

**GUIDANCE FOR PARTICIPATION BY PRIMARY CARE TRUSTS,
ACUTE TRUSTS AND FOUNDATION TRUSTS IN THE PHASE 2
IS DIAGNOSTICS PROCUREMENT PROGRAMME**

1 Purpose of Guidance

- 1.1 The Project is a public procurement organised by DH and it is a legal requirement that the procurement process is reasonable, transparent and that all bidders are treated fairly.
- 1.2 This guidance has been prepared by DH to set out the responsibilities of Trusts in relation to their involvement in the Programme and the Project.

2 Definitions

In this guidance, the following words and expressions shall have the following meanings:

“**Bidder**” means any independent sector party or consortium who is bidding or may bid for the Project and will include each member of any consortium that is a Bidder; and “**Bid**” shall be construed accordingly;

“**Bid Team**” has the meaning set out in paragraph 7.4 below;

“**DH**” means the Department of Health;

“**Host Trust**” has the meaning set out in paragraph 4.3 below;

“**ITN**” means the Invitation to Negotiate in respect of the Project;

“**ITN Team**” has the meaning set out in paragraph 7.4 below;

“**the Programme**” means the Phase 2 IS Diagnostics Procurement Programme;

“**the Project**” means in relation to any Trust, the cluster project in which it is invited to participate;

“**securities**” means any shares, loan stock, options, warrants, bonds or other securities which have been admitted to dealings on or have their prices quoted on or under the rules of any regulated market, as defined in section 60 of the Criminal Justice Act 1993;

“**site visit**” has the meaning set out in paragraph 4.3;

“**the Teams**” means the Bid Team and the ITN Team;

“**Trust**” means each Primary Care Trust, Acute Trust and Foundation Trust involved in the Programme and includes any successor body of any Trust;

“**unpublished price-sensitive information**” means information which:

- (a) relates to particular securities or to a particular issuer or to particular issuers of securities and not to securities generally or issuers of securities generally (and, for these purposes, information shall be treated as relating to an issuer of securities which is a company, within the meaning of the Criminal Justice Act 1993, not only where it is about the company but also where it may affect the company's business prospects);
- (b) is specific or precise;
- (c) has not been made public within the meaning of section 58 of the Criminal Justice Act 1993; and
- (d) if it were made public would be likely to have a significant effect on the price or value of any securities.

3 General Principles

- 3.1 This guidance applies to Trusts at all times during each and every stage of any Project in which a Trust is involved.
- 3.2 All Bidders must be treated fairly and given or offered access to an equivalent amount of information, support or services of relevance to the Programme.
- 3.3 Information relating to the Project, which is not in the public domain, must be kept strictly confidential at all times.
- 3.4 Conflicts of interest must be properly managed by Trusts to ensure that the integrity of the Programme cannot be called into question.
- 3.5 Trusts must take all reasonable steps as are necessary and appropriate to ensure that their directors (both executive and non-executive), managers, employees and representatives comply with this guidance. Trusts must report any breach of this guidance to Ken Anderson at DH immediately.
- 3.6 This guidance is intended to be read in conjunction with relevant provisions of the following:
 - (a) any heads of terms provided to a Trust in relation to the Programme;
 - (b) guidance provided at any cluster meeting(s) that a Trust is invited to attend;
 - (c) any undertakings that any Trust has been asked to sign.

Separate detailed guidance relating to the management and administration of each Project will be issued in due course.

- 3.7 Any breach of this guidance by a Trust or any other person will have serious consequences for the Trust or other person concerned.

4 Dealings with Bidders

- 4.1 Where and in so far as a Trust proposes to offer sites and/or services to Bidders or has other contact with Bidders in relation to the Programme, it must deal with Bidders on a non-discriminatory, fair and transparent basis.
- 4.2 As a general rule, where a Trust offers or makes available information or data to one or more Bidders, the Trust must equally offer or make available such information or data to all Bidders on the same terms. By way of exception to this general rule, where a Trust is bidding for the Project (as explained in paragraph 7.3 of this Guidance) it may provide information about the services that it proposes to provide in its capacity as sub-contractor or member of the bidding consortia to the lead Bidder on a confidential basis and without sharing such information with other Bidders. This rule and exception will be subject to such further specific guidance as is set out in the ITN.
- 4.3 Bidders may request or be offered the opportunity to conduct a site visit at relevant sites, either to inspect the site itself or to gain a better understanding of the nature of any services being offered in the ITN ("**site visit**"). Where any Trust is host to a site visit ("**Host Trust**"), the Host Trust must offer all such Bidders an equal opportunity to conduct such a site visit at the Host Trust's site.

