



Sandwell Travel Assistance

Flexible Purchasing System

Application Form

Version 1 (2024) of this Application Form

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Introduction

1. Preliminary information

1.1. The Flexible Purchasing System

Sandwell Metropolitan Borough Council ('Council') has established a flexible purchasing system comprising a number of Lots relating to **travel assistance for children and adults ('Flexible Purchasing System')**.

1.2. How the Flexible Purchasing System is to operate

- Any Permitted Purchaser described in paragraph 1.3 may from time to time enter into a Call-Off Contract with a Member Provider if that Call-Off Contract is within the Flexible Purchasing System and a particular Lot.
- See the Rules of the Flexible Purchasing System for further information, particularly in relation to:
 - The types of Call-Off Contracts which a Permitted Purchaser may enter under the Call-Off Contract.
 - How Call-Off Contracts are to be awarded by Permitted Purchasers under the Flexible Purchasing System.

1.3. Public bodies who are entitled to enter into Call-Off Contracts from time to time with Member Providers under the Flexible Purchasing System

- Each of them is a **'Permitted Purchaser'**
- Including any successor bodies of any of these

(a) Any of these local authorities

Sandwell Metropolitan Borough Council

(b) Any other types of public bodies

Any school

- Which is located within the boundaries of Sandwell Metropolitan Borough Council; and
- Which is (at the time)
 - **In relation to Call-Off Contracts entered before the Procurement Act 2023 comes into force in England:** a contracting authority for the purposes of the Public Contracts Regulations 2015.
 - **In relation to Call-Off Contracts entered on or after the Procurement Act 2023 comes into force in England:** a contracting authority for the purposes of the Procurement Act 2023.

(c) Companies	<p>Any company</p> <ul style="list-style-type: none"> • In which any other Permitted Purchaser described elsewhere in this paragraph 1.3 is a shareholder; and • Which at the time meets all of the requirements of regulation 12(1) of the Public Contracts Regulations 2015.
1.4. Whether there is a maximum number of Applicants who may become Member Providers on a particular Lot.	No maximum.
1.5. Current number of Lots under the Flexible Purchasing System	
(a) Lot 1	For SEND transport for children and young people other than looked after children.
(b) Lot 2	For SEND transport for children and young people who are looked after children.
(c) Lot Z	<ul style="list-style-type: none"> • Miscellaneous Contracts within the scope of the Flexible Purchasing System described in paragraph 1.1. • Each Applicant whose Application is successful for any other Lot automatically becomes a Member Provider of Lot Z.
1.6. How this Application Procedure is to be conducted	Under the 'light touch' regime under the Public Contracts Regulations 2015.
1.7. From when the Council expects the Flexible Purchasing System be open for a Permitted Purchaser to enter into Call-Off Contracts This is an indicative date only	The Council expects to conduct its first mini-competition at the same time as the initial application process.
1.8. When the Council will accept further Applications	As indicated in the Rules of the Flexible Purchasing System.
1.9. Consequences of an Applicant submitting an Application	It does not comprise any kind of offer made by the Applicant to any Permitted Purchaser.
1.10. Rules in relating to the operation of the Flexible Purchasing System ('Rules')	As published by the Council from time to time in connection with the Flexible Purchasing System.
1.11. Other documents accompanying this Application Form	<ul style="list-style-type: none"> • The current Rules of the Flexible Purchasing System. • The current Service Specification • The terms and conditions of each Package of Care Contract to be entered under the Flexible Purchasing System.

Minimum requirements

2. Summary of mandatory requirements

2.1. Minimum requirements which the Applicant must meet before the Council can award it a place as a Member Provider on a particular Lot

The Council **must** reject an Application if the Applicant does not confirm that it meets all of these minimum requirements at the date it submits its Application.

(a) Minimum insurance requirements	<ul style="list-style-type: none">• £10 million per claim employers' liability insurance.• £10 million per claim public liability insurance.• £10 million per claim motor vehicle insurance.
(b) Required Accreditations	<ul style="list-style-type: none">• Private Hire Operator Licence• Restricted Private Hire Operator Licence (Home to School Only Licence)• Standard National PSV Operator License• Standard National and International PSV Operator License.
(c) Grounds for exclusion	The Council has no reasonable grounds to exclude or reject the Applicant's Application if any of the grounds for exclusion in section 10 and/or section 11 applies to the Applicant.

The Application procedure

3. Introduction to the Application procedure

3.1. How an Applicant becomes a Member Provider of the Flexible Purchasing System for a particular Lot

If all of these apply

- The Applicant submits a properly completed Application to the Council (according to the requirements of this Application Form).
- The Council assesses the Applicant's Application as 'satisfactory' on a 'pass-fail' basis according to this Application Form.
- The Council does not reject the Applicant's Application where the Council has a right or obligation to do so according to this Application Form.

3.2. How the Council is to determine whether the Applicant's submission is 'satisfactory'

According to Its professional judgement, subject to the evaluation criteria indicated in this Application Form, and according to any specific right or obligation the Council has to reject an Application.

4. Submitting an Application

4.1. General instructions in relation to this Application Form and the submission of an Application

Please see the Application Instructions for details.

Any Applicant submitting an Application is deemed to have read and understood this Application Form, including

- The Application Instructions and
- Any attachments and schedules accompanying and forming part of this Application Form.

4.2. **Submission and communication:** how the Applicant must

- Submit its Application; and
- Communicate with the Council in relation to the Application

- Only through the Council's electronic procurement system.
- The Council will not engage in any communications with any Applicants in any other way, except in relation to any communications regarding technical difficulties with using the Council's electronic procurement system as permitted in section 16 in the Application Instructions.

4.3. Deadline for the Applicant submitting queries to the Council before the submission deadline

This is only relevant for the **first intake** of Applicants, and is not relevant to later intakes according to paragraph 1.8

4.4. **Deadline for submitting the Application**

This is only relevant for the **first intake** of Applicants, and is not relevant to later intakes according to paragraph 1.8

4.5. **Late, incomplete:** rules regarding late or incomplete Applications by the deadline indicated in paragraph 4.4

This is only relevant for the **first intake** of Applicants, and is not relevant to later intakes according to paragraph 1.8

- The Council must not evaluate it within the first intake.
- It must evaluate it at the next opportunity for later intakes according to paragraph 1.8.

4.6. Whether there is any **standstill period** between

- The Council announcing the results of the first intake
- Any Permitted Purchaser being permitted to enter into any Call-Off Contract under the Flexible Purchasing System.

The Council will observe a minimum 10 day standstill period from the date of announcing the results of the first intake before any Permitted Purchaser is permitted to enter into any Call-Off Contract under the Flexible Purchasing System.

4.7. **Changes to the Applicant:** obligation of the Applicant to keep the Council informed of significant changes in its circumstances after its Application is submitted

As indicated in the Application Declaration.

4.8. **Applicant queries:** what an Applicant is to do if it has queries in relation to this Application Procedure

See section 21 in the Application Instructions.

4.9. **Council clarifications:** arrangements if the Council requires any clarification from any Applicant

See section 22 in the Application Instructions.

Evaluation of Applications

5. Evaluation procedure, criteria

5.1. How the Council is to evaluate each Application

On a pass-fail basis according to the Council's professional judgement and the requirements of this Application Form (e.g. any discretion or obligation on the Council to reject the Application, evaluation criteria in respect of technical questions described in section 13).

5.2. Arrangements regarding the Council's provision of feedback to each Applicant after completion of this Application Procedure

See section 24 in the Application Instructions.

About the Applicant

6. Applicant details

- 6.1. Name of the Applicant including any company number or the like
- 6.2. Indicate the type of entity of the Applicant i.e.
- public limited company
 - private limited company
 - limited liability partnership
 - other partnership
 - sole trader
 - third sector
 - other (please specify the Applicant's trading status)
- 6.3. If the Applicant is a Consortium, indicate
- The name of the current lead member
 - The name of each other member
- See section 19 in the Application Instructions regarding Consortia
- 6.4. If the Applicant is a Special Purpose Vehicle, indicate
- The name of the current lead shareholder, member or the like
 - The name of each other shareholder, member or the like
- See section 20 in the Application Instructions regarding Special Purpose Vehicles
- 6.5. Current address from where the Applicant would administer its membership of any Lot of the Flexible Purchasing System
- 6.6. If the Applicant is a company, indicate its year end.
- If the Applicant is a consortium in which any member is a company, indicate the year end of each such company

7. Applicant's contact details

Please complete the following in relation to the Applicant's main contact person for the purpose of this Application Procedure

- If the Applicant is a Consortium, indicate this information for the current lead member of the Consortium only
- Applicants must ensure communications from the Council to the relevant e-mail address are regularly checked during the course of this Application Procedure
- Applicants must update the Council in a timely manner if this changes

7.1. Name of the contact person

7.2. Role/job title

7.3. Address

7.4. Telephone number (landline and mobile if relevant)

7.5. E-mail address

7.6. Other contact person if the above person is unavailable

About the Lots

8. Which Lots

8.1. Indicate the Lots for which the Applicant wishes to apply

- An Applicant may apply for Lot 1, Lot 2 or both Lots, as it wishes
- If an Applicant's Application is successful, it will automatically be admitted to Lot Z.

8.2. Whether there is any maximum or minimum number of Lots for which the Applicant may apply

This is only relevant if there are 2 or more Lots other than Lot Z.

<ul style="list-style-type: none">• No – an Applicant may apply for as many or as few as it wishes.• If the Applicant does not apply for a particular Lot at this time, it may apply for that Lot later.

