



Provision of an Existing Antimicrobial to the NHS in England via a subscription-based payment model

Selection Questionnaire

OJEU Reference: 2020/S 117-285217



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1. Selection Questionnaire

1.1 The Authority

- 1.1.1 The NHS Commissioning Board (operating as NHS England) referred to hereinafter as the "**Authority**", which term includes any successor to it in the exercise of its statutory functions.

1.2 Introduction

- 1.2.1 This Selection Questionnaire (**SQ**) has been issued by the Authority, in connection with a competitive procurement exercise conducted in accordance with the Competitive Dialogue procedure under the Public Contract Regulations 2015 (as amended).
- 1.2.2 This SQ sets out the information which is required by the Authority in order to assess the suitability of potential suppliers (**Bidders**) in terms of their technical knowledge and experience, capability/capacity, organisational, economic and financial standing to meet the Authority's Requirements (defined hereinafter).
- 1.2.3 No information contained in this SQ, or in any communication made between the Authority and any Bidder in connection with this SQ, shall be relied upon as constituting a contract, agreement or representation that any contract shall be offered in accordance with this SQ. The Authority reserves the right to change without notice the basis of, or the procedures for, the competitive bid process or to terminate the process at any time. Under no circumstances shall the Authority incur any liability in respect of this SQ or any supporting documentation.
- 1.2.4 Direct or indirect canvassing of any employee or agent of the Authority by any Bidder concerning the Authority's Requirements or this SQ, or any attempt to procure information from any employee or agent of the Authority concerning the Authority's Requirements or this SQ may result in the disqualification of the Bidder from participation for this procurement.
- 1.2.5 The Authority will not be liable for any bid costs, expenditure, work or effort incurred by any Bidder in proceeding with or participating in this procurement, including if the procurement process is terminated or amended by the Authority.
- 1.2.6 While the information contained in this SQ is believed to be correct at the time of issue, neither the Authority nor its advisors will accept any liability for its accuracy, adequacy or completeness, nor will any express or implied warranty be given. This exclusion extends to liability for any statement, opinion or conclusion contained in or any omission from this SQ and for any other written or oral communication transmitted (or otherwise made available) to any Bidder. The SQ may not be disclosed, copied, reproduced, distributed or passed by them to any other person at any time (save for the purpose of taking legal, financial or other advice and provided that an undertaking is obtained from such persons to keep this SQ confidential).
- 1.2.7 Bidders are reminded that the copyright to this SQ rests with the Authority and its appointed advisers. This SQ may not either in whole or in part be copied, reproduced, distributed or otherwise made available to any other third party without the prior written consent of the Authority except in relation to the preparation of a response to this SQ. All documentation

supplied by the Authority in relation to this SQ is and shall remain the property of the Authority and must be returned on demand, without any copies being retained.

- 1.2.8 The law of England and Wales is applicable to the SQ, and the courts of England and Wales will have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this SQ.

1.3 Confidentiality and Freedom of Information

- 1.3.1 Confidential information means all information which is supplied by the Authority to a Bidder, whether in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with such Bidder or which is obtained through observations made by such Bidder which is designated by the Authority as confidential or which is otherwise of a confidential nature. Each Bidder shall hold in confidence any confidential information, provided that such Bidder shall not be restricted from passing such information to its professional advisers, or its proposed sub-providers (subject to obtaining appropriate confidentiality undertakings) but only to the extent necessary to enable it to prepare its SQ response and participate in this procurement
- 1.3.2 Bidders are reminded that the Authority is subject to the requirements of the Freedom of Information Act 2000 ("FoIA") and the Environmental Information Regulations 2004 ("EIR"). Accordingly, the Authority may be required to disclose, on request, information submitted to it by Bidders in connection with this SQ. Information may be exempt from disclosure under FoIA where its disclosure would breach confidentiality or be likely to prejudice the commercial interests of any person, but the Authority can give no assurances as to whether or not information received from Bidders in connection with this SQ would be disclosed in response to a request made under FoIA. In the event that such a request is received by the Authority, the Authority shall, in accordance with its obligations under the Code of Practice made under section 45 FOIA, consult with any party whose interests are likely to be affected by disclosure and take their views into account. However, the Authority shall be responsible for determining at its absolute discretion whether any such information is exempt from disclosure in accordance with the provisions of the FoIA or the EIR and whether any such information is to be disclosed in response to an information request. Even if the Authority initially refuses to disclose requested information, Bidders should be aware that disclosure may be enforced by the Information Commissioner or the Courts.

