

## PART 6 - NEW PROJECT PRICING REPORT

### 1. DEFINITIONS

The following defined terms are used in this Schedule Part 6 (*New Project Pricing Report*):

<b>"Associated Entity"</b>	means, in relation to any body corporate: <ul style="list-style-type: none"><li>(a) any Associate of that body corporate;</li><li>(b) any member, director or partner of such body corporate or any of their Associates;</li><li>(c) any partner in any partnership or any person who participates in any profit sharing or joint purse arrangement, in each case to which that body corporate or any person mentioned in paragraph (a) or (b) is also a party;</li><li>(d) any member, director, officer or employee of any of the persons referred to in paragraphs (a) to (c) or any of those persons' spouses, children, step-children or partners; or</li><li>(e) any body corporate of which any person referred to in (c) above is a member, director, officer or employee</li></ul>
<b>"Compliant Tender"</b>	means a tender received from a Tenderer which complies with the Tender Requirements
<b>"Excluded Person"</b>	means hubco (or where a Supply Chain Member or proposed Supply Chain Member is conducting the Market Testing, the relevant Supply Chain Member or proposed Supply Chain Member), any Associated Entity of hubco (or the relevant Supply Chain Member or proposed Supply Chain Member) and any sub-contractor of such an Associated Entity
<b>"Market Tested Element"</b>	means the element of a New Project (whether a construction prime cost element, a construction non-prime cost element, funding, lifecycle, or hard or soft facilities management services, management services cost elements or otherwise) which would be required to be provided as part of the Project Services should the New Project in question become an Approved Project and which are to be the subject of a Market Test pursuant to paragraph 4.5 below
<b>"Market Testing"</b>	means the carrying out of a market test process in accordance with the provisions of this Schedule Part 6 ( <i>New Project Pricing Report</i> ) and <b>"Market Test"</b> shall be construed accordingly
<b>"Market Testing Method Statement"</b>	means the Market Testing Method Statement appended to this Schedule Part 6 ( <i>New Project Pricing Report</i> )
<b>"Preferred Tenderer"</b>	means, following the Market Testing of any Market Tested Element, any group of Market Tested Elements or any part of any Market Tested Element (as the case may be), the Tenderer selected to provide such services in accordance with the provisions of paragraph 5.2.4 below

<b>"Pricing Report"</b>	means the report referred to in paragraph 4.1 below
<b>"Prohibited Act"</b>	subject to paragraph 6 below, has the meaning given to it in Clause 25 ( <i>Corrupt Gifts and Fraudulent Payments</i> )
<b>"Prospective Tenderers"</b>	means those persons who express an interest in being included in any Market Testing of Market Tested Elements, group of Market Tested Elements or any part of any Market Tested Element (as the case may be)
<b>"Relevant Employees"</b>	means in relation to any service comprised within a Market Tested Element for which a Tenderer is tendering, any persons employed by any of the Relevant Participant(s) or any other organisation or body (including, for the avoidance of doubt, any sub-contractor or agent engaged by the Relevant Participant(s)) who will be wholly or mainly engaged in the provision of that service as at the relevant Transfer Date (as defined under any Project Agreement concluded in respect of the New Project in question should it become an Approved Project) and who will become an employee of the Project Service Provider or a Supply Chain Member providing the Market Testing Services in accordance with the relevant provisions of such Project Agreement
<b>"Tender Requirements"</b>	means the form and requirements of the tender documents to be sent to Tenderers as agreed or determined in accordance with the provisions of this Schedule Part 6 ( <i>New Project Pricing Report</i> )
<b>"Tender Validity Period"</b>	means the period within which tenders from Tenderers must be received if they are to be valid
<b>"Tenderers"</b>	means those of the Prospective Tenderers selected to submit tenders in accordance with paragraph 5.2.2 below
<b>"TUPE Information"</b>	means information relating to the terms and conditions, job title, age, length of service and benefits of the Relevant Employees.

