

**East Sussex County Council
Economy and Transport**

**Terms and Conditions
for**

**Applications Relating to the East Sussex
Lane Rental Surplus Fund**



1. DEFINITIONS

1.1 In these Terms and Conditions

“Lane Rental Surplus Group (LRSG)” consists of an independent chair, four utility company representatives from water, gas, electricity, and communications industries and four East Sussex County Council officers from transport, maintenance, growth and street works departments.

1.2 The **“Application Pack”** consists of the documents listed in the table set out in the LRSF Application Guidance under the heading Application Pack.

2. TERMS AND CONDITIONS

- 2.1 All applications shall each be deemed subject to these terms and conditions unless East Sussex County Council (**“the Council”**) has previously expressly agreed in writing to the contrary. No alternative terms or conditions offered by or on behalf of an applicant (whether as part of its submission or otherwise) shall be acceptable or deemed accepted by the Council unless expressly accepted by the Council in writing.

3. CONFIDENTIALITY

Subject to the exceptions referred to below, information provided as part of this Application Pack (“Information”) is made available to Applicants on condition that:

- a) Applicants shall treat the Information as confidential;
- b) Applicants shall not disclose, copy, reproduce, distribute, or pass the Information to any other person at any time, or allow any of these things to occur;
- c) Applicants shall not use the Information for any purpose other than preparing for, and engaging in the application process, including making (or deciding whether to make) a response;
- d) Applicants shall comply with the provisions of Paragraph 10 (Publicity); and
- e) Each Applicant shall ensure that every member of the Applicant’s Team who receives any of the Information is made aware of, and complies with, the provisions of this paragraph as if they were an Applicant.
- f) Any Applicant who, in the Council’s or LRSG’s opinion, breaches any of the requirements above may, at the Council’s or LRSG’s sole discretion, be disqualified (without prejudice to any other civil remedies available, and without prejudice to any criminal liability which such conduct by an Applicant may attract).
- g) Applicants may disclose, distribute, or pass the Information to another person (including, but not limited to, employees, consultants, sub-contractors, or advisers to the Applicant, the Applicant’s insurers, or the Applicant’s funders) if either:
- h) This is done for the sole purpose of enabling an application/proposal to be submitted and the person receiving the Information undertakes in writing to keep the

Information confidential on the same terms as set out in these terms and conditions;
or

- i) The Applicant obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of Information.

By participating in this application process, Applicants understand and agree (and shall procure that all others whose information is supplied to support their application also agree) that the Council is permitted to disclose all information submitted to it to members of the LRSG and its elected members, as well as to the United Kingdom Parliament or any other department, office, or agency of His Majesty's Government in the United Kingdom, and their Ministers, servants, agents, and advisers.

4. DISSEMINATION OF INFORMATION TO OTHER APPLICANTS

- 4.1 The LRSG and/or the Council also reserves the right to disseminate information that is materially relevant to all Applicants, even if the information has only been requested by one Applicant, subject to the duty to protect any Applicant's commercial confidence in its application.
- 4.2 Should Applicants wish to avoid such disclosure (for example on the basis that their request contains, or the likely response will contain, commercially confidential information or may give another Applicant a commercial advantage) the request for information to the Council must be clearly marked "in confidence - not to be circulated to other Applicants" and each relevant page of the document should be marked "commercially confidential". The Applicant must set out the reason or reasons for their request for non-disclosure to the other Applicants of its request and/or of the Council and/or LRSG response.
- 4.3 The Council will act reasonably in relation to the protection of commercially sensitive information relating to the Applicant, subject to the Council's and/or LRSG's duties under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 ("the Information Laws"), and in the light of the latest published guidance in this area.
- 4.4 If an Applicant's request for information is marked as confidential in accordance with this paragraph, and the Applicant indicates that the Council and/or LRSG response should also be confidential, the Council shall notify the Applicant whether it agrees that the request and/or the response is commercially sensitive.
- 4.5 The Applicant must confirm whether it accepts the Council and/or LRSG decision. If an Applicant cannot accept the Council and/or LRSG's decision, then the Applicant may withdraw its request for information. If the Applicant does not withdraw its request, the final decision as to whether the request and response shall be confidential will be made by the Council.

5. ACCURACY OF INFORMATION AND LIABILITY OF THE COUNCIL, AND ITS ADVISERS

- 5.1 The Information in this Application Pack and/or any other documents or information to which it refers have been prepared by the Council in good faith. However, it does not purport to be comprehensive or to have been independently verified. The Council does not accept

any responsibility for the accuracy or completeness of the Information It shall not be liable for any loss or damage arising as a result of the use of such Information or any subsequent communication. Applicants are expected to carry out their own due diligence checks for verification purposes. Applicants should treat the Information as background data, and not as contractual documentation.

