
1 Terms and Conditions

1.1 General

- 1.1.1 While the information in this document is believed to be correct at the time of issue, UK Power Networks does not accept any liability for its accuracy, adequacy or completeness. No express or implied warranties are given. Flexibility Providers (FPs) must rely on their own enquiries and on the terms and conditions set out in the Contracts as and when executed.
- 1.1.2 Neither the issue of this document or any of the information it contains should be regarded as a commitment or representation by UK Power Networks to enter into a Contractual arrangement.
- 1.1.3 Any attempt by FPs or their advisors to influence the Contract award process may result in the FP being disqualified at UK Power Networks' discretion.
- 1.1.4 FPs are responsible for ensuring that no conflicts of interest exist between the FP and its advisors, and UK Power Networks and its advisors. FPs who fail to comply with this requirement may be disqualified at UK Power Networks' discretion.
- 1.1.5 UK Power Networks will not be liable for any costs or expenditure incurred by FPs in connection with this competition, including in the event that the competition is terminated or amended by UK Power Networks.
- 1.1.6 This document shall not be deemed to create any Contractual or quasi-Contractual rights or obligations that are enforceable against UK Power Networks.

1.2 Execution of tender

FPs must execute their tenders in the manner indicated below:

- 1.2.1 In the case of a single corporate entity, by signature of one person authorised by the corporation to bind it in Contract. In such circumstances, a copy of the authorisation of the person by the corporation must be submitted with the tender; and
- 1.2.2 In the case of a joint tender by an unincorporated joint venture or consortium, by signature of one person authorised by each party to the joint venture or consortium to bind them in Contract. In such circumstances, a copy of the authorisation of that person by each party must be submitted with the tender.

In submitting its tender, the FP warrants, represents and undertakes to UK Power Networks that:
 - 1.2.3 It has complied with the conditions set out in this Participation Guidance;
 - 1.2.4 All information, representations and other matters of fact communicated (whether in writing or otherwise) to UK Power Networks by the FP, its staff or agents in connection with or arising out of the tender submission are true, complete and accurate in all respects, both as at the date communicated and as at the date of bid submission;
 - 1.2.5 It has made its own investigations and undertaken its own research and due diligence, and has satisfied itself in respect of all matters (whether actual or contingent) relating to the tender and has not submitted its response in reliance upon any information, representation or assumption which may have been made by or on behalf of UK Power Networks (with the exception of any information which is expressly warranted by UK Power Networks); and
 - 1.2.6 It has full power and authority to respond to a tender invitation and to perform the obligations in relation to the Contract (set up in Appendix 1) and will, if requested, produce evidence of such to UK Power Networks.

1.3 Data Protection Act 2018 (“DPA”)

FPs are required to keep detailed records of their data processing activities in accordance with the DPA and Article 30 of the General Data Protection Regulation 2016 (“GDPR”), copies of which are to be provided to UK Power Networks upon request. FPs will duly observe all their obligations under the DPA which arise in relation to this competition.

Where a FP is processing personal data (as defined under the GDPR) that has been provided by or on behalf of UK Power Networks, the FP shall:

- (a) have in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under Article 5.1(f) of the GDPR;
- (b) ensure that data is not transferred (including onward transfers as well as any initial transfer) to a country or territory outside the European Economic Area (EEA) unless that country or territory or international organisation ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data as required under Articles 44-47 in Chapter V of the GDPR;
- (c) ensure that the personal data is processed solely for purposes relating to this procurement event as required under Article 5.1(b) of the GDPR, and for no further purpose;
- (d) in accordance with Article 5.1(c) of the GDPR, ensure that the personal data is not retained for longer than is necessary and, in any event, at the end of the procurement event (or earlier if a FP withdraws from the procurement process), any such personal data that is held by any FPs to which contracts have not awarded shall be destroyed and deleted, or, if requested by UK Power Networks, returned to UK Power Networks;
- (e) provide UK Power Networks with such information as UK Power Networks may reasonably require to satisfy itself that the FP is complying with its obligations under the DPA, such information to include, without limitation, copies of any notifications, data transfer agreements or data processing agreements in existence or under negotiation, and the FP’s information security and data protection policies;
- (f) if, during the procurement event, any security breach occurs that involves (or may involve) any of the personal data, the FP shall promptly notify UK Power Networks of the breach and shall cooperate with and provide UK Power Networks with full details of the extent and nature of the breach, the personal data effected, and the measures being taken to address the breach, including any notification to the supervisory authority and data subjects; and
- (g) ensure that it does nothing knowingly or negligently which places UK Power Networks in breach of UK Power Networks’ obligations under the DPA, as applicable.