## 2. PURPOSE

- 2.1 The purpose of this Schedule Part 6 (*New Project Pricing Report*) is to set out how hubco and the Relevant Participant(s) will work together to ensure that the Pricing Report to be produced in respect of each stage of the New Project Approval Process for each New Project provides Relevant Participants with robust, transparent, auditable information as to the costs, fees and prices included within hubco's proposals for such New Project, to assist the Relevant Participant(s) in making informed choices as to the best available value for money solution for their specified needs.
- 2.2 In considering comparable projects to produce relevant benchmarking information and in determining adjustments to be made to Comparators, account shall be taken of inflation:
- 2.2.1 in respect of the Pricing Data, in accordance with:
- (a) Section 4 (*Partnering Services Costs Rates*) of Schedule Part 3 (*Partnering Services*) in respect of those elements of the project calculated by reference to the rates specified in said Section 4; and
  - (b) for all other elements of the project, the terms of Appendix 1 (*Pricing Data*) to Schedule Part 4 (*Partnering Services Costs*); and
- 2.2.2 for all other benchmark projects, in respect of construction (and where appropriate, property) prices by reference to MIPS or BCIS TPI (as agreed from time to time with the

Relevant Participant(s)) and such other appropriate indices as may be agreed between the TPB and hubco since the date of the comparison data.

- 2.3 The proper costs of hubco reasonably incurred in meeting its obligations under this Schedule Part 6 (*New Project Pricing Report*) are Partnering Services Costs and shall be recovered in accordance with and subject to paragraph 1 of Schedule Part 4 (*Partnering Services Costs*).

### 3. **COMPARATORS AND PROGRAMME**

- 3.1 hubco and the Relevant Participant(s) shall, at the start of each stage of the New Project Approval Process for each New Project, agree a programme:

- 3.1.1 for hubco and the Relevant Participant(s) to meet and agree, no later than 4 weeks after the commencement of that stage:

- (a) which elements or components of the projects contained within the Pricing Data are appropriate Comparators for the corresponding elements or components of the New Project in question (excluding the Project Development Fee, to which Schedule Part 4 (*Partnering Services Costs*) shall apply);
- (b) in respect of the elements and/or components referred to in paragraph 3.1.1(a), the adjustment (if any) to be made to the relevant figure or percentage specified in the Pricing Data to reflect variances between the Comparator as identified in the Pricing Data and the details of the New Project, such adjustment to be carried out in accordance with the principles set out in Appendix 1 (*Comparator and Initial Pricing Information*) to Schedule Part 4 (*Partnering Services Costs*); and
- (c) where, for any one or more element or component of such New Project there is not an appropriate Comparator, appropriate projects to act as a benchmark for such purposes,

and hubco and the Relevant Participant(s) shall attend such meetings and co-operate as may be necessary to reach agreement on said matters; and

- 3.1.2 for issue to the Relevant Participant(s) of a draft Pricing Report.

Where updated drafts of the Pricing Report are required to be submitted pursuant to paragraph 4.2, hubco and the Relevant Participant(s) shall agree the necessary changes to the programme to reflect such requirements.

- 3.2 Subject to paragraph 4.6, the price proposed by hubco for each of the relevant elements or components of each New Project to which paragraph 3.1.1(a) above applies shall not exceed the relevant figure (or percentage if applicable) for the relevant Comparator specified in the Pricing Data as adjusted pursuant to paragraph 3.1.1 above.

### 4. **PRICING REPORT**

- 4.1 hubco shall produce a report for each New Project, which shall:

- 4.1.1 analyse:

- (a) for Stage 1 Approval, its predicted maximum cost of the relevant New Project (including all profit, overheads, contingencies and other costs chargeable to the relevant New Project);
- (b) for Stage 2 Approval, its predicted cost of the relevant New Project (including all profit, overheads, contingencies and other costs chargeable to that New Project),

based on appropriate construction method statements and programmes provided with the report and in either case compared to:

- (i) the appropriate Comparators for the relevant elements or components of such overall cost (as adjusted pursuant to paragraph 3.1.1 above);
- (ii) the actual costs (and prices) of Approved Projects;
- (iii) other relevant projects agreed between the Relevant Participant(s) and hubco pursuant to paragraph 3 above;
- (iv) general market level of pricing, charges, costs and fees for all elements and components of similar projects:
- (v) in the Territory (outside of the hub initiative);
- (vi) nationally in the Community Services sector (outside of the hub initiative); and
- (vii) general market level of pricing, charges, costs and fees for all elements and components of similar projects in other hub territories, including information in respect of equivalent projects based on any benchmarking data and indices which may from time to time be provided by the Scottish Futures Trust and/or the Scottish Government in respect of the hub initiative,

and explain how such results, taking into account all aspects (whether or not cost related) of hubco's proposals for the New Project, demonstrate that the New Project would provide value for money to the Relevant Participant(s);