Applicants are expected to have carried out their own due diligence exercise in order to assess the extent of all risks relating to the services/contract/framework and to have carried out all investigations, inspections, research and have made all necessary enquiries in order to carry out this due diligence exercise.

5.2 Subject always to the requirements of paragraph 2 above, Applicants considering entering a contractual relationship with the Council should make their own investigations and enquiries as to the Council and/or LRSG requirements beforehand. The subject matter of this Application Pack shall only have any contractual effect when it is incorporated into the expressed terms of an executed contract.

5.3 The issue of this Application Pack is not to be construed as a promise or representation or commitment by the Council to enter into a contract as a result of this application process. Any expenditure, work or effort undertaken prior to the execution of any contract is accordingly a matter solely for the commercial judgment of the Applicant. The Council reserves the right to withdraw from this application process at any time or to re-invite Applicants on the same or any alternative basis.

5.4 This Application Pack document should not be considered as an investment recommendation made by the Council to any party seeking to apply to the Council and/or each Applicant must make its own independent assessment after making such investigation and taking such professional advice as is deemed necessary.

5.5 Neither the Council nor its LRSG nor its elected members officers or advisers make any representation or warranties (express or implied) or accept any liability or responsibility (other than in respect of fraudulent misrepresentation) in relation to the adequacy, accuracy, reasonableness or completeness of the Information or any part of it (including but not limited to, any loss or damage arising as a result of reliance by the Applicant or any Consortium Party on the Information or any part of it).

5.6 The Council makes no representations or warranties regarding the Applicant's financial status or stability, technical competence, or ability in any way to carry out the services.

5.7 No dialogue or communication with the Council and/ LRSG, whether prior to, during or subsequent to the application process (including any notification of preferred Applicant status) will imply acceptance of any offer or constitute an indication that the Applicant will be awarded a grant agreement and/or contract. Only the express terms of the grant agreement and/or contract(s) as set out in this Application Pack, and which shall incorporate the Applicants response to the Application Pack and these clarifications, shall have any contractual effect.

6. PROVISION OF FURTHER INFORMATION BY APPLICANTS

6.1 The Council is relying on the information provided by Applicants (including but not limited to information concerning the members and structure of the Applicant's consortium where

applicable). If at any time during the application process there are any material changes to such information, the Applicant must advise the Council as soon as it becomes aware of the change (even if this is after the submission of a response).

6.2 The Council reserves the right at its sole discretion to disqualify any Applicant whose circumstances change and if:

- a) it fails to notify the Council of such change in accordance with this Application Pack; or
- b) having notified the Council of such change, the Council considers that the effect of the change is such that, on the basis of the evaluation undertaken by the Council for the purpose of selecting potential providers, the Applicant would not pre-qualify; or
- c) the change would in the opinion of the Council lead to a breach of its obligation to conduct a fair and lawful application process.

7. MISREPRESENTATION

7.1 Any misrepresentation or fraudulent statement by the Applicant shall permit the Council immediately to exclude the Applicant.

8. CANVASSING AND ANTI-BRIBERY

The Council reserves the right to disqualify (without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by an Applicant or member of an Applicant Team may attract) any Applicant or Consortium Party who, in connection with the services/contract/framework:

- a) offers any inducement, fee or reward to any elected member or officer of the Council or any person acting as an adviser to the Council in connection with this application process or does anything which would constitute a breach of the Bribery Act 2010 (or any replacement law) or Section 117 of the Local Government Act 1972 (as amended); or
- b) contacts any member or officer of the Council or any person acting as an adviser to the Council prior to a contract being entered into about any aspect of the application process in a manner not permitted by this Application Pack,

8.1 Such disqualification may be made at the Council and/or LRSG absolute discretion (in either case without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by an Applicant or Consortium Party may attract).

9. NON-COLLUSION

Any Applicant or Consortium Party who, in connection with this application process and without obtaining the prior written content of the Council:

- a) 9.1 fixes or adjusts the amount of its response by or in accordance with any agreement or arrangement with any other Applicant or Consortium Party (other than a member of its own consortium);
- b) enters into any agreement or arrangement with any other Applicant or Consortium Party (other than a member of its own consortium) that it shall refrain from making an application or as to the amount of any proposal to be submitted;
- c) causes or induces any person to enter such agreement as mentioned in paragraphs a) or b) above or to inform the Applicant or a Consortium Party of the approximate amount of a rival response;
- d) offers or agrees to pay or give any sum of money, inducement, or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other response or proposed response any act or omission; or
- e) communicates to any person other than the LRSG and/or Council the amount or approximate amount of its proposal (except where such disclosures are made in confidence to obtain quotations necessary for the preparing of the application), will be disqualified (without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability that such conduct by an Applicant may attract).