1.3.1 Where a FP is processing personal data (as defined by the GDPR) as a data processor for UK Power Networks (as defined by the GDPR) the FP shall:

- (a) have in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data);
- (b) provide UK Power Networks with such information as UK Power Networks may reasonably require to satisfy itself that the FP is complying with its obligations under the DPA;
- (c) promptly notify UK Power Networks of any breach of the security measures required to be put in place pursuant to this clause; and
- (d) ensure that it does nothing knowingly or negligently which places UK Power Networks in breach of UK Power Networks’ obligations under the DPA.

1.4 Confidentiality & Publication of Information

- 1.4.1 Any information provided by UK Power Networks to each FP at any point during the competition, including: (i) the information contained in these documents, (ii) any other information provided to FPs whether via the Localflex Platform, orally or in writing during the procurement process (including any tender documents issued by UK Power Networks), and (iii) any information acquired by the FP through its participation in clarification meetings, evaluation and other meetings with UK Power Networks, is made available on condition that it is treated as confidential by each FP and its advisers (except where it is already in the public domain). FPs must ensure that such information is not disclosed to any other person at any time except and to the extent that this is necessary to enable a FP submission to be made.
- 1.4.2 Subject to the provisions of the tender documents, UK Power Networks will ensure that each FP's response is treated as commercially sensitive and is not shared with any other FP during the tender process.
- 1.4.3 However, following the tender, UK Power Networks may publish the results onto the DSO website's Tender Hub page and on the market platform detailing all successful and unsuccessful tenders. By participating in this tender, the FP agrees to such disclosure and/or publication by UK Power Networks. The information disclosed shall include, but will not be limited to:
- a) Name of FP;
 - b) Flexibility Zone;
 - c) Tendered Fee Parameters;
 - d) Tendered Capability Parameters; and
 - e) Tendered Service Period Parameters.

1.5 Change of control and information provided in the response

- 1.5.1 Where a change in the structure, control, composition or membership of an organisation takes place at any time prior to execution of the Contract, UK Power Networks must be informed of the change in writing, and UK Power Networks reserves the right to re-evaluate the FP's tender submission.

1.8 Copyright

- 1.8.1 The copyright in this document and any other documents provided as part of this procurement process belongs to UK Power Networks. FPs shall not reproduce any part of these documents without the written permission of UK Power Networks. This document and all copies of it are the property of UK Power Networks.

1.9 Reliance on Information

- 1.9.1 The information in this document and any other information provided by UK Power Networks is provided in good faith. However, UK Power Networks (including its directors, officers, employees, agents or advisers) does not give any warranty as to the accuracy or completeness of any information supplied.

1.10 Due Diligence

- 1.10.1 It will be the responsibility of FPs to ensure that they have undertaken their own due diligence process in formulating their responses and proposals. UK Power Networks will not warrant/certify any third party information required by FPs in formulating their responses and proposals.
- 1.10.2 It may, however, require its professional advisors or current suppliers to warrant any information they are asked to provide which may be required by FPs in formulating their response and proposals.

1.11 Cost of Participation in Tender

1.11.1 FPs will remain responsible for all costs and expenses incurred by them, their staff, and their advisors or by any third party acting under their instructions in connection with this competition. This will be regardless of whether such costs arise as a result of any direct or indirect amendments made to the tender documents, or any other documentation by UK Power Networks at any time. For the avoidance of doubt, UK Power Networks shall have no liability whatsoever to FPs for any costs incurred through participation in this competition, including the costs of any amendments, changes, discussions or communications.

1.12 Contract

1.12.1 Any procurement or tender document shall only have Contractual effect when it is contained within an executed written Contract. UK Power Networks shall make available the outcome of each tender for Flexibility Services in a Post Tender Report posted on the DSO Tender Hub page. The Service Terms relating to the awarded Flexibility Services will be formed automatically and simultaneously with such publication, and the Flexibility Services shall be treated as awarded to the Provider.

1.13 FP Conflict of Interest

1.13.1 FPs (or where the FP is a consortium the members of the consortium) are responsible for ensuring that no conflicts of interest exist between themselves, their staff, agents and advisors and those of UK Power Networks. Any organisation that fails to comply with these obligations could be disqualified from the procurement process.

