

**Ministry of Justice
Principles of Competition
Transforming Rehabilitation Programme**

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Introduction

- 1 In this document the Ministry of Justice ('the Authority') sets out the principles that will govern the delivery of the competition within the Transforming Rehabilitation Programme. These are designed to contribute to the integrity of the competition so that no unfair advantage (actual or perceived) is conferred to one Bidder over another.
- 2 As such, these principles set out the rules of the competition and expectations for fair, equal and transparent treatment of Bidders.
- 3 All Bidders will be treated in a fair and equitable manner and are subject to the same competition rules and processes. There will be no method of adjustment applied to bids in relation to the type or legal form of the bidding entity, including mutuals.
- 4 This document does not set any precedent whatsoever for any other competitions organised by the Authority or in Government more widely. This document may be subject to revision during the competition. For example, a change of law or policy may necessitate this.
- 5 This document is divided in to two parts – Part 1 Competition Fairness and Part 2 Market Management.

Part 1: Competition Fairness

- 6 The Authority wishes to elaborate on 4 key principles that govern the competition:
 - a) fair, transparent and equal treatment of Bidders;
 - b) the Authority will not fund private entities to develop bids;
 - c) approach to access and use of information and experience as part of the competition;
 - d) managing conflicts of interest.
- 7 The procedures for ensuring these principles are maintained are set out below.

Fair, transparent and equal treatment of Bidders

- 8 Throughout the competition, all Bidders will be given equal access to competition specific information. Data collection teams will research this information and provide it via the Authority's e-sourcing portal, Emptoris, or the Competition Data Room.
- 9 Bidders will be provided with guidelines and access to the Competition Data Room set up by the Authority at the appropriate stage of the competition. Access to the Competition Data Room will be tightly controlled and monitored, as will the version control process. A clear record will be available to all Bidders of any data issued via the Competition Data Room.

- 10 The same information will be available to all Bidders on an equal basis. Where Bidders wish to raise questions or clarification points during the competition they should be issued through the Authority's official channels set out in the competition documentation.
- 11 Bidders will be required to submit all requests for further information via the centrally coordinated process set out in the competition documentation. They must not approach Probation Trusts, Prisons or individual staff members directly for information relating to the competition.
- 12 Any requests received by Probation Trusts, Prisons or individuals will be directed through the Authority's official channels set out in the competition documentation.

Bid funding

- 13 The Authority will not provide any Bidders with additional resource. This includes:
 - the provision of legal support or legal costs;
 - funding of other costs associated with the bidding process; and
 - the back-filling of probation posts which are being used to develop bids.
- 14 Potential Bidders must declare in their Pre-Qualification Questionnaire (PQQ) response whether they, or their subcontractors, are in receipt of any grant funding giving all relevant details. They must also attest that any such funding received is either:
 - a) compliant with De Minimis aid regulations; or
 - b) will in no way be used to subsidise their bid, including indirect costs.

Access and use of information and experience

- 15 It is acceptable for Bidders to use experience and information, gained in the normal course of business through services delivered by that provider, in the development of their bid. This will include any staff member, contractor or sub-contractor delivering probation services or other contracts for the Authority in either the private or public sector.
- 16 Competition sensitive information gathered or available to any party due to involvement in the design or operation of the competition or Transforming Rehabilitation Programme will be treated as RESTRICTED, marked as "RESTRICTED - COMPETITION" and will not be available to Bidders unless released as part of the competition process via the Authority's official channels, at which point it will cease to be restricted information.

- 17 This classification may apply to information or documents produced by the central programme team or local teams where that information is being collated for the purpose of being used in the competition by the programme team. Where such information is required from incumbent providers the information should be made available in accordance with the terms of the providers' existing contract with the Authority.
- 18 All staff in the National Offender Management Service (NOMS), Probation Trusts, Prisons and MoJ HQ who have, or may have, access to protectively marked information or documentation are required to follow an appropriate code of conduct with regard to access to and use of protectively marked information and documentation.
- 19 The Authority may arrange market specific events as part of the competition. Where market specific engagements are arranged the Authority will endeavour to ensure that information is shared with all Bidders and that equality of opportunity, access, and influence exists.