1.4 The Authority's Requirements

- 1.4.1 This procurement relates to a competitive process for the selection of an existing antimicrobial that can best satisfy the Authority's Requirements.
- 1.4.2 The Authority seeks to select an antimicrobial that primarily:
- 1.4.3 is active against and whose licensed indications include pathogens on the WHO Priority List; and

1.4.4 that addresses high unmet need in the NHS in England

(the "**Authority's Requirements**")

1.4.5 Further details of the Authority's Requirements are included in the *Information for Bidders* document at Annex 2.

1.5 Instructions for Completion

1.5.1 Bidders are invited to complete and submit the SQ in the *Qualification Envelope* on the Bravo Solution e-tender portal, together with any requested supporting information, to the Authority by the due date for return in accordance with the paragraph 1.10 (Submission of Selection Questionnaires) below.

1.5.2 Bidders should follow the instructions outlined below when completing the SQ:

1.5.2.1 Bidders should answer all questions as accurately and concisely as possible. Where a question is not relevant to the Bidder's organisation, this should be indicated, with a full explanation as to the reasons why.

1.5.2.2 The information supplied will be checked for completeness and compliance with the instructions before responses are evaluated.

1.5.2.3 Failure to provide the required information, make a satisfactory response to any question, or supply documentation referred to in responses, within the specified timescale, will mean that a Bidder's submission will be evaluated accordingly and may mean (where the information response or documentation is mandatory) that a Bidder is not invited to participate further. In the event that none of the responses are deemed satisfactory, the Authority reserves the right to terminate the procurement and where appropriate re-advertise the procurement.

1.5.2.4 Bidders are advised neither to make any assumptions about their past or current Bidder relationships (if any) with the Authority nor to assume that such prior business relationships will be taken into account in the evaluation procedure, unless they are (1) expressly referenced in the appropriate section of the SQ and (2) relevant to the question being answered.

1.6 Queries about the Procurement

1.6.1 All requests for clarification or further information in respect of this SQ **must** be submitted via the message function within the e-tender portal. No approach of any kind in connection with this SQ should be made to any other person within, or associated with the Authority, their employees or their professional and/or technical advisors. Doing so may lead to Bidders being excluded from this procurement.

1.6.2 Requests for clarification or further information that are received within five (5) working days of the closing date of the SQ will NOT be accepted or answered.

- 1.6.3 The Authority will not enter into discussions in relation to the Authority's Requirements at this stage.
- 1.6.4 If the Authority consider any question or request for clarification to be of material significance, both the question and the response will be communicated, in a suitably anonymous form (to the extent that this is reasonably practicable), to all Bidders who have responded, have expressed an interest, or those that show an interest before the closing date for the submission of the SQ. Anything of commercial interest may not necessarily be shared.

1.7 Additional Information

- 1.7.1 The Authority expressly reserve the right to require a Bidder to provide additional information supplementing or clarifying any of the information provided in response to the requests set out in this SQ.