1.14 Canvassing and Collusion

1.14.1 Any attempt by a FP (or, where the FP is a consortium, any member of the consortium), its employees, advisors or agents to:

- (a) influence the procurement process;
- (b) obtain information on another FP or another FP's submission from UK Power Networks, or its officers, employees, agents or advisors;
- (c) offer any inducement, fee or reward to any officer, employee, agent or advisor of UK Power Networks;
- (d) canvass any such persons;
- (e) do anything which would constitute a breach of the Prevention of Corruption Acts 1889 to 1916 or under section 117 of the Local Government Act 1972;
- (f) contact any officer, employee, agent or advisor of UK Power Networks about any aspect of the competition except as authorised in this Participation Guidance, including (but without limitation) for the purposes of discussing the possible transfer to the employment of the FP of such employee for the purpose of the competition or for soliciting information in connection with the competition;
- (g) enter into any agreement or arrangement with any other FP to fix or adjust the manner or content of its Participation Guidance response;
- (h) enter into any agreement or arrangement with any other FP that such other FPs shall refrain from participating in the competition;
- (i) cause or induce any person to enter any such agreement or to inform the FP of its Participation Guidance response and its contents;
- (j) obtain details of the Participation Guidance response of another FP;
- (k) communicate to any person other than UK Power Networks the contents of its Participation Guidance response, except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of its Participation Guidance response (e.g. for insurance, a Contract guarantee bond or performance bond); or

4

- (l) carry out any other co-operation or collusion which UK Power Networks considers has actually or potentially undermined competition,

may result in the FP being disqualified from the procurement process without prejudice to any other civil remedies available to UK Power Networks and without prejudice to any criminal liability which such conduct by a FP may attract.

- 1.14.2 Members of a tender consortium are permitted to discuss, agree and communicate such matters with other members of the same consortium as necessary for the preparation of part of that consortium's submission.

1.15 Applicable Law

- 1.15.1 The law of the Contract is the Law of England and Wales.

1.16 Anti-Corruption

- (a) The FP represents and warrants that:

- (i) neither it nor any of its directors, officers and employees nor, to its knowledge, any of its subContractors, agents or representatives has directly or indirectly made, and further, that it shall not make any contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to any person, private or public, whether in money, property or Work to:

- (A) obtain favourable treatment or to secure any Contracts, agreements or commitments;

- (B) pay for favourable treatment or for any Contracts, agreements or commitments secured; or

- (C) obtain special concessions or for special concessions already obtained,

in each case, in violation in any material respect of any Law, including the *Corruption of Foreign Public Officials Act* (Canada), 1998, c. 34, the *Bribery Act* (U.K.), 2010, c. 23 (in each case, whether or not applicable to the FP) and any other Law concerned with the prevention of bribery and corruption applicable to the FP (collectively, the "**Anti-Corruption Laws**");

- (ii) it shall take particular care to ensure the propriety of all interactions with Authorities and any other persons who may have authority or influence, directly or indirectly, over the Work or any matter relating to the Work (including in relation to importation and licensing); and

- (iii) any compensation paid to its subservice providers or any other person in connection with the performance of the Work will be for legitimate, *bona fide* Work.

- (b) **The FP:**

- (i) authorises UK Power Networks and its agents to make enquiries and obtain information about the FP, its subservice providers, agents and representatives from references supplied by the FP and any other source, to verify the information given to UK Power Networks, to determine the reputation and credit standing of the FP and for other customary due diligence purposes; and

- (ii) agrees to use reasonable efforts to obtain similar authorisations from its representatives, agents and subContractors if required by UK Power Networks.
- (c) The FP acknowledges and agrees that UK Power Networks' Standards and Policies are available upon request. The FP must ensure that its employees, subservice providers, agents and representatives comply with the requirements of this Section 1.16 in the same manner as the FP is required to comply and that they receive training to ensure compliance with these requirements.
- (d) The FP must notify UK Power Networks without delay of any allegation received by the FP of any Anti-Corruption Law or any breach of any Company's Standards and Policies by the FP, its subservice providers, agents or representatives.
- (e) The representations, warranties and covenants of the FP under this Section 1.16 shall survive delivery of the Work and the termination of any agreement.