- 4.1.2 during Stage 1 include a fully costed risk register showing the allowances included within the predicted maximum cost to reflect matters which cannot be fully priced at that stage given the level of design development carried out to date; and
- 4.1.3 during Stage 2 show how the matters included within the costed risk register submitted as part of the Pricing Report in the Stage 1 Submission have been resolved within the predicted cost.

The make up of the proposed costs for all elements and components of the New Project (as contained in the Pricing Report) shall be provided on an open book basis, with hubco providing evidence of the steps taken at each level of hubco's supply chain (including in relation to funders, where applicable) to ensure value for money and continuous improvement in value for money (including those aspects of the proposed New Project which have been subject to competitive tender within the proposed supply chain).

4.2 hubco shall:

- 4.2.1 provide the Relevant Participant(s) with drafts of the Pricing Report for comment in advance of the Stage 1 Submission or Stage 2 Submission, as the case may be; and
- 4.2.2 update any draft report submitted to reflect the results of any further exercise(s) carried out pursuant to paragraph 4.4 or paragraph 4.5 and re-submit it,

all in accordance with the programme referred to in paragraph 3.1.2 above.

4.3 For each stage of the New Project Approval Process for each New Project, the costs contained in the Pricing Report shall, as a minimum, reflect the results of open book pricing exercise(s) undertaken by hubco and the proposed Contractor (or their proposed subcontractor(s)) and, if applicable, each proposed Service Provider (or their proposed subcontractor(s)) from within the supply chain (including funders) to be maintained by hubco from time to time pursuant to paragraph 1.2 of Section 1 (*Specification*) of Schedule Part 3 (*Partnering Services*).

4.4 Where hubco considers it appropriate or the Relevant Participant(s) so require, hubco shall, in addition to complying with paragraph 4.3, also procure competitive tenders in respect of specific elements and/or components (as identified by hubco or required by the Relevant Participant(s)) of the costs of the New Project from within the supply chain (including funders) to be maintained from time to time pursuant to paragraph 1.2 of Section 1 (*Specification*) of Schedule Part 3 (*Partnering Services*).

4.5 Where, in relation to any stage of the New Project Approval Process for any New Project :

4.5.1 hubco considers it appropriate (in respect of any element or component of the costs for such New Project for which there is not a Comparator); or

4.5.2 hubco and the Relevant Participant(s), each acting reasonably, have agreed (in respect of any element or component of the costs of such New Project, whether or not there is a Comparator); or

4.5.3 the Relevant Participant(s) so require (in respect of any element or component of the costs of such New Project, whether or not there is a Comparator),

hubco shall, in addition to complying with paragraph 4.3 and, where applicable paragraph 4.4, also carry out or procure the carrying out by the proposed Contractor (or its proposed subcontractor(s)) and/or any proposed Service Provider (or its proposed subcontractor(s)) of a Market Test in respect of all or any element or component of the costs for the New Project. It shall be the decision of the Relevant Participant(s) whether it is hubco, the proposed Contractor or its proposed subcontractor, a proposed Service Provider or its proposed subcontractor who is to carry out the Market Test in respect of each relevant element or component.

4.6 Where a Market Test is carried out pursuant to paragraph 4.5.3 in respect of any element or component of the costs for a New Project for which there is a Comparator, paragraph 3.2 shall not apply to such element or component.

4.7 In the event that:

4.7.1 Market Testing is to be carried out in respect of any element or component of a New Project for which there is a Comparator;

4.7.2 the requirement for such Market Test was not reflected in the agreement (or determination) of the Project Development Fee Cap; and

4.7.3 such requirement will materially increase the cost to hubco of carrying out the Project Development Partnering Services as part of the relevant New Project Approval Process beyond that which could properly have been anticipated at the time of agreeing or determining the Project Development Fee Cap, taking into account the likely costs of carrying out competition within the proposed supply chain,

the Relevant Participant(s) and hubco shall agree the appropriate adjustment to the Project Development Fee and the Project Development Fee Cap.

