

# **DYNAMIC PURCHASING SYSTEM ("DPS") AGREEMENT**

## **for the provision of BUILDING TRADES CONTRACTORS**

### **Call-Off Procedures**

#### **Introduction**

This document sets out how Call-Off Contracts ("Call-Offs") under this Agreement will operate.

The Award of Call-Offs will only be made after a complete tendering exercise. Admission to the DPS in itself is not a contract to supply goods or services; Call-Offs are only formed when services are called off through a complete tendering process.

When there is a requirement to procure Construction Subcontractors Labour and/or Services, Sanctuary Group will issue a Tender and Invite all the Suppliers on the DPS who fulfil the selected criteria to meet the service requirement in the required location, to express their interest in taking part. Tenders will be issued electronically through ProContract.

There are six stages in order for Sanctuary to form a Call-Off from the DPS:

- 1. Compilation of Tender List**
- 2. Invitation to Tender**
- 3. Tendering**
- 4. Tender Evaluation**
- 5. Contract Award**
- 6. Standstill Period (Voluntary)**

In more detail:

#### **1. Compilation of Tender List**

When there is a requirement to Tender via the DPS, the Filters/Qualifiers listed below will be applied to the Approved Suppliers DPS database managed and maintained by Constructionline in order to produce a Tender List of Approved Suppliers capable of delivering the exact requirements of the Call-Off.

- Service Category – Identifying those potential Suppliers with the appropriate Service Category.
- Delivery location(s) – Identifying those potential Suppliers that can deliver in the required location(s). The Constructionline DPS database will allow filtering at various levels of location, and this functionality will be utilised accordingly to provide a suitably populated Tender List.
- Financial Value – Identifying those potential Suppliers with the correct financial notation to deliver the required services.

Once all of these filters have been applied, a Tender List is produced. All potential Suppliers listed will be invited to Tender.

## **2. Invitation to Tender (ITT)**

When the Tender List has been compiled, Sanctuary Group will send an ITT to all potential Suppliers on the Tender List, electronically via ProContract.

The ITT documents setting out the requirements will be tailored to the particular needs of the project, but would comprise:

- Evaluation Matrix and timescales for the Tender;
- Employers Requirement Documents (including Appendices, Specification and Drawings);
- Form of Contract, Amendments and Contract Particulars;
- Required insurance particulars;
- Programme;
- Health and Safety Preconstruction Information.

The ITT sets the criteria for the award of the contract. These criteria reflect the specific business requirements of the Tender and are used to select those Suppliers whose responses to Tender offer the best combination of quality and price – that is, the Most Economically Advantageous Tender (MEAT).

All submissions in response to an ITT must be submitted via the ProContract electronic portal, along with any other Tender communications.

## **3. Tendering**

When they receive an ITT, Suppliers can choose whether they wish to participate in the Tender opportunity. Suppliers will be requested to submit a Tender response electronically through ProContract within the specified timescale. Suppliers who do not respond to the ITT by the specified submission date shall be deemed not to be interested in participating in the Tender.

A decision not to bid for a particular tender opportunity will not debar DPS members from bidding for other opportunities as they arise in the future.

For each Tender opportunity, potential Suppliers will be informed in the ITT of how long they have to submit their bids. This will vary dependent upon the

complexity of each opportunity. If site visits are required for an opportunity, then this will be built into the Tender timeframe.

Site visits to inspect the location of the services will be coordinated by Sanctuary Group and must take place on the appointed date and time only. Unsolicited visits by potential Suppliers must not be made, and could result in rejection from Tender process.

Potential Suppliers must follow all of the specific Tender instructions issued by Sanctuary Group and prepare and submit their response to Tender by the due time and date.

#### **4. Tender Evaluation**

The purpose of the tender evaluation process is to identify which bid offers the best value for money, the award is on the basis of Most Economically Advantageous Tender (MEAT).

The MEAT criteria that may be used in connection with any Tender include, but are not limited to:

- Price or cost using a cost-effectiveness approach
- Quality
  - Technical merit
  - Aesthetic and functional characteristics
  - Accessibility
  - Social characteristics
  - Environmental characteristics
  - Health and Safety
  - Risk management
  - Innovative characteristics
  - After-sales service and technical assistance
  - Delivery conditions such as date, process and period
  - Community Benefits
  - Training Opportunities
- Contractual Compliance

The criteria specified in the ITT document will govern the award of the Call-Off. Only submissions received within the ITT deadline will be evaluated.