10. INTELLECTUAL PROPERTY

10.1 The copyright in this Application Pack document is vested in the Council and it may not be reproduced, copied, or stored in any medium without the prior written consent of the Council except in relation to the preparation of an application. This Application Pack, and any document issued as a supplement to it, are and shall remain the property of the Council and must be returned upon demand, without any copies being retained.

10.2 The Council reserves the right, depending upon the nature of the project proposed, to require the assignment or grant of a royalty free non-exclusive licence to it of all intellectual property relating to or in connection with any application that is developed into a contract awarded by the Council.

11. PUBLICITY

11.1 Applicants and Consortium Parties shall not undertake (or permit to be undertaken) at any time any publicity or activity with any section of the media in relation to this application process or the supply of the products and/or services specified other than with the prior written consent of the Council. In this paragraph the word “media” includes radio, television, newspapers, trade and specialist press, the internet, social media and email accessible by the public at large and the representatives of such media.

12. RIGHT TO REJECT APPLICANTS

12.1 The issue of this Application Pack does not commit the Council to enter into a grant agreement and/or contract pursuant to this application process. The LRSG is not bound to vote on any of the applications received or recommend that they are put forward to the

Council. The Council is not bound to accept any application that is recommended by the LRSG and any application which is accepted by Council is subject to the Subsidy Control Act 2022, the Public Procurement Regulations 2015, the Procurement Act 2023, and any other relevant legislation including its own procedures and standing orders. Nothing in this Application Pack shall oblige the Council to enter into a contract and/or grant agreement or any contractual agreement.

12.2 The Council may in its sole discretion alter or terminate this application process at any stage. The Council reserves the right, at its absolute discretion, to disqualify any Applicant or Applicant Team member that does not, in the Council and/or LRSG opinion, comply with the requirements of this Application Pack or any other requirement of the Council in connection with this application process that may from time to time be notified to the Applicant.

12.3 The Council reserves the right, subject to relevant legislation, at any time to reject a response.

12.4 The Council reserves the right, subject to relevant legislation, at any time to reject or disqualify an application where:

- a) an application, is completed incorrectly, is materially incomplete, is submitted in any other format other than via email to lanerental@eastsussex.gov.uk or fails to meet the submission requirements of the Council which have been notified to Applicants;
- b) the Applicant and/or the member of the Applicant Team is unable to satisfy the terms of Article 57 of Directive 2014/24/EU and/or Regulation 57 of the Public Contracts Regulations 2015, Procurement Act 2023 (or any replacement law) at any stage during the application process;
- c) the Applicant and/or the members of the Applicant Team are guilty of material misrepresentation or false statement in relation to their submission and/or the application process;
- d) the Applicant and/or the members of the Applicant Team contravene any of the terms and conditions of this Application Pack;
- e) there is a change in identity, control, financial standing, structure, or other factor impacting on the selection and/or evaluation process affecting the Applicant and/or the members of the Applicant Team; or
- f) the Applicant introduces a material change in any commitment or statement contained in any previous submission at any previous stage in the procurement process.

12.5 The disqualification of an Applicant will not prejudice any other civil remedy available to the Council and will not prejudice any criminal liability that such conduct by an Applicant may attract.

13 FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004

- 13.1 All information relating to any application made to the Council or any contract to which the Council is party, including information arising under a contract or about its performance, may be disclosable under the Information Laws. The Council is under a legal obligation to disclose such information if requested unless an exemption applies. The Council may also be required to disclose requirements under other legislation or applicable codes of practice or otherwise as required by law, including by order of a court of competent jurisdiction.
- 13.2 Each Applicant must, as part of this application process, identify to the Council information which it submits, whether on its own behalf or, in the case of Consortium Parties, on behalf of others, which it regards as being potentially exempt from disclosure by the Council under the Information Laws. Such identification may be either specific or by class. The Applicant must state the grounds that it believes exist for potentially exempting the information from disclosure, together with detailed reasoning for this. The Applicant should also indicate whether it considers that the potential exemption from disclosure applies only for the period of the application process or whether the potential exemption would continue after the conclusion of the application process.
- 13.3 Please note that, consistent with the spirit of its obligations under the Information Laws, and as a general principle, the Council will seek to prevent or restrict the scope of any confidentiality obligations sought to be imposed upon it otherwise than in accordance with the Information Laws. Accordingly, the Council reserves the right not to accept, in whole or in part, the receipt of any information marked as confidential or sensitive, or to require further explanation of the reasons why the Applicant considers confidentiality obligations to be appropriate in a particular case.
- 13.4 It should be noted that, even where an Applicant has indicated that information should be exempt from disclosure, the Council may disclose such information following its own consideration of any request for disclosure. The Council may, in its absolute discretion, consult with the Applicant before making a decision on a request for disclosure. The Council's decision in relation to the application of any exemption and disclosure shall be final.