4.8 The Parties may agree written protocols with express reference to this paragraph 4 which explain or clarify an aspect of the procedure for producing Pricing Reports and such protocols shall be read as if incorporated into this paragraph 4.

4.9 hubco shall:

4.9.1 maintain a full record and audit trail of each benchmarking exercise and make all such records (including details of all tenders and information received) available for inspection by each Participants and its authorised representatives (including, without limitation, the National Audit Office) upon reasonable notice from that Participant; and

- 4.9.2 provide to the Relevant Participant(s) and the TPB, in a comprehensive and accurate manner, all information necessary to enable the Relevant Participant(s) and/or the TPB to review and assess all matters relating to the benchmarking exercises undertaken or commenced by hubco.

## 5. MARKET TESTING

- 5.1 The Market Testing of each Market Tested Element shall, notwithstanding any other provision of this Schedule Part 6 (*New Project Pricing Report*) (including, without limitation, the participation of the Relevant Participant(s) described in paragraph 5.2), be the responsibility of hubco (as between hubco and the Relevant Participant).

- 5.2 The requirements of this paragraph 5.2 shall apply in respect of every Market Test to be carried out pursuant to the provisions of this Schedule Part 6 (*New Project Pricing Report*).

### 5.2.1 Market Testing Procedure

- (a) hubco must obtain the approval of the Relevant Participant(s) in each case for:
- (i) (subject to the provisions of paragraph 5.2.1(b) (*Grouping of Services*)) any grouping or groupings of Market Tested Elements or any division of any Market Tested Element into separate parts which will optimise the opportunity for the Participants to obtain best value for money;
  - (ii) the appropriate media for advertising the Market Tested Elements and identifying the Prospective Tenderers (who should be wider than the supply chain to be maintained from time to time pursuant to paragraph 1.2 of Section 1 (*Specification*) of Schedule Part 3 (*Partnering Services*));
  - (iii) the basis on which the Tenderers shall be selected by hubco from among the Prospective Tenderers;
  - (iv) the Tender Requirements (which shall be in sufficient detail to allow the party carrying out the Market Test to determine the Preferred Tenderer) and shall include, without limitation:
    - (1) a statement of the Tender Validity Period;
    - (2) requirements in respect of the possible grouping or groupings of Market Tested Elements and any division of any Market Tested Element into separate parts;
    - (3) details of the tender evaluation criteria, which shall:
      - (A) reflect the tender evaluation methodology contained in Appendix 1 to this Schedule Part 6 (*New Project Pricing Report*); and
      - (B) be objective and impartial and must require Tenderers to demonstrate how they would conduct themselves as part of hubco's supply chain to ensure that the principles and objectives contained in Clause 2 (*Purpose and Conduct of the Parties*) were achieved;
    - (4) save where decided to the contrary by the Relevant Participant(s) (in their absolute discretion), a statement that Tenderers shall (where the Transfer Regulations do not

otherwise apply) be required to offer employment to all employees who may qualify as Relevant Employees on terms and conditions as favourable as those they enjoy with their employer at the point of transfer;

- (5) the TUPE Information (the Relevant Participant(s) shall procure that, in respect of any Market Testing, the employer of the Relevant Employees provides information for inclusion in the Tender Requirements to allow the consequences of the Transfer Regulations or compliance with the requirements relating to employees referred to in paragraph (4) to be assessed);
  - (6) the form of contract which the Preferred Tenderer will be required to accept, which shall reflect the principles set out in Clause 2 (*Purpose and Conduct of the Parties*) and the other requirements of this Agreement; and
  - (7) the information Tenderers are required to provide,
- unless the Relevant Participant(s) otherwise agree in writing.