Insurance requirements

9. Insurance requirements

9.1. Indicate with a 'Y' or a 'yes' to confirm that the Applicant expects to have **the following minimum level in respect of ALL of the following types of insurance cover** in place when it is first admitted as a Member Provider of the Flexible Purchasing System

- (a) £10 million per claim employers' liability insurance
- (b) £10 million per claim public liability insurance
- (c) £10 million per claim motor vehicle liability

9.2. If the Applicant does not confirm that it expects to have **the following minimum level in respect of ALL of the following types of insurance cover** in place when it is first admitted as a Member Provider of the Flexible Purchasing System, indicate whether it has in place any suitable alternative arrangements for the Council's consideration (e.g. self-insurance arrangements)

Please indicate those arrangements. The Council may seek further information about any such arrangements.

9.3. If the Applicant either

- Does not confirm that it will have the relevant insurance cover in place as indicated in paragraph 9.1; or
- Does not have suitable alternative insurance that the Council (acting reasonably) considers satisfactory

Indicate with a 'Y' or a 'yes' if the Applicant can confirm the above

	The Council must reject the Applicant's Application.

Exclusion

10. Exclusion Grounds

Please answer the following questions in full.

The Applicant must answer this section for every organisation that forms part of the Applicant's group/consortium, as well as every organisation that is being relied on (including subcontractors being relied on) to meet the selection criteria under this Application

--

Grounds for mandatory exclusion

10.1. Within the past five years, anywhere in the world, has the Applicant and/or any person who:

- is a member of the supplier's administrative, management or supervisory body or
- has powers of representation, decision or control in the supplier ,

been convicted of any of the offences within the summary below and listed in full on in the following webpage

[Annex C Exclusion Grounds.pdf](#)
(publishing.service.gov.uk)

--

- (a) Participation in a criminal organisation
- (b) Corruption
- (c) Terrorist offences or offences linked to terrorist activities
- (d) Money laundering or terrorist financing
- (e) Child labour and other forms of trafficking in human beings
- (f) Any other offence within the meaning of Article 57(1) of the Directive as defined by the law of any jurisdiction outside England, Wales or Northern Ireland
- (g) Any other offence within the meaning of Article 57(1) of the Directive created after 26th February 2015 in England, Wales or Northern Ireland

10.2. If the Applicant has answered yes to any part of paragraph 10.1, please provide further details, including:

- the date of conviction and the jurisdiction,
- which of the grounds listed the conviction was for,
- the reasons for conviction,
- the identity of who has been convicted.

If the relevant documentation is available electronically please provide:

- the web address,
- issuing authority,
- precise reference of the documents.

10.3. If the Applicant has answered yes to any part of paragraph 10.1, please explain what measures have been taken to demonstrate the Applicant's reliability despite the existence of relevant grounds for exclusion. (Self cleaning)

Mandatory and discretionary grounds relating to the payment of taxes and social security contributions

The detailed grounds for mandatory and discretionary exclusion of a supplier for non-payment of taxes and social security contributions, are set out on this webpage [Annex C Exclusion Grounds.pdf](#) (publishing.service.gov.uk) and should be referred to before completing these questions.

10.4. Please confirm that the Applicant has met all of its obligations relating to the payment of taxes and social security contributions, both in the country in which the Applicant is established and in the UK.

Indicate yes or no

If documentation is available electronically please provide:

- the web address,
- issuing authority,
- precise reference of the documents

10.5. If the Applicant has answered no to paragraph 10.4, please provide further details including the following:

- Country concerned,
- what is the amount concerned
- how the breach was established, i.e. through a judicial or administrative decision or by other means.
- if the breach has been established through a judicial or administrative decision please provide the date of the decision,
- if the breach has been established by other means please specify the means.

10.6. Please also confirm whether the Applicant has paid, or has entered into a binding arrangement with a view to paying, the outstanding sum including, where applicable, any accrued interest and/or fines

Indicate yes or no

10.7. Further rights of the Council

The Council reserves its right to use our discretion to exclude the Applicant's Application where it can demonstrate by any appropriate means that the Applicant is in breach of its obligations relating to the payment of taxes or social security contributions.

Grounds for Discretionary Exclusion

The detailed grounds for discretionary exclusion of an organisation are set out on this webpage [Annex C Exclusion Grounds.pdf \(publishing.service.gov.uk\)](#) and should be referred to before completing these questions.

10.8. Within the past three years, anywhere in the world, have any of the situations summarised below and listed in full on the webpage [Annex C Exclusion Grounds.pdf \(publishing.service.gov.uk\)](#) applied to the Applicant?

- (a) Breach of environmental obligations?
To note that environmental law obligations include Health and Safety obligations. See this webpage [Annex C Exclusion Grounds.pdf \(publishing.service.gov.uk\)](#)
- (b) Breach of social law obligations?
- (c) Breach of labour law obligations?
- (d) Bankruptcy or subject of insolvency?
- (e) Guilty of grave professional misconduct?
- (f) Distortion of competition?

- (g) Conflict of interest?
- (h) Been involved in the preparation of the procurement procedure?
- (i) Prior performance issues?
- (j) The Applicant has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria.
- (k) The Applicant has withheld such information.
- (l) The Applicant is not able, without delay, to submit documents if/when required.
- (m) The Applicant has undertaken to unduly influence the decision-making process of the contracting authority to obtain confidential information that may confer upon the Applicant undue advantages in the procurement procedure, or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award

10.9. Please complete this question

- If the Applicant is a relevant commercial organisation subject to Section 54 of the Modern Slavery Act 2015
- If the Applicant carries on its business, or part of its business in the UK, supplying goods or services and the Applicant has an annual turnover of at least £36 million.

- (a) Confirm that the Applicant has published a statement as required by Section 54 of the Modern Slavery Act.
- (b) Confirm that the statement described in paragraph (a) complies with the requirements of Section 54 and any guidance issued under Section 54.
- (c) If the Applicant's latest published statement is available electronically

Please provide: <ul style="list-style-type: none"> • the web address, • precise reference of the documents.

10.10. If the Applicant has answered YES to any of the questions in paragraph 10.8 or NO in paragraph 10.9, please explain what measures have been taken to demonstrate the Applicant's reliability despite the existence of a relevant ground for exclusion. (Self cleaning)

11. Certain events etc. in relation to the Applicant

Contract termination, claims

Please indicate whether any of the following has occurred in relation to the Applicant and/or any of its EEA-based Affiliates at any time since **1st January 2019** in relation to any contract the Applicant and/or its EEA-based Affiliate has had to supply goods, services and/or works to a client which was a large organisation (e.g. another public body)

- Whether or not the goods, services or works are similar to those to which the Flexible Purchasing System relates
- Attach further pages if there is insufficient space

11.1. **Contract termination:** the relevant contract was terminated by the relevant client organisation due to a default by the Applicant and/or its EEA-based Affiliate

Answer yes or no, and if yes, please give brief details of

- The circumstances resulting in the termination
- Steps which the Applicant and/or the Affiliate has subsequently taken to address the issue

11.2. **Claims for compensation:** the relevant client organisation claimed compensation for breach of contract by the Applicant and/or its EEA-based Affiliate, regardless of whether the claim was successful

Answer yes or no, and if yes, please give brief details of

- The circumstances leading to the claim
- The outcome of the claim
- Steps which the Applicant and/or the Affiliate has subsequently taken to address the issue if the claim were successful

11.3. Instructions in answering the questions in paragraph 11.1 and paragraph 11.2

- (a) If the Applicant has any UK based Affiliates
- (b) If the Applicant is a Consortium
- (c) If the Applicant is a Special Purpose Vehicle

	Please also indicate whether any such termination or claim applies to any EEA-based Affiliate of the Applicant
	Please also indicate whether any such termination or claim applies to any Consortium member and/or to any of its respective EEA-based Affiliates.
	Please also indicate whether any such termination or claim applies to any shareholder, member or the like of the Special Purpose Vehicle and/or to any of its respective EEA-based Affiliates.

11.4. Consequences if the Applicant's response to questions in paragraph 11.1 and paragraph 11.2 indicates (in the Council's professional judgement)

- Serious issues of contract default; and
- The Applicant (or other relevant person) has not taken appropriate steps to address the issue

The Council may reject the Applicant's Application.

Health and safety

11.5. Indicate whether any one or more of the following applies to the Applicant and/or any EEA-based Affiliate at any time since **1st January 2019**

(a) Any convictions for breach of the law relating to health and safety against the Applicant and/or any of its Affiliates within an EEA country

(maximum: 500 words per event or circumstance; please attach further pages if insufficient space)

(b) Any complaint issued by any person to the Health and Safety Executive (or equivalent bodies in other EEA countries) for health and safety issues involving the Applicant and/or any of its Affiliates within an EEA country

(maximum: 500 words per event or circumstance; please attach further pages if insufficient space)

(c) Any investigation carried out by the Health and Safety Executive (or equivalent bodies in other EEA countries) for health and safety issues involving the Applicant against the Applicant or its Affiliate where the Health and Safety Executive (or equivalent body in another EEA country) suspects wrong-doing (i.e. not a routine investigation)

(maximum: 500 words per event or circumstance; please attach further pages if insufficient space)

(d) If any of the above applies to the Applicant and/or its EEA-based Affiliate, indicate steps which the Applicant and/or the Affiliate has taken to remedy the matter

(maximum: 500 words)

11.6. Instructions in answering the questions in paragraph 11.5 if the Applicant **is a Consortium**

The Applicant must answer those questions **in respect of each Consortium member** and their respective EEA-based Affiliates.

11.7. Instructions in answering the questions in paragraph 11.5 if the Applicant **is a Special Purpose Vehicle**

The Applicant must answer those questions **in respect of each shareholder, member or the like** and their respective EEA-based Affiliates.

11.8. How the Council will evaluate the Applicant's response to the questions in paragraph 11.5

An Applicant's Application may be rejected if the Applicant's response gives the Council's evaluation team (exercising its professional judgement) insufficient grounds to believe the Applicant would supply services under this Flexible Purchasing System in compliance with UK health and safety law.