The content of all Suppliers' Tenders will remain confidential until the period for submitting Supplier responses to Tender as specified in the ITT has expired. All Tenders received by the prescribed deadline will be checked for compliance with the Tender rules. If a Tender is, at any stage, not compliant with the instructions and requirements set out in the ITT, or ceases to be compliant, then Sanctuary Group reserves the right to not evaluate that Supplier's Tender any further and/or eliminate that Supplier from the Tender process.

#### **5. Contract Award**

Once the evaluation process has been completed, the Supplier or Suppliers who, in accordance with the selection and evaluation criteria best meet(s) the requirements of the relevant Tendered opportunity, will be awarded the Call-Off, and enter the Contract-Off Contract as a Deed.

All Suppliers included in that Tender opportunity will be notified of the award decision.

## **6. Standstill Period (Voluntary)**

Within some complex tender opportunities, Sanctuary Group may impose a voluntary standstill period of at least ten calendar days following the notification of an award decision.

If a standstill period is applied, at the end of that period the successful Supplier or Suppliers will be awarded a Call-Off Contract, subject to no substantiated objections having been received in respect of the contract award decision.

### **Tender Rules**

This Section sets out the rules for conducting a Tender (the "Rules").

Tenders must be submitted in accordance with the relevant Rules. Tenders that do not comply with the Rules in any particular way may be rejected by Sanctuary Group, whose decision in the matter shall be final.

- 1.0 All Tenders will be Submitted through Sanctuary Group's tender portal, ProContract, unless agreed otherwise due to the type of documentation to be submitted not being suitable for transmission through the portal.
- 1.1 A Tender is to be prepared in accordance with the instructions given in the ITT. Suppliers must include all information requested.
- 1.2 Suppliers are responsible for obtaining all information necessary for the preparation of their Tenders. If a Supplier requires any further information or wishes to raise any query, such requests must be made through ProContract as a clarification. Clarification questions received by any other method will not receive a response.
- 1.3 There is no limit on the number of clarifications that a Supplier may seek, nor on the number of occasions on which clarifications may be sought, provided they are received before any deadlines set by Sanctuary Group. These deadlines will be set on a contract-by-contract basis.
- 1.4 In order to treat Suppliers fairly, Sanctuary Group will normally provide an anonymised copy of any clarification questions, and the answers to those questions, to all Suppliers participating in the Tender. Provision will be made for Suppliers to request clarification in confidence (this request must be clearly marked at the outset of each question stating the reasons why such a question is commercial and in confidence), but

in responding to such requests Sanctuary Group reserves the right to act in what it considers a fair manner and in the best interests of the Tender, which may include circulating the response to all Suppliers.

- 1.5 All costs, claims, losses, expenses and liabilities incurred by any Supplier, sub-contractor, partner, supplier, funder, authorised representative or advisor in connection with the preparation and submission of a Tender response, and in discussion with Sanctuary Group, and (in the case of acceptance of a Tender by Sanctuary Group) in connection with the execution of the relevant Call-Off, and all and any relevant documents, shall be borne by that Supplier, including if the Tender is terminated or amended by Sanctuary Group.
- 1.6 The fact that a Supplier has been invited to submit a Tender does not necessarily mean that it has satisfied Sanctuary Group as to its capability to provide the defined works. Furthermore, Sanctuary Group makes no representation regarding any Supplier's financial stability, technical competence or ability in any way to carry out any works.
- 1.7 Suppliers are advised to familiarise themselves with the contents of the ITT thoroughly before writing their Tender responses.
- 1.8 The indicative timescales for the Tender process will be set out in the ITT.

**1.9 Submission of Tender responses**

- a. Tenders must be submitted via ProContract. No Tenders are to be submitted in hard copy format except where expressly requested. For example, plans or drawings may be requested separately.
- b. No unauthorised alteration or addition should be made to the form of the Tender documents (see Appendix A) provided in the ITT or any other part of the documents enclosed therein. Tenders must not be qualified in any way and must be submitted strictly in accordance with the ITT, including these Rules.
- c. To be considered, Tenders must be:
  - i. received via the ProContract portal no later than the date and time set out in the ITT;
  - ii. be kept open and valid for acceptance by Sanctuary Group for a period of 6 months following the deadline for submitting the Tender or such longer period as may be agreed with Sanctuary Group;
  - iii. Any Tenders or other supporting documents received after such time and date may not be accepted by ProContract and in any event shall not be accepted by Sanctuary Group for the purposes of the Tender;

- iv. Should Suppliers decide not to submit a Tender, Suppliers are requested to notify Sanctuary Group via the ProContract messaging function of the reason(s) for not submitting a bid;
  - v. Sanctuary Group reserves the right to request Suppliers to resubmit their bids at any time during the post submission and clarification stage of the procurement;
  - vi. Tenders and any other supporting documents must be completed in English and all monetary amounts shall be stated in pounds sterling.
- d. Suppliers should note that any award of a Call-Off, its formation, interpretation and performance shall be subject to and interpreted in accordance with the laws of England or Scotland as identified in the ITT.
  - e. Suppliers should include in their Tenders all information required by the ITT and all costs necessary to undertake the defined works safely and in compliance with all statutory provisions and other rules or regulations.