5 Site Visits

- 5.1 A Host Trust must comply with the guidance set out in 5.2 below.
- 5.2 It is of paramount importance that one Bidder is not able to discover the identity of any other Bidder as a result of a site visit and that all Bidders are given equal access to equivalent information. Accordingly:
 - (a) representatives of only one Bidder should be allowed on site at any particular time;
 - (b) visits by representatives of each Bidder should be scheduled so that there is no risk of any of them meeting representatives of the others before, during or after any relevant visit;
 - (c) signing in or visitors books should be in such form that it is not possible for a visitor to read the names of earlier visitors; and

- (d) site visits must be hosted by members of the ITN Team of the Host Trust and care must be taken to ensure that representatives of the Bidder are not introduced to or afforded any opportunity to communicate with the Bid Team of the Host Trust.

6 Confidentiality

- 6.1 Each Trust must ensure that all its directors (whether executive or non-executive), management, employees and representatives involved in the Project, including secondees from other bodies, are aware that they are representing the Trust and that they must not disclose information to or discuss the procurement process with any person (including colleagues outside the Trust), except to the extent necessary to properly carry out their duties to the Trust in relation to the Project.
- 6.2 If any Trust receives a request for information relating to the Project under the Freedom of Information Act 2000, it shall immediately notify Ken Anderson of DH in writing.

7 Conflicts of Interest

- 7.1 The Chief Executive of each Trust must keep a register of all actual and potential material conflicts of interest which the Trust may have in relation to the Project. All material conflicts of interest must be notified in writing to Ken Anderson of DH. In this paragraph 7.1, the expression “material conflict of interest” shall mean any conflict of interest which might result in the integrity of the Programme being called into question.
- 7.2 Examples of material conflicts of interest that may arise are as follows:
 - (a) where a Trust is proposing to offer sites and/or services to all Bidders in the ITN and is also bidding for the Project;
 - (b) where a Trust is proposing to offer sites and/or services to all Bidders in the ITN and is also offering services to one of the Bidders which are different to the services to be offered to all Bidders in the ITN;
 - (c) where an employee or a non executive officer of the Trust is or may be offering services in connection with the Project to one or more, but not all of the Bidders.
- 7.3 A Trust will be considered as bidding for the Project in the following circumstances:
 - (a) where it has submitted or might submit a Bid itself; or
 - (b) where it is in discussion with one or more prospective Bidders about the possibility of providing services of any kind to it or them as sub-contractor in relation to its or their Bid; or
 - (c) providing consultancy or advisory services to a Bidder;
 - (d) where it has formed or joined or is in discussion with any third parties about the possibility of forming or joining a consortium for the purpose of submitting a Bid.
- 7.4 Where a Trust is both offering sites and/or services to all bidders in the ITN and also bidding for the Project, it must take all reasonable steps to ensure that strict confidentiality is maintained at all times for the duration of the Project and information barriers established as between (1) Trust directors (both executive and non-executive), management, employees and representatives dealing with the provision of information about sites and services (including the pricing and other commercial terms relating to those services) (the “**Sites and Services Information**”) to be offered to all bidders in the ITN and, post-ITN, potentially negotiating the same with bidders (the “**ITN Team**”) and (2) Trust directors (both executive and non-executive) management, employees and representatives, directly or indirectly, participating in the preparation or submission of any Bid by the Trust either on its own account, or as subcontractor, partner in a consortium or as an adviser to a prospective Bidder or otherwise (the “**Bid Team**”). Such steps should include the following:
 - (a) ensuring that all members of the Bid Team and ITN Team (together “**the Teams**”) are aware of and comply with the obligations of confidentiality set out above;
 - (b) ensuring that no member of the ITN Team is, has been or will be at any stage a member of the Bid Team, and vice versa;

- (c) maintenance of separate IT systems and databases with appropriate restricted user access and password protection and restricted access to hard copy information, in each case so that (i) no member of the Bid Team has access to the Sites and Services Information (other than the information contained in the ITN, once issued) and (ii) no member of the ITN Team has access to information relating to the Bid;
- (d) ensuring that no member of the Bid Team becomes aware of (i) the identity of any Bidder or (ii) any information that would identify any Bidder, save in respect of a Bidder which is already part of a bidding consortium with the Trust; and
- (e) ensuring that there are separate and distinct reporting lines within the Trust for each of the Teams, and that members of the Bid Team are aware of the identity of members of the ITN Team, and vice versa.