Equalities

11.9. Indicate whether any one or more of the following applies to the Applicant and/or any EEA-based Affiliate at any time since **1st January 2019**

- (a) Any convictions for breach of the law relating to equalities and discrimination issues against the Applicant and/or any of its Affiliates within an EEA country

(maximum: 500 words per event or circumstance; please attach further pages if insufficient space)
- (b) Any complaint issued by any person to the Equality and Human Rights Commission (or equivalent bodies in other EEA countries) for equalities and discrimination issues involving the Applicant and/or any of its Affiliates within an EEA country

(maximum: 500 words per event or circumstance; please attach further pages if insufficient space)
- (c) Any investigation carried out by the Equality and Human Rights Commission (or equivalent bodies in other EEA countries) for equalities and discrimination issues involving the Applicant against the Applicant or its Affiliate where the Equality and Human Rights Commission (or equivalent body in another EEA country) suspects wrong-doing (i.e. not a routine investigation)

(maximum: 500 words per event or circumstance; please attach further pages if insufficient space)
- (d) If any of the above applies to the Applicant and/or its EEA-based Affiliate, indicate steps which the Applicant and/or the Affiliate has taken to remedy the matter

(maximum: 500 words)

11.10. Instructions in answering the questions in paragraph 11.9 if the Applicant **is a Consortium**

The Applicant must answer those questions **in respect of each Consortium member** and their respective EEA-based Affiliates.

11.11. Instructions in answering the questions in paragraph 11.9 if the Applicant **is a Special Purpose Vehicle**

The Applicant must answer those questions **in respect of each shareholder, member or the like** and their respective EEA-based Affiliates.

11.12. How the Council will evaluate the Applicant's response to the questions in paragraph 11.9

An Applicant's Application may be rejected if the Applicant's response gives the Council's evaluation team (exercising its professional judgement) insufficient grounds to believe the Applicant would supply services under this Flexible Purchasing System in compliance with relevant UK equalities law.

Data protection

11.13. Please self-certify whether the Applicant has a data protection policy
(indicate yes or no)

11.14. Indicate whether any one or more of the following applies to the Applicant and/or any EEA-based Affiliate at any time since **1st January 2019**

(a) Any convictions for breach of the law relating to personal data issues against the Applicant and/or any of its EEA-based Affiliates within an EEA country

(maximum: 500 words per event or circumstance; please attach further pages if insufficient space)

(b) Any complaint issued by any person to the Information Commissioner's Office (or equivalent bodies in other EEA countries) for personal data issues involving the Applicant and/or any of its EEA-based Affiliates within an EEA country

(maximum: 500 words per event or circumstance; please attach further pages if insufficient space)

(c) Any investigation carried out by the Information Commissioner's Office (or equivalent bodies in other EEA countries) for personal data issues involving the Applicant against the Applicant or its EEA-based Affiliate where the Information Commissioner's Office (or equivalent body in another EEA country) suspects wrongdoing (i.e. not a routine investigation)

(maximum: 500 words per event or circumstance; please attach further pages if insufficient space)

(d) If any of the above applies to the Applicant and/or its EEA-based Affiliate, indicate steps which the Applicant and/or the Affiliate has taken to remedy the matter

(maximum: 500 words)

11.15. Instructions in answering the questions in paragraph 11.14 if the Applicant **is a Consortium**

The Applicant must answer those questions **in respect of each Consortium member** and their respective EEA-based Affiliates.

11.16. Instructions in answering the questions in paragraph 11.14 if the Applicant **is a Special Purpose Vehicle**

The Applicant must answer those questions **in respect of each shareholder, member or the like** and their respective EEA-based Affiliates.

11.17. How the Council will evaluate the Applicant's response to the questions in paragraph 11.14

An Applicant's Application may be rejected if the Applicant's response gives the Council's evaluation team (exercising its professional judgement) insufficient grounds to believe the Applicant would supply services under this Flexible Purchasing System in compliance with relevant UK data protection law.

Environment

11.18. Indicate whether any one or more of the following applies to the Applicant and/or any EEA-based Affiliate at any time since **1st January 2019**

- (a) Any convictions for breach of the law relating to environmental issues against the Applicant and/or any of its EEA-based Affiliates within an EEA country

(maximum: 500 words per event or circumstance; please attach further pages if insufficient space)
- (b) Any complaint issued by any person to the Environment Agency (or equivalent bodies in other EEA countries) for environmental issues involving the Applicant and/or any of its EEA-based Affiliates within an EEA country

(maximum: 500 words per event or circumstance; please attach further pages if insufficient space)
- (c) Any investigation carried out by the Environment Agency (or equivalent bodies in other EEA countries) for environmental issues involving the Applicant against the Applicant or its EEA-based Affiliate where the Environment Agency (or equivalent body in another EEA country) suspects wrong-doing (i.e. not a routine investigation)

(maximum: 500 words per event or circumstance; please attach further pages if insufficient space)
- (d) If any of the above applies to the Applicant and/or its EEA-based Affiliate, indicate steps which the Applicant and/or the Affiliate has taken to remedy the matter

(maximum: 500 words)

11.19. Instructions in answering the questions in paragraph 11.14 if the Applicant **is a Consortium**

The Applicant must answer those questions **in respect of each Consortium member** and their respective EEA-based Affiliates.

11.20. Instructions in answering the questions in paragraph 11.14 if the Applicant **is a Special Purpose Vehicle**

The Applicant must answer those questions **in respect of each shareholder, member or the like** and their respective EEA-based Affiliates.

11.21. How the Council will evaluate the Applicant's response to the questions in paragraph 11.14

An Applicant's Application may be rejected if the Applicant's response gives the Council's evaluation team (exercising its professional judgement) insufficient grounds to believe the Applicant would supply services under this Flexible Purchasing System in compliance with relevant environment law.

12. Pricing

Not required at Application stage.

13. Technical Questions

<p>13.1. Which technical questions must the Applicant complete</p>	<p>All questions which are indicated to be relevant to the relevant Lots for which the Applicant is applying, as indicated in paragraph 8.1.</p>
<p>13.2. How the Council will evaluate the Applicant's responses to each relevant technical question it is required to answer, according to the relevant Lots for which the Applicant is applying, as indicated in paragraph 8.1</p>	<ul style="list-style-type: none"> • On a pass-fail basis, according to the evaluation criteria indicated at each technical question. • The Council must reject the Applicant's Application for a particular Lot if the Applicant fails any technical question relevant to that Lot.
<p>13.3. General instructions in relation to technical questions</p>	<p>Please read and follow the instructions given for each question.</p>
<p>13.4. About word limits</p>	<ul style="list-style-type: none"> • Please pay particular attention to any word limits set for each question. • The Council must not read any part of the Applicant's response to a particular technical question that response beyond the word limit, regardless of the merits of that part of the response.
<p>13.5. About cross-referencing</p> <ul style="list-style-type: none"> • Between responses to different technical questions • To any attachments 	<p>Do not cross-reference to other questions and/or to any attachments unless clearly permitted or required.</p>
<p>13.6. Use of bullet points, abbreviations, short words</p>	<ul style="list-style-type: none"> • Bullet points and use of well-known abbreviations are acceptable. • Applicants may discard short words (e.g. 'the' etc.) as long as it does not affect the meaning.
<p>13.7. About use of any diagrams, pictures and tables included in the Applicant's responses</p>	<p>These should only be used to support the Applicant's written response, as any diagrams, pictures and tables will not be included in the word count.</p>
<p>13.8. Sequence in which each Applicant must sequence its responses to the technical questions</p>	<p>In the same order as the questions are presented.</p>
<p>13.9. Further information</p>	<p>The Council and/or any other Permitted Purchaser may (acting reasonably) ask further questions and/or to seek further information or assurances before awarding any Call-off Contract to any Applicant if it becomes a Member Provider.</p>

Licences

Please state below the type(s) of Operator's licence that you currently hold (if you hold both types of licence, please complete all sections)

1. Operator licences held:

Private Hire Operator Licence Yes No

Licence number:

Valid from date:

Date of expiry:

Licensing Authority:

Are you aware of anything currently that might result in your Licence being suspended or revoked
Yes No

If yes please provide details

Restricted Private Hire Operator Licence (Home to School Only Licence) Yes No

Licence number:.....

Valid from date:.....

Date of expiry:.....

Licensing Authority:.....

Are you aware of anything currently that might result in your Licence being suspended or revoked Yes No

If yes please provide details

Standard National PSV Operator Licence Yes No

Standard National and International PSV Operator Licence Yes No

Licence number:.....

Valid from date:.....

Date of expiry:.....

Are you aware of anything currently that might result your Licence being suspended or revoked Yes No

If yes, please provide details

In order to pass this section Applicants must hold either a Private Hire Operator Licence or a PSV Operator Licence which Applicants must submit evidence of at the time at which they upload this document

The Council must fail an Applicant if it does not hold any of the required licences described above.

If the Applicant wishes to subcontract relevant parts of the services to another entity, the Council may undertake further checks regarding the holding of the licences in relation to a proposed subcontractor.

ICO registration

2. Confirm that the Applicant has registration with the Information Commissioner's Office as a data controller. Indicate the Applicant's registration number including the 'from' date and the expiry date.

In order to pass this section Applicants must be registered with the ICO.

The Council must fail an Applicant if it does not hold that registration.

If the Applicant wishes to subcontract relevant parts of the services to another entity, the Council may undertake further checks regarding the ICO registration in relation to a proposed subcontractor.

Technical and Operational Abilities

These questions concern your organisation's ability to complete any passenger transport contracts on behalf of Sandwell MBC

3. Please describe the maintenance, licensing and contractual compliance management systems, policies, standards and procedures you have in place to ensure uninterrupted passenger transport contract delivery.

Your response must cover all of the following areas:

- a) Process for recording fleet management and compliance.
- b) Vehicle Tax, MOT and Insurance.
- c) LOLER certificates (if applicable).
- d) Driver's daily walk around checks.
- e) Defect reporting.
- f) Record of action taken to rectify faults.
- g) Monitoring the roadworthiness of vehicles.
- h) Records confirming appropriate first aid kit for the specific vehicle is onboard with adequate signage – frequency of checks.