- (b) Unless hubco can demonstrate to the Relevant Participant(s) that it will optimise its ability to obtain best value for money for the Relevant Participant(s) if Market Tested Elements are tendered separately or in particular groupings, or if any Market Tested Element is divided into separate parts, the grouping of any Market Tested Elements shall be left to the discretion of Tenderers on the basis that the Tender Requirements shall specify that:
  - (i) Tenderers may submit tenders for all or any of the Market Tested Elements; and
  - (ii) where a Tenderer submits a tender for a group or groups of Market Tested Elements, it may be required to provide all or any of the services in such group or groups and shall, in any event, provide separate pricing for each service in such group or groups.
- (c) Where the context of the Market Test so permits, where hubco is the party carrying out Market Testing and considers it appropriate to do so, it may adopt a two stage process for Market Testing the Market Tested Elements by:
  - (i) first Market Testing the design element of a New Project and appointing a Preferred Tenderer;
  - (ii) requiring the Preferred Tenderer selected under sub-paragraph (i) to prepare the necessary designs and specifications (including facilities management, construction and other relevant works and services) in conjunction with hubco for the New Project(s) which would then become the relevant Tender Requirements; and
  - (iii) based on the Tender Requirements referred to in sub-paragraph (ii), Market Test those Tender Requirements and select one or more Preferred Tenderer(s) in accordance with the provisions of this paragraph 5.
- (d) The Tender Requirements and form of contract approved by the Relevant Participant(s) shall be used for the Market Testing.
- (e) The Market Testing shall be carried out in accordance with the Market Testing Method Statement.

## 5.2.2 Selection of Tenderers

- (a) hubco shall or shall procure that party carrying out the Market Test shall give due consideration to the use of a pre-qualification questionnaire and interview/presentation process, particularly in relation to specialist or high value elements or components.
- (b) The Relevant Participants shall have the opportunity to provide input into any such questionnaire and may attend any such interviews or presentations.
- (c) hubco (as between hubco and the Relevant Participant(s)) shall be responsible for compiling the list of Prospective Tenderers and for ensuring that the Tenderers are selected from the list of Prospective Tenders on the basis of the following criteria:
  - (i) the financial standing of the Prospective Tenderers; and
  - (ii) the technical, managerial and other relevant experience and ability of the Prospective Tenders (taking into account any relevant customer references).

It is anticipated that five Tenderers should, in the ordinary course, be selected.

- (d) The Relevant Participants shall have a right to object to the selection of any person as a Prospective Tenderer if such person does not (or could not reasonably be considered) to comply with any of the criteria referred to in 5.2.2(c) above.
- (e) To avoid doubt, an Excluded Person shall not be disqualified from selection as a Tenderer merely by virtue of the existence of the contractual relationship reflected in the Shareholders Agreement, Project Agreements or Supply Chain Agreements where the requirements of the relevant provisions of the Partnering Services Method Statements have been complied with or in circumstances where its selection has been approved by the shareholders of hubco pursuant to the terms of clause 12 of the Shareholders Agreement, subject to:
  - (i) compliance with all Laws; and
  - (ii) the establishment of, and compliance with, arrangements reasonably satisfactory to the Participants to avoid any conflict of interest or unfair advantage. Failure by hubco to comply with any such arrangements shall automatically lead to the disqualification of the Excluded Person and the provisions of paragraph 5.4 shall apply.
- (f) The Relevant Participant(s) shall, in their absolute discretion, have the right to veto the selection of any person as a Tenderer on the grounds that the Prospective Tenderer has committed a Prohibited Act.
- (g) hubco shall (after consultation with the Relevant Participant(s)) procure that any Prospective Tenderer which is unsuccessful in being selected as a Tenderer is provided with an appropriate explanation of the reasons behind its non-selection, if so requested by the person in question.
- (h) Where, in respect of any Market Tested Element or group of Market Tested Elements or any part of any Market Tested Element, there is only one Prospective Tenderer (or hubco or the relevant Supply Chain Member or proposed Supply Chain Member intends to select only one of the Prospective Tenderers as Tenderer), hubco shall not be entitled to proceed, and shall procure that the relevant Supply Chain Member or proposed Supply Chain Member does not proceed, with the Market Testing of the same without the



prior written consent of the Relevant Participant(s), such consent not to be unreasonably withheld or delayed.