7.5 A Trust must take all reasonable steps to ensure that any director (whether executive or non-executive), manager, employee or representative of the Trust:

- (a) who attends any cluster meeting to which the Trust is invited; or
- (b) who is or becomes involved, in any capacity, in the Trust's participation in the Programme or Project, whether as a potential provider of a site or services or otherwise;

will not have any material conflict of interest which might mean that the integrity of the Programme or Project might be called into question and specifically that they will not be and do not become involved, in any capacity, in the preparation, consideration or submission of any Bid, by the Trust either on its own account, or as subcontractor or partner in a consortium or otherwise.

8 Code of Conduct for Individuals

8.1 Each Trust must take reasonable steps to ensure that all directors (both executive and non-executive), managers, employees and representatives who are involved in the Project (whether as a member of the ITN Team, the Bid Team or otherwise) comply with the following provisions of this paragraph 8.

8.2 This paragraph 8.2 applies in relation to any director (whether executive or non-executive), manager, employee or representative of the Trust who has a personal interest in any matter relating to the Project. Any such person shall:

- (a) disclose in writing to the Chief Executive of the Trust all relevant details of the relevant matter and the extent of his interest in it, as soon as possible after he/she becomes aware that he/she has such an interest;
- (b) at any meeting he/she attends at which the matter is discussed, disclose the existence and nature of his/her interest at the commencement of that discussion, or when it becomes apparent;
- (c) in the event that he/she makes any executive decision in respect of the matter, must record in the written statement of that decision, the existence and nature of that interest.

8.3 A director (whether executive or non-executive), manager, employee or representative of the Trust will have a material personal interest in a matter if he anticipates that a decision upon it might reasonably be regarded as affecting the well-being or financial position of:

- (a) himself, a member of his family or a friend, or
- (b) a body which employs those persons, or for which those persons have any degree of ownership, control or management.

9 Share Dealings

9.1 Each Trust must take reasonable steps to ensure that all Trust directors (whether executive or non-executive), management, employees and representatives who are involved in the Project comply with the guidelines on share dealings set out in the following paragraphs of this Section 9.

9.2 No Trust manager, employee or representative must deal in any securities of any Bidder at any time when he or she is in possession of unpublished price-sensitive information in relation to those securities.

- 9.3 Any manager, employee or representative who does so will be guilty of an offence punishable by a fine and/or imprisonment under the Criminal Justice Act 1993.
- 9.4 Examples of “unpublished price-sensitive information” which Trust directors (both executive and non-executive), managers, employees or representatives might acquire in the course of the Project include the following:
- (a) the fact that any company intends to submit a Bid in relation to the Project;
 - (b) details of any company’s Bid;
 - (c) the fact that a Bidder has been successful;

in each case before it has been made public (within the meaning of section 58 of the Criminal Justice Act 1993). It is strongly recommended that all directors (both executive and non-executive), managers, employees and representatives of the Trust be encouraged to regard all unpublished information about a Bid or a Bidder as unpublished price-sensitive information.

10 Whistleblowing

- 10.1 A Trust should encourage its directors (both executive and non-executive), managers, employees and representatives to inform its Chief Executive immediately if any of them become aware of any breach of these guidelines by the Trust or any other directors, managers, employees or representatives on the basis that, wherever possible, the anonymity of the informant will be preserved
- 10.2 The Chief Executive of a Trust must notify Ken Anderson of DH immediately on becoming aware of any material breach of this guidance by the Trust or any of its directors (whether executive or non-executive), managers, employees and representatives. In this paragraph 10.2, the expression “material breach” means any breach of this guidance that might result in the integrity of the Programme being called into question.