Response: (word limit 750)

To be evaluated by the Council on a pass-fail basis, according to the professional judgement of the Council's evaluators.

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to satisfactorily provide services within the scope of services of each Lot for which the Applicant is applying, without creating unreasonable risks of serious adverse consequences for the Council and/or any service user.

4. Please describe your methods and frequency for researching / investigating / planning ahead for localised disruption both within Sandwell and out-of-borough, to ensure uninterrupted passenger transport contract delivery.

Your response must cover all of the following areas:

- a) Planned roadworks.
- b) Published events (i.e., road closures due to events).
- c) Disruption caused by weather events (flooding, road closures, etc...).
- d) Disruption caused by Police Activity.
- e) Any other 'avoidable' disruption.

Response: (word limit 250)

To be evaluated by the Council on a pass-fail basis, according to the professional judgement of the Council's evaluators.

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to satisfactorily provide services within the scope of services of each Lot for which the Applicant is applying, without creating unreasonable risks of serious adverse consequences for the Council and/or any service user.

5. Please submit the Applicant's service continuity plan relevant to the services applicable to this Flexible Purchasing System.

Response: (word limit 500)

To be evaluated by the Council on a pass-fail basis, according to the professional judgement of the Council's evaluators.

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to satisfactorily continue to provide services within the scope of services of each Lot for which the Applicant is applying during any force majeure type situations.

In particular,

Whether the response properly addresses all of the following areas, and including what you would do **prior to the start of the route and during a journey in the event of a vehicle breakdown:**

- Reporting methods regarding vehicle faults and breakdowns for drivers / passenger assistants
 - a) Including how changes in service provision would be communicated to the Council's Transport Assistance Service (TAS), the passenger and their parent / carer.
- Contingency plans for vehicle breakdowns
 - b) How the passenger(s)' needs would be communicated to the replacement transport staff (if replacement staff would be used).
 - c) How any passenger(s)' equipment would be transferred to the replacement vehicle and communicated to the replacement transport staff (if replacement staff would be used).
 - d) How any required passenger, vehicle and route information would be shared with the replacement transport staff (if replacement staff would be used).

Whether the response properly addresses staff absences and appropriate cover.

6. Effective communication is key to the efficient running of transport services on behalf of the Council. You will communicate with children and young people, parents / carers, learning establishments, transport staff and the Travel Assistance Service.

Please explain how you will engage with all stakeholders:

- a) children and young people.
- b) parents and carers.
- c) schools / education establishments.
- d) Travel Assistance Service.
- e) Other operators (i.e., sub-contracted arrangements).

Response: (word limit 250)

To be evaluated by the Council on a pass-fail basis, according to the professional judgement of the Council's evaluators.

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to satisfactorily provide services within the scope of services of each Lot for which the Applicant is applying, without creating unreasonable risks of serious adverse consequences for the Council and/or any service user.

Passenger Satisfaction, Safeguarding and Health and Safety

These questions concern your prioritisation of the passenger's experience, safety and wellbeing.

7. The Council requires consistency of drivers and passenger assistants (PAs) on all routes due to the specific needs of our passengers. Please describe your organisation's process for providing replacement staff in the event of staff illness or unavailability.

Your response must cover all of the following areas:

- a) How would any changes be communicated to TAS, the passenger and their parent / carer.
- b) How the required passenger, vehicle and route information would be shared with the replacement transport staff.
- c) How the passenger's needs and / or equipment requirements would be communicated to the replacement transport staff.
- d) Differences in your approach between short-term, short-notice replacements and longer-term replacement transport staff teams.

Response: (word limit 500)

To be evaluated by the Council on a pass-fail basis, according to the professional judgement of the Council's evaluators.

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to satisfactorily provide services within the scope of services of each Lot for which the Applicant is applying, without creating unreasonable risks of serious adverse consequences for the Council and/or any service user.

8. A 'meet and greet' is essential to understand and support any passenger's specific needs prior to the start of their transport. Please explain how you will carry out your meet and greet responsibilities.

Your response must cover all of the following areas:

- a) Matching the most appropriate vehicle(s) with the passenger.
- b) Matching the most appropriate staff with the passenger.
- c) Ensuring the passenger's equipment requirements are understood, recorded and regularly reviewed.
- d) Ensuring the passenger's needs can be completely met.
- e) Ensuring all relevant completed paperwork is returned to TAS within a specified timescale.
- f) Your process for completing meet and greets which may be required when changes are made to a contract.

Response: (word limit 750)

To be evaluated by the Council on a pass-fail basis, according to the professional judgement of the Council's evaluators.

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to satisfactorily provide services within the scope of services of each Lot for which the Applicant is applying, without creating unreasonable risks of serious adverse consequences for the Council and/or any service user.

9. Describe your organisation's process for handling safeguarding disclosures and reporting concerns.

Your response must cover your process/es for handling all of the following areas:

- a) a safeguarding disclosure **from** a passenger to a member of your staff.
- b) safeguarding concerns **raised by your member of staff** about a passenger.
- c) safeguarding concerns **raised by your member of staff** regarding parents / carers / families.

Response: (word limit 750)

To be evaluated by the Council on a pass-fail basis, according to the professional judgement of the Council's evaluators.

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to satisfactorily provide services within the scope of services of each Lot for which the Applicant is applying, without creating unreasonable risks of serious adverse consequences for the Council and/or any service user.

10. Anyone undertaking a role that involves contact with, or responsibility for, children, young people and adults should be taken through a safer recruitment process. It is a vital part of creating a safe and positive environment and making a commitment to keep children, young people, and adults safe from harm.

Please can you demonstrate how your organisation will adhere to the following requirements of safe recruitment and best practice when recruiting staff:

- a) Application forms.
- b) Self-disclosure.
- c) Robust interviews that cover safeguarding, equality, and diversity knowledge and skills.
- d) Reference checks.
- e) A thorough induction process.
- f) Verification of qualifications and experience.
- g) Risk assessments.
- h) Once the person is in the role, there should be a probationary period and review, as well as regular safeguarding training that includes safeguarding adults at risk.

Please submit the Applicant's recruitment policies and procedures. Such documents will not be taken into account in determining the word limit.

Response: (word limit 750)

To be evaluated by the Council on a pass-fail basis, according to the professional judgement of the Council's evaluators.

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to properly recruit to satisfactorily provide services within the scope of services of each Lot for which the Applicant is applying, without creating unreasonable risks of serious adverse consequences for the Council and/or any service user.

11. Describe your organisation's process for handling complaints / concerns.

Your response must cover your process for addressing all of the following areas:

- a) passenger complaints.
- b) parent / carer complaints.
- c) school / educational establishment complaints.
- d) concerns from the Council (Travel Assistance Service)

Response: (word limit 500)

To be evaluated by the Council on a pass-fail basis, according to the professional judgement of the Council's evaluators.

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to satisfactorily handle complaints in a fair and timely manner.

12. a)

Some passengers may display challenging, abusive and / or aggressive behaviour including, but not limited to spitting, slapping, punching, shouting, swearing and name calling. This behaviour may be directed at members of staff or other pupils in or around the vehicle. It is important that any Driver and Passenger Assistant assigned to work on any vehicle understand this and is trained to deal this type of behaviour.

As such, all of the Council's contracts for passenger transport work are underpinned by the 'TAS Passenger Charter'. The Charter is provided as part of the Service Specification within this invitation. Please confirm that your Organisation will abide by the Charter.

Yes / No

11. b)

Please set out the process and procedures that you have in place to ensure that your staff know and understand how to deal with passengers with complex needs.

Your response must cover all of the following areas:

- a) Completing and actioning risk assessments.
- b) Working with parents / carers and schools to support passengers.
- c) Identifying and completing appropriate and necessary training.

Response: (word limit 500)

In relation to paragraph (a), the Council must reject the Application if the Applicant does not agree to the matters indicated.

In relation to paragraph (b):

To be evaluated by the Council on a pass-fail basis, according to the professional judgement of the Council's evaluators.

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to satisfactorily handle complaints in a fair and timely manner.

12. Any equipment used, including specialist harness(es), wheelchair tie-downs / restraints, child car seats, etc. for passenger use must be purchased brand-new from a reputable source and conform to the relevant ECE and BSI standards.

Any equipment purchased **must not be previously used, pre-owned or second-hand.**

Please describe your process/es for the following areas of operation:

- a) Purchasing of new equipment.
- b) Safe-storage.
- c) Safe installation.
- d) Staff training.
- e) Clear plans for the replacement of equipment reaching its end of life.

Please note that providing copies of documents or booklets / sales brochures as appendices, or reference to such alone will not be accepted as a full response to this question.

Response: (word limit 500)

To be evaluated by the Council on a pass-fail basis, according to the professional judgement of the Council's evaluators.

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to satisfactorily handle complaints in a fair and timely manner.

Training and Quality

These questions concern your competency, professionalism and general approach to undertaking passenger transport contracts on behalf of Sandwell MBC

13. Please provide evidence of the Applicant's staff training arrangements for staff to be engaged in relation to relevant services you will use for the provision of services under this contract with the Council will be trained at least annually to use any equipment associated with the vehicles provided, and any passenger specific equipment such as car seats, harnesses, seat-belt extenders, wheelchair tie-downs / restraints etc.

Your response must cover all of the following areas:

- a) Training logs.
- b) Training methods.
- c) Training materials.
- d) Legislative and manufacturer updates.

Please upload relevant policies and procedures and example training logs.

To be evaluated by the Council on a pass-fail basis, according to the professional judgement of the Council's evaluators.

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to satisfactorily handle complaints in a fair and timely manner.