1.8 Consortia and Sub-Contracting

- 1.8.1 Where a consortium or sub-contracting approach is proposed, all information requested should be given in respect of the proposed prime contractor or consortium leader. Relevant information should also be provided in respect of consortium members or sub-contractors who will play a significant role in the delivery of the Authority's Requirements under any ensuing contract. For the purposes of this SQ, a significant role is where the economic and financial standing and the technical or professional ability of the consortium member or subcontractor is referred to or relied on in the response to the SQ. Bidders should note that in the case of a consortium approach not involving a prime contractor, the Authority will require that the liability of the consortium members shall be joint and several.
- 1.8.2 Where the proposed prime contractor is a special purpose vehicle ("SPV"), full information should be provided about the extent to which the SPV will call upon the resources and expertise of its members to fulfil the Authority's Requirements, including whether a parent company guarantee or bond will be available.
- 1.8.3 The Authority recognises that arrangements in relation to consortia and sub-contracting may (within limits) be subject to future change. Bidders should therefore respond in light of the arrangements as currently envisaged. Bidders are reminded that any future change in relation to consortia and sub-contracting must be notified to the Authority so that they can make a further assessment by applying the selection criteria to the new information provided.
- 1.8.4 Without prejudice to paragraphs 1.8.1 to 1.8.3 above, the Authority needs to ensure that any entity with which the Authority contracts meets the financial standing requirements in the SQ. Consequently:
- 1.8.4.1 where an SPV arrangement is proposed, Bidders must identify and must provide full financial details in respect of the member or members of the SPV (or parent company thereof) which will provide a guarantee of the performance of the SPV.

- 1.8.4.2 where a Bidder intends to rely on the financial standing of other entities (whether parent companies, group companies or otherwise), full information must be provided about those other entities.

1.9 Bidder Contact Point

- 1.9.1 It is the sole responsibility of Bidders to ensure that their access to this procurement exercise through the Bravo Solution E-Tendering Portal enables them to respond to clarification requests promptly (link: <https://nhsengland.bravosolution.co.uk/web/login.html>).

1.10 Submission of Selection Questionnaires

- 1.10.1 The responses must be submitted through the e-tender portal no later than:

13:00 on Wednesday 22 July 2020

- 1.10.2 Please note that completed SQ responses received after the above closing deadline may be rejected.

1.11 Bidder Selection

- 1.11.1 The Authority may disqualify any potential Bidder who fails to:

- 1.11.1.1 provide a satisfactory explanation / set out measures taken to rectify any exclusion grounds that apply per Regulation 57 (1), (2) or (8) of the Public Contracts Regulations 2015
- 1.11.1.2 provide a satisfactory response to any questions in the SQ or who inadequately or incorrectly completes any question;
- 1.11.1.3 submit its completed SQ after the deadline for submission; or
- 1.11.1.4 fails to meet the Authority minimum requirements as set out in this SQ.

- 1.11.2 Bidders who are not disqualified in accordance with the above grounds shall be evaluated on the selection criteria set out in this SQ, which take into account the economic and financial standing and the technical or professional ability of the Bidder.

1.12 SQ Evaluation Process

Stage 1 - SQ return.

- 1.12.1 Any SQ response that is received after the designated deadline may, at the Authority's discretion, be rejected and therefore not considered for evaluation.

Stage 2 – Checking responses.

- 1.12.2 All responses will be checked to ensure that all questions have been addressed and that all documents requested have been attached. In the event that a Bidder is unable to provide a positive response to any of the questions, or a detailed reason as to why a positive response cannot be given, the Authority may either exclude the Bidder from further participation in the selection process or, at their discretion, seek clarification. In the case of the latter, a failure by

the Bidder to provide a satisfactory response within any deadline specified by the Authority in the request for clarification may result in its disqualification from the selection process.

Stage 3 – Individual Evaluations.

1.12.3 All SQs that have passed the initial checks are to be evaluated on the basis of an assessment of information provided in response to the each of the questions set out in the SQ. Responses to questions will be evaluated on the basis of the scoring methodology set out in this SQ.

1.12.4 The evaluation of Bidders' SQ responses will be undertaken on the following basis:

Parts 1 & 2 - Bidder Information and Exclusion Grounds

Not scored but MUST be completed.

Part 3 - Selection Questions

1.12.5 Evaluation will be based on an assessment of information provided in response to the each of the questions in the sections referred to below. Please see 'Annex 1 for further information about how a response will be evaluated (on a question by question basis). Failure to provide a response to any of the questions may lead to the Bidder being eliminated.