### 5.2.3 Tendering Process

- (a) hubco shall procure that:
  - (i) the Market Testing is managed and conducted in an efficient and fair manner in accordance with the requirements of this paragraph 5.2 and shall procure that only Tenderers selected in accordance with this paragraph 5.2 are invited to submit tenders;
  - (ii) the principle of equality of information to, and treatment of, Tenderers shall apply at all times;
  - (iii) all necessary documents and information (including, without limitation, the Tender Requirements) are sent to Tenderers in a timely manner;
  - (iv) Tenders are assessed for compliance with the Tender Requirements; and
  - (v) the Relevant Participant(s) are given the opportunity to attend any meetings held with Tenderers and, where applicable, to witness the opening of tenders.
- (b) The Parties agree that e-tendering is the preferred method for tenderers to submit their price. The e-tendering platform and associated protocols for this purpose shall be developed by or on behalf of hubco at its own cost and submitted to the Participants for their agreement.

### 5.2.4 Preferred Tenderers

- (a) Following expiry of the Tender Validity Period, hubco or the relevant Supply Chain Member or proposed Supply Chain Member shall (subject to the provisions of this paragraph 5.2.4) determine which Tenderer (the "**Preferred Tenderer**") offers the Compliant Tender in respect of any Market Tested Element, group of Market Tested Elements or individual part of any Market Tested Element, that represents (as the case may be) the best value for money for the Relevant Participant(s).
- (b) Immediately upon the determination referred to in paragraph 5.2.4(a) being made, hubco shall supply to the Relevant Participant(s) a tender report which shall include, as a minimum:
  - (i) a section setting out an introduction and the purpose of the report;
  - (ii) a review of the invitation to tender;
  - (iii) period of acceptance of the tenders;
  - (iv) cost summary of tenders;
  - (v) observations, remarks and qualifications of tenders;
  - (vi) amount of contingency within the sums;
  - (vii) Conclusions and Recommendations for award; and

- (viii) a copy of the tender evaluation together with sufficient other supporting information concerning the tender evaluation to enable the Relevant Participant(s) to analyse and understand the basis for such determination.
- (c) If the Relevant Participant(s) do not agree with the notified determination in the case of any Compliant Tender, the Relevant Participant(s) may, within fifteen (15) Business Days of being provided with the tender evaluation report pursuant to paragraph 5.2.4(b) above, dispute such determination and, if the hubco and the Relevant Participant(s) do not resolve such dispute within a further fifteen (15) Business Days, the dispute shall be referred for resolution in accordance with Schedule Part 21 (*Dispute Resolution Procedure*).

### 5.2.5 Appointment

- (a) Where the New Project receives Stage 2 Approval, hubco shall procure that all the Preferred Tenderers (as agreed or determined in accordance with paragraph 5.2.4 above) are appointed by the Project Service Provider, Contractor (or its subcontractor) or appropriate Service Provider (or their subcontractor) to provide the relevant Market Tested Element or group of Market Tested Elements or individual parts of any Market Tested Element (as the case may be) on the basis set out in their Compliant Tender.
- (b) Without prejudice to paragraph 5.2.2(h), where hubco believes that only one Compliant Tender is likely to be submitted, or where only one Compliant Tender is submitted, hubco shall not be entitled to proceed further and shall not permit the Supply Chain Member or proposed Supply Chain Member to proceed further with the Market Testing or (as the case may be) to appoint a Preferred Tenderer without the prior written approval of the Relevant Participants, such approval not to be unreasonably withheld or delayed.
- (c) hubco shall (after consultation with the Relevant Participant(s)) procure that any Tenderer which is unsuccessful in being selected as a Preferred Tenderer is provided with an appropriate explanation of the reasons behind its non-selection, if so requested by the party in question.

### 5.3 hubco shall:

- 5.3.1 maintain a full record and audit trail of each Market Testing and make all such records (including details of all tenders received) available for inspection by the Participants and their authorised representatives (including, without limitation, the National Audit Office) on reasonable written notice from the Participants;
- 5.3.2 provide to the Relevant Participant(s), in a comprehensive and accurate manner, all information necessary to enable the Relevant Participant(s) to review and assess all matters relating to the Market Testing;
- 5.3.3 certify to the Relevant Participant(s) within twenty (20) Business Days of expiry of the Tender Validity Period that:
  - (a) to the best of its knowledge and belief (having made due and diligent enquiry) no Excluded Person intends to or will obtain any direct or indirect financial or other benefit from such appointment (other than the benefit of the contract itself);
  - (b) to the best of its knowledge and belief (having made due and diligent enquiry) no Excluded Person has colluded in connection with the Market Testing; and
  - (c) there has been full compliance with all requirements relating to ensuring equality of information provided to, and treatment of, Tenderers.