If the training procedures do not indicate to the Council's reasonable satisfaction that relevant staff will receive training at least annually to use any equipment associated with the vehicles provided, and any passenger specific equipment such as car seats, harnesses, seat-belt extenders, wheelchair tie-downs / restraints etc: the Council must fail the Applicant.

14. First Aid accreditation is mandatory for **all** Drivers and Passenger Assistants working on Council passenger transport contracts.

- Emergency First Aid at Work (EFAW)
 - The EFAW certificate is valid for three years and the Health and Safety Executive recommend First Aiders keep their basic skills up to date, with **first aiders undertaking annual refresher training** (normally 3 hours). However, the re-qualification when they reach the three-year expiry will be the one-day EFAW course taken again.
- Paediatric Emergency First Aid at work
 - For those involved in transporting early years children (0-5 years), then a Paediatric EFAW certificate **will** be required.

Please confirm that every member of staff working on the Council's passenger transport contracts will hold the applicable valid first aid certification:

Yes / No

Evaluation criteria

The Council must fail the Applicant if it cannot provide the relevant confirmation.

15. Drivers and Passenger Assistants may be required to undertake additional training based on the medical / behavioural requirements of an individual passenger who needs transport, as required by either the Local Authority or a school / educational establishment.

The training will normally be tailored to the needs of an individual passenger but may be of a generic nature in some cases. Training may take the form of directed face-to-face or online training to suit individuals needs of children and young people.

Please confirm that every member of staff working on passenger transport contracts will be made available to undertake any and all training as and when required.

Yes / No

Evaluation criteria

The Council must fail the Applicant if it cannot provide the relevant confirmation.

16. Please complete the Council's GDPR Self-Assessment which will be available online.

Also please answer both of the following:

- You discover that paper records containing personal information in relation to a child and their family have been left in the minibus. What action do you take?
- A child no longer requires transport and the Council has advised you that the service you provide is no longer required. Please confirm what action you would take in relation to the information you hold about the child and family.

Response: (word limit 500 per question)

Evaluation criteria:

Whether the Applicant's response demonstrates (to the reasonable satisfaction of the Council) a capability to satisfactorily hold and process personal data of service user and other affected individuals in accordance with relevant law and ICO requirements.

Application Declaration

Application Declaration instructions

- The Applicant must read this Application Declaration and sign it (or where relevant, arrange for it to be signed below by a suitably authorised representative) before submitting its Application.
- The Council will not regard the Applicant's response to this Application Form to have been properly submitted without this Application Declaration having been properly signed, completed and submitted.
- Any amendments made by or on behalf of the Applicant (e.g. or qualifications, deletions, additions or conditions to any of the statements below, whether handwritten or otherwise) will result in the Council rejecting the Applicant's Application.
- This declaration is addressed to the Council.

The Application Declaration

1. The person signing this Application Declaration (below) hereby does so as follows
 - (a) **If the Applicant is a sole trader:** as the Applicant
 - (b) **In all other cases:** on behalf of the Applicant, as its properly authorised representative
2. **Rules:** the Applicant accepts and agrees to be bound by the Rules in relation to the Flexible Purchasing System as amended from time to time:
 - (a) While the Council is evaluating the Applicant's Application; and
 - (b) For as long as the Applicant remains a Member Provider on any Lot of the Flexible Purchasing System.
3. **Have requirements in place:** if the Applicant's Application is successful, the Applicant
 - Will have in place at all times while applying for any Call-Off Contract with any Permitted Purchaser under any Lot; and
 - Will have in place at all times while providing any services under any Call-Off Contract under the Flexible Purchasing System; and
 - Will provide evidence to any Permitted Purchaser (promptly on request) of the Applicant's complianceAll insurance, accreditations, policies, s (or the like of any of these) which the Applicant must have in place at all times under the contract when supplying the relevant services under a Call-off Contract.
4. **Warranties and representations:** the Applicant warrants and represents to the Council and to each other Permitted Purchaser
 - (a) That any facts contained in the Applicant's Application
 - Are materially true and correct; and
 - Are not reasonably likely to seriously mislead the Council in evaluating the ApplicationTo the best of the knowledge of the Applicant, having made reasonable checks.
 - (b) That the Applicant has prepared its Application honestly, and with necessary skill, care and diligence.

5. **Obligation to keep informed:** the Applicant agrees to inform the Council (through the Council's electronic procurement system) if any of the following applies before either
- The Council and/or any Permitted Purchaser enters into any Call-Off Contract with the Applicant (as a Member Provider) under any Lot of the Flexible Purchasing System; or
 - The Council abandons this Application Procedure
- (the Applicant must do so promptly on becoming aware of the matter)
- (a) **Disclosures becoming untrue etc.:** any significant matter disclosed in the Applicant's Application being (or becoming) materially untrue, incorrect, or reasonably likely to significantly mislead the Council.
- (b) **Affecting ability to enter contract, carry out obligations:** any event or circumstance materially and adversely affecting the Applicant's ability
- To enter into any Call-off Contract with any Permitted Purchaser; and/or
 - To properly carry out its obligations under any Call-off Contract with any Permitted Purchaser.
- (c) Any event or circumstance which would give the Council grounds to reject the Applicant's Application according to section 30.
- (d) **If the Applicant is a Consortium:** any changes to the composition of the Consortium.
- (e) **If the Applicant is a Special Purpose Vehicle:** any changes to the shareholding, membership or the like of the Special Purpose Vehicle.
6. **Statements relating to non-canvassing:** all of the following
- (a) The Applicant represents to the Council and to each other Permitted Purchaser that (to the best of the Applicant's knowledge, having made reasonable checks) no person purporting to act on behalf of the Applicant has canvassed any Personnel of the Council (or any other person acting or purporting to act on behalf of the Council) in relation to the Applicant's Application.
- (b) The Applicant shall not canvas (or direct or knowingly permit any other person acting on its behalf to canvas) any Personnel of the Council in relation to the Applicant's Application.
7. **Statements relating to non-collusion:** the Applicant's Application is a genuine application. Without limiting this, no person purporting to act on behalf of the Applicant has done or attempted or agreed to do any of the following on behalf of the Applicant
- In relation to this Application Procedure
 - To the best of the Applicant's knowledge, having made reasonable checks.
- (a) Fixed the Applicant's Application (in full or part) to comply with any formal or informal agreement or arrangement with any other person. **Exception:** with any other member of any Consortium or Special Purpose Vehicle in connection with this Application Procedure, if relevant to the Applicant.
- (b) Directly or indirectly given or offered any inducement or benefit of any kind
- To any other person (other than any genuine member or shareholder or the like of any Consortium or Special Purpose Vehicle to which the Applicant relates)
 - Whether in the form of money or otherwise
 - Regardless of whether the Applicant gets anything in return
 - Under which that other person has agreed or has been encouraged to do either of the following
 - Not to submit an Application to the Flexible Purchasing System, or
 - To submit an Application in a particular way (e.g. a particular price) in return for that inducement or other benefit.

- (c) Disclosed or made available any part of the Applicant's Application (other than those parts included in this Application Form) to a person other than
- The Council or its authorised agents.
 - Anyone genuinely connected with the Applicant (or, if the Applicant is a Consortium or Special Purpose Vehicle, any shareholder, member or the like of it) who needs to know in relation to the preparation of the Application and this Application Procedure generally, This may include any of its officers, employees, contractors, advisors, banks or insurers to whom the Applicant has made relevant disclosures on a need-to-know basis.
 - Any other person to whom the Applicant was obliged by Law to disclose the relevant information.
8. **Acknowledgements regarding canvassing and collusion:** the Applicant understands that any such canvassing and/or collusive conduct referred to in paragraph 5 and paragraph 6 shall be regarded as a serious matter by the Council. The Council does not exclude any right or remedy in relation to such conduct, including rejection of the Applicant's Application.
9. **Reliance on Application:** the Applicant understands that the Council and other Permitted Purchasers will rely on information disclosed by the Applicant in its Application. As a result (and without limiting the implications of this):
- The Council or other Permitted Purchaser is likely to use that information to assess the Applicant's suitability to be awarded a contract.
 - The Council or other Permitted Purchaser is likely to incur losses if any such information is inaccurate, incomplete, or otherwise reasonably likely to mislead.
10. **Application Instructions:** the Applicant has read and understood this Application Form, including the Application Instructions. In particular, the Applicant acknowledges:
- The Council's right to abandon, delay or change all or any part of this Application Procedure.
 - The limits and exclusions on the Council's liability to the Applicant under this Application Procedure.
11. **Data protection:** if the Applicant has disclosed or otherwise made available any personal data of any individual in its Application, the Applicant has a lawful basis for making that disclosure (e.g. consents of the relevant individual, or other basis) according to the Data Protection Legislation.
12. **Consideration:** the Applicant agrees that its invitation to submit an Application in connection with this Application Procedure is adequate consideration for the warranties, representations, obligations and the like of the Applicant indicated in this Application Form, particularly this Application Declaration.
13. **If the Applicant is a Consortium:** the lead member has sufficient authority to bind each member of the Consortium
- For the purposes of submitting the Application and this Application Procedure generally.
 - For the purposes of any contract which the Applicant enters with the Council as a result of this Application Procedure.

14. **Statement by the signatory of this Application Declaration on behalf of the relevant Applicant:** the relevant individual is authorised to sign this Application Declaration to legally bind the Applicant.

Signature

Electronic/typed signatures are acceptable

Name of signatory (please print)

Role/title of signatory (please print)

Applicant which the signatory represents (please print)

If a Consortium, name of the lead member (please print)

Date (please print)

Summary of required submissions

a

14. Submission of Applications

14.1. Document checklist

- This Application Form properly completed with all questions properly answered
- Any supplementary pages required to answer any questions, any accounts etc.
- Signed Application Declaration

14.2. How the Council may treat missing documents

- The Council may (but shall not be obliged to) seek missing documents from an Applicant via the clarification process.
- The Council must not do so in a way that breaches relevant Law on procurement.
- See section 22 in the Application Instructions.