#### **1.10 Rejection of Tenders**

The Tender or other documents submitted by any Supplier in respect of which the Supplier:

- a. fixes or adjusts the amount, prices, charges and rates shown:
  - i. by or in connection with any agreement or arrangement with any other person; or
  - ii. by reference to any other Supplier's Tenders; or
- b. communicates to any person, other than the relevant Sanctuary Group personnel, any information except in accordance with paragraph 1.9 a) above; or
- c. enters into any agreement or arrangement with any other person that such other person shall refrain from submitting Tenders or shall limit or restrict the amounts, prices, charges and rates to be shown by any other Supplier in its Tender and other documents; or:
  - i. offers or agrees to pay or give, or does 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 any other Supplier or Tender or other documents, any act or omission; or
  - ii. has directly or indirectly canvassed any member or official of Sanctuary Group concerning the acceptance of any Tender or has directly or indirectly obtained or attempted to obtain information from any such member or official concerning any Tender submitted by any other Supplier; or

- iii. fails to use the English language; or
- iv. fails to state monetary amounts in pounds sterling,

shall not be considered for acceptance and shall accordingly be rejected by Sanctuary Group, provided always that such non-acceptance or rejection shall be without prejudice to any other civil remedies available to Sanctuary Group in respect thereof or to any criminal liability that such conduct by a Supplier may attract.

#### **1.11 Non-Consideration of Tenders**

- a. Sanctuary Group may, in its absolute discretion, refrain from considering Tenders if either:
  - i. in any respect, it does not comply with the requirements of the ITT and these Rules; or
  - ii. the Tenders contain any significant omissions.

#### **1.12 Acceptance of Tenders and Contract Award**

- a. Sanctuary Group may, without limitation, undertake site visits, seek references, require presentations to be given and undertake clarifications as part of the evaluation process. All information and documents submitted by Suppliers by the due date for Tender submissions will be considered, as well as any other information that Sanctuary Group requires to be submitted.
- b. Sanctuary Group shall not be bound to accept any Tender and reserves to itself the right, at its absolute discretion, to accept or not accept any Tender submitted.
- c. Sanctuary Group reserves the right to, at its discretion:
  - i. waive the requirements of the ITT in whole or in part;
  - ii. disqualify any Supplier whose Tender does not comply with the response requirements set out in the ITT;
  - iii. to seek additional information or verification, if Sanctuary Group has legitimate concerns about a Supplier's ability to perform its obligations, including (without limitation) in a financially secure way, over the term of the defined works;
  - iv. to cancel or withdraw from the Tender at any stage;
  - v. to make an award in respect of the Tender for part only of its requirements or not make an award at all, regardless of whether or not a Supplier meets the evaluation criteria.

- vi. not to select a Supplier, or where a Supplier has been selected, not to award the Contract.
- vii. to accept any Tender submitted pursuant to the ITT.

#### **1.13 Supplier's Warranties**

- a. In submitting its Tender response each Supplier warrants, represents and undertakes to Sanctuary Group that:
  - i. it has not done any of the acts or matters referred to in paragraphs 1.10 c. i) - 1.10 c. iv) above and has complied in all respects with these Rules;
  - ii. all information, representations and other matters of fact communicated (whether in writing or otherwise) to Sanctuary Group by the Supplier, its employees or agents in connection with or arising out of the Tenders are true, complete and accurate in all respects;
  - iii. it has made its own investigations and research and has satisfied itself in respect of all matters, (whether actual or contingent), relating to the Tenders;
  - iv. it has satisfied itself as to the correctness and sufficiency of the information it has inserted in the Tender;
  - v. it has full power and authority to enter into a Call-Off and undertake the defined Works;
  - vi. it is of sound financial standing and has and will have sufficient premises, working capital, skilled personnel, vehicles, plant, goods and materials and other resources available to it to carry out the defined Works;
  - vii. it has obtained all necessary consents, licences and permissions to enable it to carry out the defined works and will from time to time obtain and maintain all further and other necessary consents, licences and permissions to enable it to continue to do so;
  - viii. it will not at any time claim or seek to enforce any lien, charge, or other encumbrances over property of whatever nature owned by Sanctuary Group and that is for the time being in the possession of the Supplier; and
  - ix. where there is a change to the information provided to Sanctuary Groups at any time, the Supplier will advise Sanctuary Group as soon as practicable, even if this is prior to the date of submitting the Tender and disclose such changes in full.