14 JURISDICTION

- 14.1 The negotiations and all subsequent contract and/or grant funding negotiation with the Council and any non-contractual obligations arising out of or in connection with such grant funding agreements and/or contracts will be subject to the laws of England and the exclusive jurisdiction of the English courts.

15 CONFLICTS OF INTEREST

- 15.1 All members of the LRSG are required to declare any conflicts of interest related to any received applications from Applicants. A conflict of interest is defined as any situation where a member has a personal or financial interest that could potentially influence or

appear to influence their impartiality in the evaluation and decision making.

In the event that a member or members of the LRSG declare a conflict of interest they shall be immediately recused from participating in the evaluation of the application and the voting process for the relevant application. The recused member(s) shall abstain from any discussions, evaluations and decisions pertaining to the conflicted application to ensure fairness and impartiality in the governance process.

16 APPLICATION COSTS

- 16.1 The Council will not make any payments to any Applicant in respect of the Applicant's expenses incurred in participating in this application process. Accordingly, the Council and each Applicant will bear their own costs arising out of or in connection with the entirety of this application process.
- 16.2 The Council reserves the right to decide whether to enter into any contractual arrangements arising from this application process, and Applicants' participation in the application process is entirely at their own risk.
- 16.3 The Council shall bear no liability whatsoever for the outcome of this application process, whether it is withdrawn, altered, or recommenced, including any loss of application costs, loss of profit, or other economic loss incurred by Applicants or by any other person arising out of or in connection with this application process.

17. APPLICATION PROCESS AND APPLICATION COSTS

17.1 The Council reserves the right at any time to:

- a) not to consider responses or applications other than those submitted in accordance with the terms of this Application Pack and to disqualify any Applicant that does not submit a compliant response;
- b) enter into dialogue with one or more of the Applicants during the application process to obtain arrangements that best meet its requirements, to the extent permitted pursuant to the procurement regulations and/or the Procurement Act 2023;
- c) issue amendments to or modifications of this Application Pack during the application process;
- d) require an Applicant and/or members of an Applicant Team to clarify their submission in writing and/or to provide additional information. Failure to respond adequately may result in the Applicant being rejected;
- e) alter the timescale of any aspect of the application process;
- f) not to award a contract, appoint to a framework or issue a grant agreement as a result of the application process; and /or
- g) cancel or withdraw from the application process at any time or to re-invite applications on the same or any alternative basis.

18. APPLICANT WARRANTIES

18.1 In submitting its response(s), the Applicant warrants, represents and undertakes to the Council that:

- a) all information, representations, and other matters of fact communicated (whether in writing or otherwise) to the Council by the Applicant, its staff, agents, or advisers in connection with, or arising out of, the Application Pack are true, complete, and accurate in all respects, both at the time they are communicated and as at the date of submission of the response(s);
- b) it has carried out its own investigations, research, and due diligence, and has satisfied itself in respect of all matters (whether actual or contingent) relating to the Information, and has not submitted its response(s) in reliance upon any information, representation, or assumption made by or on behalf of the Council, except where such information is expressly warranted by the Council under the terms of any grant agreement and/or contract; and
- c) it has full power and authority to respond to the Application Pack and to perform its obligations in relation to any grant agreement and/or contract, and will, if requested, produce evidence of such authority to the reasonable satisfaction of the Council and/or the LRSG.

18.2 Applicants acknowledge that the confirmations provided in response to the questions, requirements, and associated documents, and all statements made within their application, shall remain true and accurate in all material respects throughout the application process (save to the extent specifically highlighted by the Applicant).

18.3 Applicants must ensure that their applications are accurate and complete. Exceptionally, where any information provided to the Council changes at any time, the Applicant must notify the Council as soon as reasonably practicable, even where such change occurs after the submission of a response and must disclose such changes in full.

18.4 Applicants are advised that the Council may comply with the Government's transparency agenda by publishing procurement documentation and contracts on appropriate publicly accessible websites. Accordingly, application documents, the fact that an Applicant has submitted an application, and the text of any grant agreement and/or contract awarded may be published, subject to any redactions made at the discretion of the Council and/or the LRSG in respect of information that is exempt from disclosure under the Information Laws.

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