14.3. How the Applicant must submit its Application

Electronically on the Council's electronic procurement system, according to accompanying directions.

14.4. When submission is to be made

- **For the first intake:** see paragraph 4.4.
- **For the later intakes:** see paragraph 1.8.
- See paragraph 4.5 regarding late and/or incomplete submissions.

Application Instructions

15. Completing Applications

15.1. Language for all responses	English only.
<p>15.2. How the Council will regard any attachments accompanying its Application</p> <p>Examples: any supplementary material, marketing materials (e.g. brochures), graphics which the Applicant includes with its Application</p>	<ul style="list-style-type: none"> The Council will ignore them. Exception: to the extent the Council has clearly requested or permitted them in this Application Form.
<p>15.3. If this Application Form indicates any requirement to use a particular template (e.g. to complete answers in a particular box) in submitting a response to a question in this Application Form; and</p> <p>An Applicant's response does not strictly comply with that requirement</p>	The Council may ignore responses which do not comply with that requirement.
15.4. In relation to any 'yes-no' questions	Insert a 'Yes' or 'Y' or a 'No' or 'N' (in lower or upper case).within the box or in a suitable space nearby to clearly indicate the response, except as otherwise instructed.
15.5. How to respond to any multiple-choice questions	<p>Do any of the following to indicate the Applicant's response (within the box or in a suitable place nearby to clearly indicate the response) except to the extent otherwise instructed:</p> <p>Copy and paste the ✓ symbol.</p> <p>Type in an 'x' (upper or lower case).</p>
15.6. Rights of the Council if an Applicant's Application fails to meet any part of these Application Instructions	<p>The Council may (but shall not be obliged to) seek resubmission by the Applicant as a clarification, subject to the following</p> <ul style="list-style-type: none"> These Application Instructions, particularly those relating to clarifications. Any specific obligation of the Council to ignore any part of the Application, as indicated in these Application Instructions. Requirements of public procurement law.

16. Problems with the Council's electronic procurement system

<p>16.1. Instructions to each Applicant if it has technical problems with the Council's electronic procurement system</p> <p>(e.g. in communicating with the Council, in submitting documents)</p>	<p>If Applicants experience technical difficulties with the Council's procurement portal, they are requested to contact at least one of the following:</p> <p>Procurement_SMBC@sandwell.gov.uk</p> <p>Suppliers_SMBC@sandwell.gov.uk</p>
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17. Abandoning, delaying or changing the Application Procedure

17.1. The Council reserves the right to do any of the following for any reason in relation to this Application Procedure

- (a) Abandon
- (b) Delay
- (c) Changes

Abandon this Application Procedure in full or in part.

Delay this Application Procedure.

Make any changes to this Application Procedure including without limitation:

- Changes to the minimum requirements
- Changes to the timetable (subject to any minimum periods required in the Public Contracts Regulations 2015)
- Changes to the quality (technical) questions including addition or removal of questions, and including changes to any evaluation criteria applicable to any of them
- Changes to the Service Specification
- Changes to the Council's Call-Off Contract terms and conditions.

17.2. Liability of the Council for taking any of the action described in paragraph 17.1

See section 25 of these Application Instructions.

18. Change of an Applicant's circumstances

18.1. Matters on which each Applicant must keep the Council informed

The Applicant must do so

- After the Applicant has submitted its Application but;
- Before the Council informs the Applicant of the outcome of the Application

- The Applicant must keep the Council informed
 - About events or circumstances that **significantly affect** the Applicant's Application.
 - Doing so promptly on becoming aware of the matter
 - Doing so through the Council's electronic procurement system
- See paragraph 18.2 for examples (not an exhaustive list).

18.2. Examples of events or circumstances that **significantly affect** the Applicant's Application for the purposes of paragraph 18.1

(not an exhaustive list of examples)

- (a) Rejection events
- (b) If the Applicant is a Consortium

Any event or circumstance indicated in in section 30 affecting the Applicant.

- Changes to the membership of the Consortium; and/or
- Any event or circumstance indicated in in section 19 affecting the Applicant.

(c) If the Applicant is a Special Purpose Vehicle

- Changes to the shareholding or membership of the special purpose vehicle, and/or
- Any event or circumstance indicated in in section 20 affecting the Applicant.

19. If the Applicant is a Consortium

19.1. Whether a Consortium may take part in this Application Procedure

- It may do so.
- The Applicant's status as a Consortium shall not in itself be regarded by the Council as a particular advantage or disadvantage.

19.2. Liability of the Consortium members under any Call-Off Contract it enters under the Flexible Purchasing System

- They shall have joint and several liability.
- This means one, or some, or all Consortium members may (as the relevant Permitted Purchaser chooses) be held liable for the Consortium's debts and other liabilities arising in connection with that Call-Off Contract.

19.3. Rules in relation to replacement of Consortium members from time to time

A new Application is required to take account of the replacement (whether before or after the Council awards the Consortium a place as a Member Provider on any Lot of the Flexible Purchasing System).

20. Use of a Special Purpose Vehicle

20.1. Whether a Special Purpose Vehicle may take part in this Application Procedure

- Yes.
- The Applicant's status as a Special Purpose Vehicle shall not in itself be regarded by the Council as a disadvantage or advantage.

20.2. Liability of the shareholders or members under any under any Call-Off Contract it enters under the Flexible Purchasing System

Only to the extent they have entered any guarantee in relation to the debts or other liabilities of the Special Purpose Vehicle arising under the contract.

20.3. If any question in the Application Form relates to a shareholder, member or the like of the Special Purpose Vehicle

That shareholder or member of the Special Purpose Vehicle would be regarded as a subcontractor of the Special Purpose Vehicle.

21. Queries raised by the Applicant

21.1. Purposes for which an Applicant **may raise queries** with the Council in relation to this Application Procedure

Any and all of the following, as relevant

- To enable the Applicant to have a better understanding of any aspect of this Application Procedure, whether relating to the process (e.g. the questions, timetable, these Application Instructions, the Service Specification, accompanying Call-Off Contract terms and conditions etc.).
- To enable the Council to make such changes to any aspect of this Application Form (as it deems appropriate at its absolute discretion) in light of queries that are raised.

Such changes may (for example) be to correct errors, clarify ambiguities, to make the Application Form more coherent and/or to better align the Service Specification and/or any accompanying Call-Off Contract terms and conditions with market expectations.

21.2. Purposes for which an Applicant **may not raise queries** with the Council in relation to this Application Procedure

To negotiate specific changes to any aspect of this Application Form.

21.3. How an Applicant must raise any queries which it has

- Only through the Council's electronic procurement system (and in no other way).
- **Exception:** see section 16 of these Application Instructions for arrangements if there are difficulties in relation to the use of that system.

21.4. How the Council will respond to queries

- Only through the Council's electronic procurement system (and in no other way).
- **Exception:** to respond to any difficulties with that system which the Applicant has raised under section 16 of these Application Instructions.

21.5. Whether the Council may request further information from an Applicant before answering the Applicant's query

- The Council may do so, acting reasonably.
- The Council may delay responding until that information is properly provided. It may refuse to respond if that information is provided after any deadline for Applicants to raise queries (see the process timetable).

21.6. **Confidentiality arrangements** in relation to an Applicant's query and the Council's response to it

(a) Whether the query and the Council's response to it is to be considered confidential

- No.
- **Exceptions:** where all of the following apply
 - The Applicant has requested the query and/or the response to it to be treated confidentially by the Council; and
 - The Council has consented in writing at its discretion to accept confidentiality obligations. In this case, section 27 shall apply to the Council's confidentiality obligations.

(b) If the Council refuses the Applicant's request for confidentiality in relation to the query and/or the Council's response

- The Council shall give the Applicant **2 business days** to withdraw its query from the Council's electronic procurement system.
- If the Applicant fails to withdraw its query in this manner after the end of that deadline, the Council may treat the query and the Council's response to it as non-confidential.

(c) If an Applicant's query (and/or the Council's response to it) is disclosed publicly by the Council (e.g. on its electronic procurement system)

The Council may (but shall not be obliged to) take further steps to amend the query to avoid that Applicant being identified by name or by inference.

Regardless of whether the Applicant has requested confidentiality

22. Clarifications by the Council

22.1. Purposes of any clarification sought by the Council from an Applicant

To enable the Council to be better informed on that Applicant's Application.

To enable the Council to adjust its evaluation of the Application (if as a result of the Applicant's response to the Council's clarification questions).

22.2. Examples of purposes for paragraph 22.1 (not an exhaustive list)

- To clarify any ambiguity and/or incompleteness in any part of the Applicant's Application.
- To confirm the Applicant's compliance with relevant requirements of the Council in this Application Form.

22.3. Restrictions on the Council's right to seek clarifications and to use information obtained from the Applicant

The Council must not do so in a way that breaches the Law.

22.4. How the Council may use further information obtained from an Applicant as a result of a clarification which the Council has sought from the Applicant

To pass the Applicant on a particular question where it would have otherwise failed, or vice versa, as relevant according to the professional judgement of the Council's evaluators.

22.5. Duty of the Council to seek clarification from an Applicant

- No duty to do so.
- This applies even if the Applicant becomes aware of an error in its Application after submission and requests a clarification from the Council.
- Without limiting this, the fact the Council has a negative opinion on any aspect of the Applicant's Application does not in itself impose any duty on the Council to seek clarifications from the Applicant on that matter.

22.6. Consequence if the Council does not seek clarification from an Applicant on a particular issue

This shall not in itself imply that the Council regards the Applicant's response on the issue to be satisfactory and/or clear.

22.7. How the Council will make contact with the Applicant if the Council wishes to raise a clarification

- Only through the Council's electronic procurement system.
- It may be followed up with a telephone call or face-to-face meeting, as appropriate.