5.4 hubco shall indemnify and keep each of the Participants fully indemnified at all times for and against all claims (including any claim made by any person (including any Prospective Tenderer, Tenderer or Preferred Tenderer) that is not awarded a contract), demands or notices which may be brought or alleged or threatened against any of the Participants or a Participant Party and from and against all Direct Losses or fines which that Participant or relative Participant Party may suffer or incur in relation to any such claims, demands or notices which occur as a result of or in connection with:

5.4.1 the implementation of this paragraph 5 (*Market Testing*); and

5.4.2 any breach of the provisions of this paragraph 5 (*Market Testing*),

save and to the extent that any such breach or claim results from any failure of the Participant to comply with the express provisions of this paragraph 5 (*Market Testing*) or from any failure of the Participants in carrying out the initial competition which resulted in the entering into of this Agreement by the Participants and hubco.

## 6. IRREGULARITY IN AWARD OF CONTRACTS

### 6.1 Acceptance by hubco

Where hubco is required by this Agreement to carry out Market Testing or procure that Market Testing is carried out, then for the purpose of Clause 25 (*Corrupt Gifts and Fraudulent Payments*) it shall be an additional Prohibited Act for hubco or the relevant Supply Chain Member or proposed Supply Chain Member or any Associated Entity (or anyone acting on its behalf) to:

6.1.1 accept or agree to accept any gift or consideration of any kind as an inducement or reward:

(a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of any Supply Chain Agreement; or

(b) for showing or not showing favour or disfavour to any person in relation to any Supply Chain Agreement; or

6.1.2 enter into any Supply Chain Agreement in connection with which commission has been paid or has been agreed to be paid unless, before the Supply Chain Agreement is made, particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to the Participants and they have consented to the same (in their absolute discretion),

and the provisions of Clause 25 (*Corrupt Gifts and Fraudulent Payments*) (changed according to context) shall apply and be construed accordingly.

### 6.2 Offer by Tenderer

6.2.1 Where hubco is required by this Agreement to carry out or procure the carrying out of Market Testing and any Prospective Tenderer or Tenderer (or anyone acting on its or their behalf or any of its or their directors, officers or employees) offers or agrees to give to hubco or any Associated Entity any gift or consideration of any kind as inducement or reward:

6.2.2 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of any Supply Chain Agreement; or

6.2.3 for showing or not showing favour or disfavour to any person in relation to any Supply Chain Agreement,

the Relevant Participant(s) may (without prejudice to any of their other rights) by written notice to hubco require hubco to procure, as soon as practicable, the termination of that person's involvement in the Market Testing or, if discovered after the award of the relevant contract, the termination of the relevant Supply Chain Agreement(s) (and the provisions of Clause 25 (*Corrupt Gifts and Fraudulent Payments*) shall apply and be construed accordingly).

- 6.3 Without prejudice to Clause 25 (*Corrupt Gifts and Fraudulent Payments*) hubco shall notify the Participants in writing of the occurrence (and details) of any Prohibited Act promptly on hubco becoming aware of its occurrence.

## APPENDIX 1 - TENDER EVALUATION METHODOLOGY

### Purpose

The purpose of this Appendix is to provide an outline framework tender evaluation methodology. It is not intended to be prescriptive and detailed. Specific methodologies will be developed based on this framework for each individual Market Testing exercise.

#### 1. **RESPONSIBILITY**

The Chief Executive of hubco will establish the market testing project team (including any external technical input or requirements) and take overall responsibility for the management of the Tender Evaluation process. He/she will ensure that due process is followed at all times and that sufficient and appropriate resources are made available to ensure that the process is completed in a timely and efficient manner ensuring that probity is achieved at all times.