1.17 Modern Slavery Act

1.17.1 In submitting a response to this Participation Guidance, the FP represents that the FP and those in its supply chain comply with (and will continue to do so) the Modern Slavery Act 2015, so that the FP is not and those in its supply chain are not committing any offence under that Act. Moreover, the FP will provide evidence annually of compliance with the Act.

1.18 Bidders' Costs

1.18.1 Each FP will bear its own costs of participating in this competition, including the costs of preparing and submitting any clarification questions and its tender response and any accompanying or associated documents, and of taking part in the competition.

1.19 Exclusion of Liability

1.19.1 UK Power Networks bears no liability whatsoever for the outcome of the competition and shall not be liable for any FP's costs, including any loss of profit or other economic loss incurred by any FP (or, where the FP is a consortium, any consortium member), its employees, agents, advisers, subContractors or funders.

1.19.2 Any and all liability is expressly disclaimed and excluded to the greatest extent permissible by law. Notwithstanding the foregoing, liability for death or personal injury caused by UK Power Networks, its officers, employees, agents or advisors is not excluded.

1.20 Company's Discretion

1.20.1 Neither the issue of this document nor any information given later on in the competition process commits UK Power Networks to accept any tender response and/or award any Contract pursuant to this procurement and/or constitutes an offer to enter into a Contractual relationship.

1.20.2 UK Power Networks may in its sole discretion at any time terminate discussions and/or competition with any one or more FPs and/or to discontinue this procurement process.

1.20.3 Where a FP makes or suffers material changes to any aspect of their Participation Guidance response, UK Power Networks will consider the effect that this may have on the eligibility of the FP to continue to participate in the competition and may decide to disqualify the FP.

1.20.4 UK Power Networks may refrain from considering any FP's submission if it is not in accordance with the requirements and conditions set out in the tender instructions and requirements.

UK Power Networks may, at any time up until 10 days before the closing date, issue addenda to clarify the tender documents or to modify the tender documents. Any addenda to this document will be issued to all FPs simultaneously and FPs' submissions will be assumed to take account of any such modifications and amendments (unless UK Power Networks expressly indicates otherwise), and any such amendments or modifications will not necessarily lead to an extension of the submission period. Under no circumstances shall UK Power

Networks or its staff, agents or advisers incur any liability whatsoever in respect of such matters.

- 1.20.5 UK Power Networks will issue every addendum to all FPs and any addenda will form part of the tender documents.

1.21 Risk identification and evaluation

- 1.21.1 Bidders should review potential risks and make their own evaluation of their tender submissions.

1.22 Notification

- 1.22.1 Bidders must notify UK Power Networks in writing immediately upon identification by them of any ambiguities, errors, omissions, discrepancies, inconsistencies or other faults in any of the Tender Documents, with full details of those ambiguities, errors, omissions, discrepancies, inconsistencies or other faults. UK Power Networks shall issue a clarification to all FPs if appropriate to resolve such ambiguities.

1.23 No claim

- 1.23.1 UK Power Networks will not consider any claims made by a FP that its tender was disadvantaged by a lack of information, or an inability to resolve ambiguities.

1.24 Closing date

- 1.24.1 Tenders not received by UK Power Networks by the closing date and time may be excluded from further consideration and returned to FPs.
- 1.24.2 Tenders must be submitted in accordance with this document including any tender amendments. Tenders must not be qualified or accompanied by statements or a covering letter that might be construed as rendering the tender equivocal. Unauthorised alterations or additions must not be made to any component of the tender documents. UK Power Networks' decision as to whether or not a tender complies with these Participation Guidance Requirements will be final.
- 1.24.3 If a FP wishes to submit a correction to its original tender or additional information following submission of its tender, it must submit the correction or additional information before the closing date.

2 UK Power Networks' Rights

UK Power Networks reserves the right to:

- 2.1.1 waive or change the requirements of this document from time to time, without giving prior notice to the FPs
- 2.1.2 request that FPs provide clarification or further documents in support of their response
- 2.1.3 disqualify FPs who do not submit a response which complies with this document
- 2.1.4 disqualify FPs who are guilty of misrepresentation in relation to any aspect of this competition
- 2.1.5 disqualify parties who do not satisfy the financial standing requirements as part of the Pre-qualification process
- 2.1.6 to withdraw this document, and to reissue it on the same or an alternative basis
- 2.1.7 choose not to award any Contract as a result of this competition
- 2.1.8 make any changes it considers necessary to the timetable, structure or content of this competition