<p>22.8. Applicant's responsibilities regarding clarifications which the Council may seek</p>	<ul style="list-style-type: none"> To ensure its contact information is correct and up-to-date on the Council's electronic procurement system; and To regularly check the Council's electronic procurement system to check for requests clarifications. <p>The Council is not responsible for any failure by the Applicant to respond to the Council's request for a clarification by the relevant deadline.</p>
<p>22.9. How the Applicant is to respond to the Council's request for clarification</p>	<p>Only through the Council's electronic procurement system.</p>
<p>22.10. Deadline for an Applicant to respond to the Council's request for clarifications</p>	<p>As communicated by the Council, acting reasonably.</p>
<p>22.11. Consequences if the Applicant fails to respond to the Council's request for clarification by the deadline in paragraph 22.10</p>	<p>The Council may (but shall not be obliged to) draw conclusions in relation to the issue on which it seeks clarification which are least advantageous to the Applicant for the purpose of evaluating the Application.</p>
<p>22.12. Confidentiality arrangements in relation to</p> <ul style="list-style-type: none"> The Council's request for clarification; and The Applicant's response to that request 	<p>As indicated in section 27.</p>
<p>22.13. Character of an Applicant's response to a request for clarification by the Council according to this section 22</p>	<ul style="list-style-type: none"> It shall be deemed to amend the relevant part of the Applicant's Application. The response to the request shall override any other part of the Application to the extent of any inconsistency.

23. Evaluation of Applications

<p>23.1. Whether any member of the Council's evaluation team is to be any individual who is not an employee of the Council</p>	<ul style="list-style-type: none"> The Council may from time to time appoint individuals who are not employees of the Council or another Permitted Purchaser. This is subject (where relevant) to the relevant individuals meeting normal requirements for appointment to this activity (e.g. sufficient subject matter expertise, accepting obligations to observe confidentiality, impartiality and objectivity).
<p>23.2. Whether the Council can disclose the names of individuals on its team appointed to evaluate the Applicant's Application</p>	<p>It cannot do so.</p>
<p>23.3. Consequences if an Applicant contacts a member of the evaluation team to discuss matters relevant to this Application Procedure</p>	<ul style="list-style-type: none"> It is likely to be regarded as an act of serious misconduct by the Applicant for the purposes of paragraph 30.4. Therefore, it is likely to result in the rejection of the Applicant's Application.
<p>23.4. If an Applicant is directly contacted by a person claiming to be a member of the evaluation team other than through the Council's electronic procurement system</p>	<ul style="list-style-type: none"> The Council does not expect any Applicant to be contacted in this way. Please report the incident promptly via the Council's electronic procurement system.

24. Feedback

24.1. Provision of feedback to Applicants

- The Council will provide feedback to an Applicant (whether successful or unsuccessful) but only to the extent required by Law.
- The Council shall only provide any other feedback which is not specifically required by Law at the Council’s discretion. The Council is does not recognise any further obligation to do so.

25. Liability of the Council

25.1. The liability of the Council and its Personnel (whether arising in tort, contract, statute or otherwise) to an Applicant **is excluded to the fullest extent permitted by Law** for all of the following

(a) Abandonment

The Council’s abandonment of this Application Procedure or the Flexible Purchasing System in full or part before any Permitted Purchaser enters into any Call-Off Contract, even if the Council has communicated its intention to award any operator a place on the Flexible Purchasing System, or even if a Permitted Purchaser has indicated its intention to award any Call-Off Contract to any Member Provider.

(b) Delay

Any delay in this Application Procedure by the Council, including evaluation delays, regardless of whether caused by the Council.

(c) Changes to the Application Procedure

The Council communicating to operators any lawful change to change any aspect of this Application Procedure before completion of the Application Procedure.

(d) Inaccuracy

- Any error or inaccuracy contained in this Application Form.
- This does not limit the Council’s liability for fraudulent misrepresentation.

(e) Failure by the Applicant to do any of the following

(i) Due diligence

To exercise its own due diligence in relation to this Application Procedure, including the preparation and submission of its Application.

(ii) Study Application Form

To carefully study all aspects of the Application Form.

(iii) Response

To satisfy itself of the accuracy and completeness of its Application.

(iv) Copy

To keep a copy of its Application.

(v) Raising uncertainties

To raise any uncertainties, complaints or the like (including any suggestion that any aspect of the Council's conduct has been unlawful) in a prompt manner when it first knew (or had reasonable grounds to know) of that conduct.

26. Costs

26.1. Costs in relation to this Application Procedure

The Council and each Applicant shall bear its own respective costs in relation to this Application Procedure.

27. Confidentiality, freedom of information

27.1. Confidentiality obligations of the Applicant to the Council in relation to this Application Form

None.

27.2. What information is Confidential Information of the Applicant for the purposes of this section 27

All information of the Applicant and/or their respective Affiliates

- In the Applicant's Application; and/or
- In any clarification information supplied by the Applicant in response to a request by the Council under section 22
- In any query
 - Described in section 21 which the Applicant raises
 - To the extent the Council has agreed to accept confidentiality obligations in relation to those queries according to paragraph 21.6(b)

Other than information described in paragraph 27.5.

27.3. If the Applicant is a Consortium

Reference to the Confidential Information of an Applicant includes that of each Consortium member and/or its respective Affiliates.

27.4. If the Applicant is a Special Purpose Vehicle

Reference to the Confidential Information of an Applicant includes that of each shareholder, member or similar of the Special Purpose Vehicle and/or its respective Affiliates.

27.5. What information of the Applicant is not Confidential Information of the Applicant for the purposes of this section 27

Information to which any of the following applies

- It is in the public domain at the time, other than as a result of the Council's breach of this section 27.
- Information which the Council obtains from a third party where the Council does not know or have reasonable grounds to believe that per third party is breaching confidentiality obligations owed to the Applicant.
- It is of a trivial nature.

27.6. Confidentiality obligations of the Council in relation to the Applicant's Confidential Information

All of the following:

- The Council must not disclose the Confidential Information to any third party, except to the extent permitted in paragraph 27.8.
- The Council must not use the Confidential Information for any other purposes unconnected with:
 - This Application Procedure; and/or
 - Any contract which the Council or anyone else enters with the Applicant as a result of the Application Procedure.

27.7. Duration of the Council's obligations in paragraph 27.6 in relation to any piece of Confidential Information

- For **3 years** from the date that piece of Confidential Information was first disclosed by the Applicant to the Council in connection with the Application Procedure; or
- For such longer or shorter period required by Law applying to that information.
- In any case, confidentiality obligations shall end in relation to that piece of Confidential Information immediately if and when that piece of Confidential Information enters the public domain other than due to breach by the Council.

27.8. Exceptions to the Council's obligations in paragraph 27.6 not to disclose the Applicant's Confidential Information

The Applicant may disclose that Confidential Information in any of the following circumstances

(a) Applicant's permission

Disclosure is made to a third party with the written permission of the Applicant.

(b) Other Permitted Purchaser

Disclosure is made to any other Permitted Purchaser.

(c) Personnel etc.

Disclosure is made to any Personnel, advisor, contractor or other agent of any of the following (on a strict need-to-know basis).

- The Council and
- Any other Permitted Purchaser.

But only on a strict need-to-know basis.

(d) Other public body

Disclosure is made to any public body authorised to review any aspect of this Application Procedure, including any Application.

(e) Required by Law

The Council is required by Law to disclose the Confidential Information, including under any FOI Act.

27.9. The extent to which the Applicant regards any information connected with its Application as 'commercially sensitive' for the purposes of any FOI Act

- As disclosed by the Applicant in its Application.
- This indicative only. It is not legally binding on the Council and/or any other Permitted Purchaser.

27.10. Consequences if the Council and/or any other Permitted Purchaser receives a request for information under any FOI Act involving information of the Applicant

(all of the following)

(a) Rights of the Council or other Permitted Purchaser

The Council or other Permitted Purchaser may make its own determination according to Law as to whether or not to provide that information to the person making the request.

(b) Extent to which the Council or other Permitted Purchaser is required to consult etc.

The Council or other Permitted Purchaser is not obliged under this Application Form to consult the Applicant or anyone else in relation to that request for information.

(c) Consequence if the Council or other Permitted Purchaser does consult the Applicant and/or anyone else

The Council or other Permitted Purchaser is not obliged under this Application Form to have regard to the views of the Applicant and/or that other person.

(d) To what this paragraph 27.10 is subject

It is subject to compliance by the Council and/or other Permitted Purchaser with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 to the extent that compliance is permissible and reasonably possible.

28. Data protection

28.1. Consequence for the purposes of the Data Protection Legislation if the Applicant discloses any personal data to the Council in its Application or otherwise in the course of this Application Procedure generally

- The Council shall be data controller in its own right in relation to that personal data.
- This is on the understanding that the Council will determine the use of that personal data. It will not be processing that personal data on behalf of the Applicant or anyone else.

28.2. Disclosures of personal data in the Application

If the Applicant has made available any personal data of any individual in its Application, the Applicant warrants to the Council and to each Permitted Purchaser that the Applicant has a lawful basis to make such personal data available in such circumstances, particularly under Data Protection Legislation.

28.3. Purposes for which the Council will use any personal data contained in the Applicant's Application

- Only for purposes of evaluating the Application and to enable it and/or any other Permitted Purchaser to award Call-Off Contracts under the Flexible Purchasing System; and
- For such other purposes as permitted by Law, particularly the Data Protection Legislation.
- Any of the above This may include sharing such personal data with other Permitted Purchasers, who must similarly limit their use of such personal data to the purposes described above.

29. Copyright

29.1. Copyright in this Application Form

Copyright and other intellectual property rights in this Application Form belong to the Council and/or its third party licensors.