- 1.14 All information supplied by Sanctuary Group in connection with a Tender shall be treated as confidential and a Supplier shall not, without



the prior written consent of Sanctuary Group, at any time, make use of such information for its own purposes or disclose such information to any person (except as may be required by law or where such information is disclosed with the prior written agreement of Sanctuary Group for the purposes of obtaining sureties, guarantees or commitments from proposed sub-contractors or suppliers and other information required to be submitted with a Tender).

- 1.15 Suppliers must not disclose the fact that they have been invited to submit a Tender or release details of the ITT other than on a strictly confidential basis to those parties whom they need to consult for the purposes of preparing a Tender.
- 1.16 Suppliers shall not at any time release any information concerning the ITT and/or their Tender and/or any related documents and/or any negotiation and/or discussion with Sanctuary Group in this connection for publication in the press or on radio, television, screen or any other medium.
- 1.17 Each Supplier shall retain intellectual property rights in all documents that it prepares as part of its Tender and Sanctuary Group shall not copy or use any such documents other than for the purpose of evaluating a Tender (as applicable) and selecting Suppliers.
- 1.18 Sanctuary Group reserves the right to retain all Tenders submitted by Suppliers throughout the period that their Tenders remain valid and open for acceptance.
- 1.19 Each Supplier undertakes to indemnify Sanctuary Group and to keep Sanctuary Group indemnified against all actions, claims, demands, liability, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any breach of the provisions of these Rules.

### **Conflicts of Interest**

- 1.20 Suppliers are reminded of their continuing obligation to disclose actual, potential and perceived conflicts of interest to Sanctuary Group.
- 1.21 Suppliers are responsible for ensuring that no conflicts of interest exist between themselves and their appointed advisors and Sanctuary Group and its appointed advisors. Any Supplier who fails to comply with this requirement may have its Tender disqualified at the discretion of Sanctuary Group.
- 1.22 Sanctuary Group requires that all actual or potential conflicts of interest are resolved to its satisfaction prior to the submission of a Tender. In the event that any actual, potential or perceived conflict of interest comes to a Supplier's attention following the submission of its Tender, that Supplier should immediately notify Sanctuary Group.

## **Supplier Changes**

- 1.23 Suppliers are reminded that they are subject to an on-going obligation to immediately notify Sanctuary Group of any material changes in their proposed arrangements. This includes, but is not limited to, changes to the identity of proposed partners, suppliers, sub-contractors or funders and the ownership or financial or other circumstances thereof and solvency of the Supplier. Sanctuary Group should be notified of any such material change as soon as it becomes apparent.
- 1.24 Failure to notify Sanctuary Group of any material changes or to comply with any of these provisions may lead to a Supplier being disqualified.

## **General**

- 1.25 The ITT and all other documents provided to Suppliers will remain the property of Sanctuary Group and must be returned with the Tender or, if no Tender is submitted, upon demand.
- 1.26 Suppliers are advised to retain for themselves details of their submissions. Sanctuary Group reserves the right to make a charge if a Supplier requests a copy of its submitted Tender.
- 1.27 Suppliers must at all times:
- a. comply with the Data Protection Act 2018 (the "Data Protection Laws") to the extent that the Data Protection Laws are relevant to the subject matter of the relevant Tender;
  - b. indemnify Sanctuary Group against any liabilities, losses, costs, claims or expenses incurred as a result of the loss, destruction or procuring of data contrary to the Data Protection Laws by the Supplier, its servants or agents; and
  - c. comply with the obligations imposed by the Data Protection Laws, including (without limitation) by the sixth data protection principle as set out in Chapter 2 of Part 3 of the Data Protection Laws.
- 1.28 Suppliers should be aware that, information in relation to a Tender may be made available on demand in accordance with the requirements of the Freedom of Information Act 2000 and/or to maintain transparency and accountability regarding Sanctuary Group and its procurement activities.
- 1.29 Suppliers should state whether any of the information supplied by them is confidential, or commercially sensitive, or should not be disclosed in response to a request for information. Suppliers should clearly mark the information that they deem to be confidential and/or commercially sensitive, and state why they consider the information to be confidential and/or commercially sensitive. They shall also set out what harm may

result from disclosure of such information and the time period applicable to the sensitivity.

