potential lessee at this stage of the procurement process. Where a subcontractor has been identified in response to this question, any resulting subcontract entered into with that subcontractor for that part of the lease identified in response to that question will not be subject to the requirement to advertise.

What is meant by 'rely on' an organisation?

17. An organisation is relied on for the purposes of the standard selection questions if the potential lessee is relying on the technical and professional ability and/or the economic and financial standing of the organisation to meet the selection criteria in part 3.

Modern Slavery Act 2015[2]

18. Commercial organisations in any sector that supply goods or services, carry on a business or part of a business in the UK, and have an annual turnover of at least £36 million ("relevant commercial organisations") are required to prepare a slavery and human trafficking statement by Section 54 of the Modern Slavery Act 2015[3]. Section 54 sets out various requirements relating to the content, format and publication of the statement. The standard selection questions ask potential lessees who are subject to this requirement to confirm that they have published a statement and to confirm that it meets the requirements of Section 54.

19. The Council will consider whether the response of a potential lessee to these questions gives rise to a discretionary exclusion ground relating to breach of applicable obligations under social and labour laws. Failure to publish a statement or failure to comply with the requirements of Section 54 is likely to give rise to such a discretionary exclusion ground. If the Council concludes that the discretionary exclusion ground applies, the potential lessee should be excluded unless it can provide sufficient self-cleaning evidence.

[2] For background see Home Office publication at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide__final_.pdf

[3] http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted

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Guidance on Part 3 of the Standard Selection Questionnaire and Qualitative Selection – Key Principles.

Below threshold procurements

20. Questions are asked to assess the suitability, capability, legal status, and financial standing of a potential lessee, and the questions are relevant and proportionate.

Use of selection questions

21. The questions are used:

- to test that a potential lessee meets minimum levels of suitability (i.e. fulfilment of selection criteria);
- to pre-qualify lessees to be invited to offer;
- to pre-qualify lessees to submit an initial offer; and
- to pre-qualify suppliers to participate in a competitive dialogue.

22. The questions are presented in Part 3 and appropriate declarations are included and a signature required.

Self-declarations and evidence.

23. Part 2 requires self-declarations from potential suppliers in relation to the exclusion grounds. Part 3 asks for some information from potential lessees in relation to the selection criteria, but also allows for supporting documentary evidence to be provided at a later date.

24. Generally, only the winning supplier (and any organisations relied upon to meet the selection criteria) is required to submit supporting documentary evidence in relation to exclusions and selection criteria. This reduces the need for potential suppliers to submit supporting documents every time they wish to bid.

25. If the winning supplier fails to provide the required evidence within reasonable timeframe, or the evidence demonstrates that the selection criteria are not met, the award of the contract should not proceed. The Council may then choose to amend the lease award decision and award to the second-placed lessee who has not been excluded on the basis of the exclusion grounds or the selection criteria, provided that they have submitted a satisfactory bid. Alternatively, the process may be terminated.

26. The Council requires supporting documentary evidence from any potential lessee at any stage if it is necessary to ensure proper conduct of the process. It might be necessary to ask for supporting documentary evidence in relation to exclusions and the selection criteria before the award stage.

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Scoring

27. Positive responses form the selection criteria and a scoring system (ranking) for assessing whether potential lessees meet the selection criteria, using responses to questions in part 3. The selection criteria is relevant and proportionate to the lease and comply with the principles of transparency, non-discrimination and equal treatment, including in relation to the treatment of Small and Medium-sized Enterprises (SMEs).

Group of potential suppliers

28. If the potential lessee is offering on behalf of a group/consortium, or intends to use subcontractors, there may be different actions required for completion of part 3 of the standard questions compared to part 1 and part 2. The response to part 1 should make it clear who the lead member of the group/consortium is, and who will be contractually responsible for delivery of the lease. Where the group/consortium is proposing to create a separate legal entity, such as a Special Purpose Vehicle (SPV), in part 1, they should provide details of the actual or proposed percentage shareholding of the constituent members within the new legal entity. They should also provide the name for the new entity and details of its legal and operational structure.

29. All members of the group/consortium may be required to provide the information in part 3 of the selection questions, as part of a single composite response (unless the question specifically directs otherwise). Where this is the case, the group/consortium lead member would normally complete all of the questions in part 3 on behalf of the group/consortium and/or any subcontractors, referring to the economic and financial standing and/or technical and professional ability of group/consortium members and/or any subcontractors where appropriate.