29.2. Rights of use by the Applicant

- The Applicant may copy or otherwise use the copyright and other intellectual property rights in this Application Form only for purposes connected with its preparation (including its consideration and decision whether or not to prepare) of its Application.
- Except as indicated above, the Applicant obtains no property right or right to copy, modify or otherwise use the copyright or other intellectual property rights in this Application Form.

29.3. Copyright in the Applicant's Application

- Copyright and other intellectual property rights in the Applicant's Application belongs to the Applicant and/or its third-party licensors.
- On submission of its Application (including any responses to any request for clarification made under section 22), the Applicant grants (and shall cause its third party licensors to grant, where relevant) a licence in relation to the copyright and other intellectual property rights in the Applicant's Application (including such responses) as follows
 - The licence is granted to the Council and each other Permitted Purchaser.
 - It shall be a non-exclusive, royalty-free, perpetual and worldwide licence.
 - This licence shall allow the relevant licensee to use the relevant copyright and other intellectual property rights only for purposes genuinely connected with this Application Procedure and any Call-Off Contract entered (or proposed) in connection with the Flexible Purchasing System, and for no other purposes. Without limiting this, the licensee may not use the copyright and other intellectual property rights to compete with the Applicant and/or its Affiliates.
 - The licensee may assign or sublicense this licence with the Applicant's prior written consent, not to be unreasonably withheld.)

29.4. If the Applicant is a Consortium

Reference in this section 29 to the Applicant includes each Consortium member.

29.5. If the Applicant is a Special Purpose Vehicle

Reference in this section 29 to the Applicant includes each shareholder, member or similar in the Special Purpose Vehicle.

30. Rejection of Application

The Council **must reject** or **may reject** (as indicated) an Applicant's Application if any of the following events or circumstances applies to the Applicant and/or its Application

- **If the Applicant is a Consortium:** reference in this section 30 to the Applicant includes each Consortium member.
- **If the Applicant is a Special Purpose Vehicle:** reference in this section 30 to the Applicant includes each shareholder, member or similar in the Special Purpose Vehicle.
- **If the Council may reject the Application but is not required to do so and the Applicant has applied for more than one Lot:** the Council may reject the Application in relation to one (or some) Lots, but not all of them.
- Rejection of the Application does not in itself limit the Council's rights and remedies against the Applicant

30.1. Grounds for exclusion, requirements or permissions of the Law

- The Council **must** reject the Application if **required by Law** to do so, particularly in relation to the grounds for exclusion in section 10 and/or section 11.
- The Council **may** reject the Application if **permitted by Law** to do so, particularly in relation to the grounds for exclusion in section 10 and/or section 11..

30.2. Pass/fail

The Council **must** reject the Application if the Applicant fails in any pass-fail question in this Application Form.

30.3. Insurance requirements

The Council **must** reject the Application in the circumstances described in paragraph 9.3 in relation to insurance matters.

30.4. Misconduct

The Council **must** reject the Application if the Council has reasonable grounds to believe that the Applicant has been involved in serious misconduct in connection with this Application Procedure.

Serious misconduct includes without limitation:

- Collusion with other Applicants.
- Canvassing and/or offering gifts to Personnel of the Council which are unlawful or contrary to any policy of the Council.

30.5. Scandal

The Council **may** reject the Application if the Applicant or its Affiliate or any member of their respective senior management has been involved in a serious public scandal (whether in connection with this Application Procedure or otherwise) in circumstances where a reasonable person would not expect the Council to accept the Applicant as a Member Provider on the Flexible Purchasing System.

30.6. Discontinuation of business activities	The Council may reject the Application if the Applicant publicly announces its intention to discontinue its current business activities which are relevant to this Application Procedure.
30.7. Misrepresentation, withheld information	The Council may reject the Application if the Applicant has made a misrepresentation in its Application that would materially affect the decision of a reasonable person in the Council's position in relation to this Application.
30.8. The Council is permitted to reject the Application (and is not required to do so unless indicated) if any of the following applies to the Applicant during the Application Procedure	
(a) If the Applicant is an individual operating as a sole trader	<p>The Council must reject the Application if any of the following applies to the Applicant:</p> <ul style="list-style-type: none"> • He/she dies. • He/she becomes bankrupt. <p>The Council may reject the Application if:</p> <ul style="list-style-type: none"> • He/she is convicted of any crime of violence or dishonesty, any crime relevant to safeguarding (where the activities in connection with the supply of the relevant goods, services and/or works involve safeguarding issues) or any other offence resulting in a prison sentence (whether suspended or served). • He/she suffers total and permanent disability. • He/she becomes a patient within the meanings of section 145(1) of the Mental Health Act 1983 or equivalent meanings in other similar replacement legislation or in equivalent legislation applying to the Applicant in his/her relevant jurisdiction.
(b) If the Applicant is operating as a company	<p>The Council must reject the Application if any of the following applies:</p> <ul style="list-style-type: none"> • There are reasonable grounds for the Council to believe that the Applicant is not properly incorporated or otherwise constituted in its relevant jurisdiction. • The Provider is subject to <ul style="list-style-type: none"> - A court order (or equivalent) or - A resolution or similar decision Requiring the Provider to be dissolved and/or wound up.
(c) If the Applicant is operating as a company	The Council may reject the Application if the Applicant is subject to an order or resolution requiring the appointment of an administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Applicant and/or its assets.

(d) Unable to pay debts

The Council **may** reject the Application if the Applicant is unable to pay his/her or its debts (taking into account its contingent and prospective liabilities) as defined in any applicable Law (whether such debts individually or in aggregate equal any minimum required under relevant bankruptcy or similar legislation from time to time) as they fall due and has no reasonable prospect of doing so.

(e) Composition

The Council **may** reject the Application if the Applicant enters into a composition or other arrangement with his/her or its creditors.

(f) Right to operate

The Council **must** reject the Application if the Applicant is not permitted to operate in the UK for any reason.

30.9. Other

- Any other reason indicated elsewhere in this Application Form.
- Whether the Council **may or must** reject the Application is as indicated elsewhere in this Application Form.

31. Interpretation of this Application Form

31.1. Order of priority

These Application Instructions override any other part of this Application Form to the extent of any inconsistency.

31.2. How this Application Form (including these Application Instructions) are to be read

At all times subject to Law, which shall override anything in this Application Form to the extent of any inconsistency.

32. Definitions

Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in this Application Form), the following words and expressions shall have the following meaning when used in this Application Form

Definition	Defined term
Affiliate	<ul style="list-style-type: none">• In relation to a person, any other entity which controls that person, is controlled by that person or is under the same common underlying control as of that person.• A person ('X') will be regarded as having 'control' over another person ('Y') if X alone (and without being subject to the further direction of any other person) directly or indirectly possesses the power (whether by the direct or indirect holding of voting shares or otherwise) to direct the management and policies of Y on all matters.
Applicant	An economic operator or Consortium which submits a is invited to submit a response to this Application Form.
Application	The response of an Applicant to this Application Form, including: <ul style="list-style-type: none">• The Applicant's completed Application Form.• The Applicant's response to any clarification question raised by the Council in connection with this exercise.

Definition	Defined term
Application Declaration	The part of this Application Form headed 'Application Declaration'.
Application Form	This Application Form and accompanying documents (e.g. the Service Specification, the Call-Off Contract terms and conditions).
Application Instructions	The instructions contained in this Application Form, as amended.
Application Procedure	The exercise conducted by the Council to decide whether or not to admit Applicants to the relevant Lots of the Flexible Purchasing System.
Call-off Contract	<ul style="list-style-type: none"> • A contract from time to time entered between a Permitted Purchaser and a Member Provider under the Flexible Purchasing System. • See the Rules for more information.
Consortium	A candidate which is a consortium, partnership, joint venture or the like.
Data Protection Legislation	<p>Each of the following to the extent relevant</p> <ul style="list-style-type: none"> • The Data Protection Act 2018 • The UK GDPR. • Any additional or replacement Law from time to time relating to the processing and protection of personal data or the like of individuals and privacy.
Directive	The Public Contract Directives 2014/24/EU or any successor on substantially similar subject matter.
Flexible Purchasing System	<p>The flexible purchasing system</p> <ul style="list-style-type: none"> • Established by the Council • Described in section 1 of this Application Form.
FOI Act	Either or both of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
Service Specification	The specification applying to the Flexible Purchasing System generally.

Definition	Defined term
Law	<p>Any of the following applicable to a party from time to time (to be read independently)</p> <ul style="list-style-type: none"> • Any statute, regulation, bye-law, order, subordinate legislation or the like of any of these. • Any directive or other European instrument (to the extent it is binding on the party) • Any treaty • Any judgement, rule of common law or equity • Any stock exchange rule • Any order of a competent court, tribunal, arbitrator or the like of any of these • Any permit, permission (e.g. planning permission) consent, licence, statutory agreement and authorisation (or the like of any of these) required by law and affecting the relevant person and its activities in connection with this Application Form from time to time. • Any guidance or the like issued by authorised government bodies (whether legally binding or not) • Anything else imposed by any governmental body (in its capacity as such) having a legally binding effect on the respective activities of any party in connection with this Application Form from time to time.
Lot	<p>Each lot from time to time of the Flexible Purchasing System, including the current Lots described in paragraph 1.5.</p>
Member Provider	<p>An operator which from time to time is a member service provider of any Lot in connection with the Flexible Purchasing System.</p>
Personnel	<p>In relation to an entity, any individual genuinely appointed or otherwise engaged by that entity as an officer, employee, worker, consultant, trustee, elected member, member of any partnership, agent, intern, seconded person, volunteer, adviser or contractor.</p>
Rules	<p>The rules of the Flexible Purchasing System described in paragraph 1.10 of this Application Form.</p>
Special Purpose Vehicle	<p>Any Special Purpose Vehicle</p> <ul style="list-style-type: none"> • Which is an Applicant; and • Which has (or will be) established by 2 or more economic operators (as shareholders, members or the like) to enter into any contract with the Council as a result of this Application Procedure.