1.13 SQ Scoring Methodology

1.13.1 Economic and financial standing – Pass/Fail

1.13.2 Technical / Professional ability – Pass/Fail

1.13.3 Minimum Requirements – Pass/Fail

Stage 4 – Bidder Selection.

1.13.4 Bidders who satisfy the Authority's qualification criteria as set out in this SQ will be invited to participate in dialogue.

1.13.5 **IMPORTANT** – prior to any award of any ensuing contract, the Authority may, at its discretion, confirm or re-check some or all aspects of the information provided at this, the SQ stage. This will not be re-scored; the process (if undertaken) will be to ascertain that the information given at SQ stage is still correct and that there have been no significant adverse changes in the Bidders' positions.

Selection Questions & Criteria

Bidder Information and Exclusion Grounds: SQ Part 1 and Part 2

The section is a self-declaration, made by you (the Bidder), that you do not meet any of the grounds for exclusion¹. If there are grounds for exclusion, there is an opportunity to explain the background and any measures you have taken to rectify the situation (this is called 'self-cleaning').

A completed declaration of Part 1 and Part 2 provides a formal statement that the organisation making the declaration has not breached any of the exclusion grounds. Consequently, we require all the organisations that you will rely on to meet the selection criteria to provide a completed Part 1 and Part 2. For example, these could be parent companies, affiliates, associates, or essential sub-contractors, if they are relied upon to meet the selection criteria. This means that where you are joining in a group of organisations, including joint ventures and partnerships, each organisation in that group must complete one of these self-declarations. Sub-contractors that you rely on to meet the selection criteria must also complete a self-declaration (although sub-contractors that are not relied upon do not need to complete the self-declaration).

Selection Questions: SQ Part 3

This section of the SQ is to be completed, and the relevant information provided, by all Bidders (including, where applicable, by the Consortium leader or Prime contractor for and on behalf of any consortium members or sub-contractors who will play a significant role in the delivery of the Authority's Requirements under any ensuing contract)

Note - for the purposes of this SQ, a significant role is where the economic and financial standing and the technical or professional ability of the consortium member or subcontractor is referred to or relied on in the response to the SQ.

If any Bidder, consortium member or subcontractor who will play a significant role in the delivery of the Authority's Requirements wishes the financial assessment to be based upon a parent company/ group or guarantor, then all financial information requested must be provided in respect of that parent company / guarantor.

Consequences of misrepresentation

If you seriously misrepresent any factual information in filling in the SQ, and so induce the Authority to enter into a contract, there may be significant consequences.

- The potential Bidder may be excluded from bidding for contracts for three years, under regulation 57(8)(h)(i) of the PCR 2015;

¹ For the list of exclusions please see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf

- The Authority may sue the supplier for damages and may rescind the contract under the Misrepresentation Act 1967.
- If fraud, or fraudulent intent, can be proved, the supplier or the responsible officers of the supplier may be prosecuted and convicted of the offence of fraud by false representation under s.2 of the Fraud Act 2006, which can carry a sentence of up to 10 years or a fine (or both).
- If there is a conviction, then the company must be excluded from procurement for five years under reg. 57(1) of the PCR (subject to self-cleaning).

Additional Notes for completion

1. "You" / "Your" refers to the Bidder completing this SQ i.e. the legal entity responsible for the information provided.
2. Please ensure that all questions are completed in full, and in the format requested. If the question does not apply to you, please state 'N/A' together with an explanation.
3. For Part 1 and Part 2 every organisation that is being relied on to meet the selection must complete and submit the self-declaration.
4. For answers to Part 3, if you are bidding on behalf of a group, for example, a consortium, or you intend to use sub-contractors, you should complete all of the questions on behalf of the consortium and/ or any sub-contractors, providing one composite response and declaration.
5. The questions to be completed are included in the Qualification Envelope of the Bravo Solution e-tender portal.
6. The evaluation criteria for each question are included in SQ Annex 1.

2. Annexures

Annex 1 Selection Questions & Criteria

Annex 2 Information for Bidders