Conflicts of Interest

- 20 It is an essential part of any competition that all Bidders have an equal opportunity to take part and to compete equally. Therefore the Authority will manage access to information to help prevent any party gaining an unfair advantage and in particular help prevent the possibility of individuals obtaining information other than through the Authority's official channels, and provide that any such instances are appropriately dealt with.
- 21 Appropriate protections are required to robustly manage potential conflicts of interest in relation to any party directly or indirectly involved in the competition, including the Authority, Probation Trusts and Bidders.

Bidders

- 22 It is acceptable for any current providers of probation services to use existing knowledge and experience, gained in the normal course of their service provision, to develop a bid.
- 23 However, Bidders should note that the Authority reserves the right to disqualify Bidders where there is an actual or potential conflict of interest. Bidders are therefore advised to review carefully the prior or current involvement of the Bidder including sub-contractors, consortium members and each and any of their advisors with the Authority, its officers, employees, agents and advisors and to contact the Authority immediately via the route set out in the competition documentation to discuss actual or potential conflicts they have identified.
- 24 Potential Bidders will also be required to sign and return the relevant declaration in the PQQ.

Ministry of Justice / National Offender Management Service HQ and Probation Trusts

- 25 Again, to ensure the integrity of the competition, the Authority requires that where there is to be any form of bid from current providers of probation services, (including mutuals to be formed by staff from the existing trust) that clear processes are in place to prevent any conflicts of interest for:
- a. any individual involved in the design, development or conduct of the Transforming Rehabilitation Programme (including those having access to any restricted information regarding the internal reorganisation into Government companies) and those assisting the in developing the competition; and
 - b. any individual involved in the development of potential bids for the competition as Bidders (e.g. mutuals and Alternative Delivery Vehicles).
- 26 Appropriate steps have been taken by all Probation Trusts to manage conflicts of interest for staff. Bidders should not approach Probation Trust staff with regard to the Transforming Rehabilitation Programme competition, except through competition organised engagement events, or where identified Probation Trust staff have officially declared that they are part of a mutual bid team.

Part 2 – Market Management

Market Stewardship and Supply Chain Principles

- 27 In the Transforming Rehabilitation: a strategy for reform consultation response document, the Authority stated its intention to put in place a reformed probation system which:
- ‘opens up service delivery to a wide market so that the best of private and not for profit, larger and smaller, local and national organisations can work with offenders to improve reoffending rates’.*
- 28 The Authority believes that the primary objective of the Transforming Rehabilitation Programme – reducing reoffending rates – will be best supported by harnessing the wide range of expertise which exists across different sectors and by facilitating the introduction of locally sensitive, flexible and innovative ways of working.
- 29 The Authority has identified a number of principles which it believes are key to ensuring sustainable behaviours are displayed throughout the supply chain. The competition is the first step towards ensuring the principles below are reflected in delivering rehabilitation services under the Authority’s reforms.

- 30 The Authority will require Bidders to evidence how they will meet their obligations with regard to these market stewardship principles.

Core market stewardship principles

Appropriate management of risk in the supply chain:

- 31 All contractual and other risk should be appropriately managed. This should extend to not passing risk down supply chains disproportionately, the management of volume fluctuations and other events and the management of intellectual property rights.

Alignment of ethos in the supply chain:

- 32 The Authority envisages that a sustainable relationship is fostered throughout the contractual period, which meets the expectations of both parties according to the position established at contract inception. In entering into a contractual agreement, there should be an understanding of what is important to both parties and this should go on to form part of the contractual agreement which will be reviewed throughout the contract term to ensure that expectations are being met. The Authority's market engagement has reinforced that this is an important expectation for many organisations and key to building trust, especially in the early stages of such business relationships.