#### 2. **CONTEXT**

Value for money is the essential test against which any Market Testing exercise is to be justified. It is essential that the evaluation methodology offers a robust, objective, transparent and equitable process against which bid submissions are evaluated and that inherent in the process is a clear and comprehensive audit trail.

#### 3. **KEY REQUIREMENTS OF THE PROCESS**

##### 3.1 Value for Money

A balanced assessment of quality standards, service benchmarks and price is to be carried out so as to ensure that the optimal offer is selected.

##### 3.2 Systematic Evaluation Regime

All tenders must be evaluated in a consistent manner against agreed evaluation criteria. The use of a weighted matrix analysis will be the method adopted for evaluation.

##### 3.3 Cost Comparison

Total costs and not just tender price must be assessed for each tender.

#### 4. **DUE DILIGENCE**

As part of the evaluation process a due diligence assessment will be undertaken of the preferred tenderer to ensure that they have the capacity to comply with the requirements of the contract.

#### 5. **EVALUATION METHODOLOGY**

The market testing project team will be responsible for ensuring a robust evaluation of all bids submitted throughout the tendering process. A Tender Evaluation Plan will be developed and agreed which will cover the following topics:

- Evaluation criteria
- Evaluation methodology
- Evaluation process
- Evaluation timescales

##### 5.1 Evaluation Criteria

The broad evaluation criteria for tenders will include, but not be limited to, the following:

- 5.1.1 Ability to deliver the required service
- 5.1.2 Proposed quality of the service
- 5.1.3 Cost - total cost and not just tender price
- 5.1.4 Ability to meet timescales
- 5.1.5 Capacity
- 5.1.6 Financial standing
- 5.1.7 Understanding of the principles of hub and cultural fit with the organisations involved

## 5.2 Evaluation Methodology

Evaluation will be by way of a weighted matrix analysis. A scored approach will allow for each part of the bid to be considered individually, provide an objective basis for ranking tenderers and provide a comprehensive audit trail of the process.

## 5.3 Evaluation Process

The evaluation process will include key stages to be completed in order that a preferred tenderer can be identified and a recommendation made to the Project Board. The key stages are as follows:

## 5.4 Timescales/Receipt of tenders

Tender packages will be returned to the nominated person on a date and time to be specified. The nominated person or their duly authorised deputies will open them. A tender opening form will be completed which will include such information as:

- Date and time of opening
- Name of tenderer
- Tender price
- Any comments pertaining to the tender
- Signatures of those opening the tender

The bids will then be separated to remove pricing issues as far as is practical and issued to the respective members of the market testing team. In this way a qualitative evaluation can be made independent of any pricing considerations.

## 6. INITIAL EVALUATION SCORING

Following receipt and distribution of tenders the market testing team will undertake an assessment of each bid and complete an initial scoring matrix for their relevant area of evaluation. The following represents critical areas of evaluation:

- (a) Finance and pricing
- (b) Health and Safety
- (c) Legal

- (d) Human Resources including ability to impact on local employment
- (e) Technical
- (f) Cultural fit with the requirements of hub and those organisations involved.

Following this initial scoring a shortlist of bidders will be compiled whose submissions will then be subject to more detailed scrutiny.

#### **7. CLARIFICATION OF SHORTLISTED TENDERS**

Where appropriate, shortlisted bidders will be invited to present their bids to the market testing panel and a further period of assessment will follow. This will include a series of interviews and letters of clarification.

During this period references will also be taken up for each of the shortlisted bidders and a series of site visits may also be undertaken.

Following this second round evaluation initial scores will be revisited and amended if appropriate. A report will be prepared for each of the agreed areas of evaluation. These will then be combined on a summary matrix and compared on price and also against a benchmark comparison to assess value for money and affordability.

#### **8. PREFERRED BIDDER**

Following the final evaluation and clarification process the market testing panel will make a recommendation of preferred bidder. The nominated person will notify the preferred bidder and all unsuccessful bidders in writing. An opportunity for de-brief will be offered to all bidders.

#### **9. AUDIT**

A full documented audit trail will be maintained for each an every stage of the process.

## **APPENDIX 2 - MARKET TESTING METHOD STATEMENT**

The Market Testing Method Statements is attached hereto.

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