30. Alternatively, all members of a group/consortium or subcontractors relied on to meet the selection criteria may complete their own section of part 3, as well as part 1 and part 2, so selection checks can be undertaken on them. The most negative response provided by a group/consortium will be used in selection.

31. Consortium and subcontracting arrangements may be subject to change, and any updates to these arrangements or any other leasing model should be provided to the Council during the process. This is to allow the Council to request responses to part 1 and part 2 of the standard selection questions for any new organisation, including self-declarations relating to the exclusion grounds, and updated responses to part 3 of the standard selection questions to carry out a further assessment of the selection criteria. The Council reserves the right to deselect a potential supplier or a group/consortium prior to any award of lease, based on an assessment of the updated information.

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Guidance on Supplier Selection Questions

Economic and financial standing (EFS)

32. Potential lessees must demonstrate their economic and financial viability in terms of turnover, assets, number/type of employees, reserves, balance sheet and P&L account for the past 3 years. You should clearly state any minimum EFS requirements and selection criteria. You should also describe the methodology for assessing EFS clearly. Any minimum requirements should be proportionate.

33. If a lessee does not itself meet minimum financial requirements, the Council can allow potential lessees to rely on the financial standing of a group or parent company or fellow consortium member if they are willing to provide appropriate security or support, for example in the form of a parent company guarantee.

Technical and Professional Ability

Past Performance

34. The Council will evaluate the past performance of a potential supplier in order to assess whether they have a sufficient level of technical and professional ability through experience demonstrated by examples of and suitable references from past contracts.

35. The Council will request details of three current lease / contract examples or references from the public and/or private sectors. Leases must have been performed during the past three years. Contracts for works must have been performed during the past five years. In both cases, older examples can be taken into account only where necessary to ensure an adequate level of competition. Example responses will be ranked by the Council and not be discriminatory or disproportionate, including towards smaller businesses.

36. The questions ask for information that can then be used to assess whether the selection criteria are met. Potential lessees are asked to submit details of leases where the named customer contact is prepared to provide written evidence to confirm the accuracy of the information provided. Customer references should be factual. Supporting documentary evidence should be requested from the winning supplier to verify the declarations.

37. The Council asks the lead member to provide a relevant example where one or more group/consortium members have delivered similar requirements. If this is not possible (for example a consortium is newly formed or an SPV will be created for the contract) up to three separate examples should be provided from the principal members of the group. This approach will help you establish that the new entity demonstrates the required level of experience.

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Subcontractors and supply chains

38. Where a potential lessee is proposing to subcontract a portion of the lease they should provide a relevant example where one or more of the essential subcontractors have delivered similar requirements (separate examples are not required from each subcontractor).

Additional questions

Project Specific Questions

Insurance

39. Potential lessees are required to self-certify that they have, or will have in place, any required insurance in the event that they are awarded the lease. It is not appropriate at the selection stage to insist on evidence that cover already exists. You are asked to specify the level of cover required on a case-by-case basis. This should be proportionate and reflective of the nature of the work and the risk involved. Any reason for requiring insurance above that required by law should be justifiable.

Health and Safety at work

40. Questions about compliance with environmental law obligations (which include health and safety legislation) are included in part 2. There is an additional question relating to health & safety arrangements.

41. The type and level of relevant experience and capability for managing health and safety risks may vary, depending on the risks, size and complexity of the requirement. Guidance from the Health and Safety Executive describes what is appropriate and proportionate in particular circumstances. Follow this link for guidance on the Health and Safety Executive's website.

42. A health and safety policy and examples of an assessment of how risks are controlled can help demonstrate capability, if effectively put into practice. The Council is aware that a company with fewer than five employees is not legally required to write down a statement of health and safety policy or record the significant findings of any risk assessment and will not be discriminated against in the assessment of technical and professional ability for not having these.

Data Protection Legislation

43. In relevant procurements for leases involving processing personal data, the Council will use appropriate selection criteria relating to potential lessees technical and

professional ability in implementing the appropriate technical and organisational measures to comply with UK GDPR and to ensure the protection of the rights of data subjects. Where this is linked to the subject-matter of the lease and proportionate, selection criteria is used to assess potential suppliers' human and technical resources to perform the contract to the appropriate standard and potential lessees are asked to provide proof by reference to the technical facilities and measures they have in place.

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