Visibility across the supply chain:

- 33 The Authority envisages that all parties have visibility of participation within the supply chain. This should include payment terms against contractual targets, the volume of business handled by supply chain partners, transparency for refresh and retendering of services, fair apportionment of referrals with regard to easier cases, and how the supply chain adjusts to changing volumes or demographics within each Contract Package Area (CPA).

Reward and recognition of good performance:

- 34 The Authority considers it important that organisations in the supply chain receive appropriate reward for good performance. Recognition of good performance should be shared across the chain and this should include the sharing of good practice.

Application of the principles of the Compact in work with 3rd Sector organisations:

- 35 The principles of the Compact set out the code of conduct that the Government has agreed to adopt when working with 3rd sector organisations. The Authority has an expectation that providers and their supply chain follow this code when engaging with 3rd sector organisations. The Compact can be found at:
www.cabinetoffice.gov.uk/sites/default/files/resources/The%20Compact.pdf

Robust contract documentation

- 36 Contractual documentation presented at Invitation To Negotiate (ITN) stage will embed the market stewardship principles robustly. This will include both main contracts and an Industry Standard Partnering Agreement (ISPA) which will be used between the Tier 1 providers and the supply chain where the supply chain has completed the appropriate registration process referenced below. Regardless, it is the Authority's expectation that the ISPA will be used in all cases.

Supply chain registration process

- 37 The Authority will create a register for organisations who envisage participating as part of the supply chain, including SMEs and third sector organisations who wish to obtain business through the Transforming Rehabilitation Programme. The aim is to provide a platform for visibility of the range of potential supply chain partners available.
- 38 This voluntary registration process will be referenced within the OJEU and also promoted more widely through the Authority website and via a number of key stakeholder organisations.

Develop Authority performance and contract management processes

- 39 During the ITN process the Authority will discuss with all Bidders the performance and contract management processes and procedures. These will be designed not just to ensure that the Authority can monitor the payment and performance of the supply chain but that it can do so in a way that underpins and enforces the Authority's market stewardship principles.

Approach to pre-qualifying Potential Bidders

- 40 The Authority wishes to encourage a varied supply chain to deliver rehabilitation services as part of this competition whilst, at the same time, ensuring those Potential Bidders progressing through to ITN stage have the capability and capacity to deliver the services in their CPAs.
- 41 The programme objectives include creating and maintaining a competitive marketplace and ensuring diversity of provision.
- 42 The Programme has carefully set the thresholds to qualification at a level that enables the maximum participation in the competition whilst ensuring that only Potential Bidders who have the capability and capacity to deliver the services, either individually or as a consortia, are taken through to ITN stage.

Funding requirements

- 43 Potential Bidders must demonstrate that they have the capacity to meet their financial liabilities and obligations for the value of the contracts they are bidding for. The PQQ will therefore test Potential Bidders financial strength by examining the level of funding to which Potential Bidders have access. Potential Bidders will be excluded from competitions where they are unable to demonstrate the minimum level of funding required for the lots they wish to bid for.
- 44 Full details regarding the level of funding required, as a function of the contract value, are set out in the PQQ.

Market share restriction

- 45 A market share restriction will be used when awarding contracts to mitigate against a Bidder gaining control over an excessive proportion of the market, but without constraining the potential for economies of scale to be achieved through the award of contiguous lots, where this would deliver significant operational and commercial benefits.
- 46 It is currently the Authority's intention to impose a market share restriction whereby Bidders can win a maximum of 25% of market share based on the indicative contract values set out in the competition documentation. Bidders will be allowed to win multiple contracts up to the point at which their market share cap would be breached subject to meeting any other requirements set out by the Authority.
- 47 The Authority intends that this restriction applies both to individual consortia bidding for multiple CPAs and, where relevant, to individual organisations who are bidding as part of multiple consortia.
- 48 The Authority reserves the right to amend these award criteria and restrictions and will confirm details of their size and application at ITN stage.