- 1.30 However, Suppliers should be aware that even where a Supplier has indicated that information is commercially sensitive, Sanctuary Group is responsible for determining in its absolute discretion whether such information should be disclosed.
- 1.31 Suppliers should also note that the receipt by Sanctuary Group of any information marked “confidential” or equivalent does not mean that Sanctuary Group accepts any duty of confidence by virtue of that marking, and that Sanctuary Group has the final decision regarding the disclosure of any such information in response to a request for information.

### **Disclaimer**

- 1.32 The information issued for a Tender is presented in good faith and does not purport to be comprehensive or to have been independently verified. Neither Sanctuary Group, nor any of its advisors accept any responsibility or liability in relation to its accuracy or completeness or any other information which has been, or which is subsequently, made available to any Supplier, partner, supplier, sub-Supplier, funder or any of their respective advisors, orally or in writing or in whatever media. Such persons must therefore take their own steps to verify the accuracy of any information which they consider relevant and are not entitled to rely on any statement or representation made by Sanctuary Group or any of its advisors.
- 1.33 Sanctuary Group, Sanctuary Groups’ members, directors, officers, employees, agents or advisers do not make any representation or warranty as to, or (save in the case of fraudulent misrepresentation) accept any liability or responsibility in relation to, the adequacy, accuracy, reasonableness or completeness of the ITT and/or the information contained within it or any part of it (including but not limited to loss or damage arising as a result of reliance by the Supplier on Sanctuary Group’s Requirements / ITT information or any part of it).

## Appendix A

### Form of Tender

FORM OF TENDER FOR [ ], TO BE SUBMITTED BY [DATE].

[Name]

[Address]

Date:

UNCONDITIONAL AND IRREVOCABLE OFFER TO the Sanctuary Group IN RESPECT OF [type of defined works]

1. I/We the undersigned return this Tender and acknowledge that we are bound by our Proposals submitted pursuant to the ITT (receipt of which is also acknowledged) consisting of the following:
  - a. ITT including but not limited to:
    - i. Evaluation Matrix and timescales for the Tender
    - ii. Employer's of Requirement Documents (completed document Schedule 5) including Appendices, Specification and Drawings)
    - iii. Form of Contract, Amendments and Contract Particulars
    - iv. Programme,
    - v. Health and Safety Preconstruction Information
    - vi. Pricing Schedule
2. I/We hereby unconditionally and irrevocably offer to undertake the defined works requested to be provided and performed as set out in the ITT, and in accordance with the Contract and at the rates and prices stated in the Pricing Schedule. I/We confirm that the rates and prices set out in the Pricing Schedule shall remain fixed for 6 months from the date of this Form of Tender.
3. I/We confirm that:
  - a. I/We are fully conversant with all the documentation comprising the ITT and
  - b. this Tender is submitted strictly in accordance with the Tender Rules.
4. I/We have submitted with this Form of Tender copies of the following documents:
  - a. the completed response including the Tender to ITT for the provision of the defined works [and]
  - b. the completed Pricing Schedule and
  - c. Any other required supporting documents.

5. I/We agree that this Tender shall remain open to be accepted or not by you and shall not be withdrawn for a period of 6 months from the deadline for receipt of Tenders as set out in the Tender Rules, or such longer period as may be agreed with Sanctuary Group .
6. I/We agree that I/we shall commence the defined works when instructed to do so by you pursuant to the terms of the Contract.
7. I/We certify that the details of this Supplier Tender and the documentation have not been communicated to any other person or adjusted in accordance with any agreement or arrangement with any other person or organisation.
8. I/We acknowledge that you are not bound to accept the lowest or any Tender you may receive, and that you reserve the right at your absolute discretion to accept or not to accept any Tender submitted.
9. I/We certify that we have full power and authority to enter into a Contract and to undertake the defined works, and that this is a bona fide Tender for the provision of the defined works.

Dated this                      day of [                      ]

Signed for and on behalf of the Supplier

Signed: \_\_\_\_\_

Position/Status: \_\_\_\_\_

Supplier's Name:                      \_\_\_\_\_

Address:                      \_\_\_\_\_

Signed for and on behalf of the Supplier:

Signed: \_\_\_\_\_

Position/Status: \_\_\_\_\_

Supplier's Name:                      \_\_\_\_\_

Address:                      \_\_\_\_\_