Terms & Conditions

PARTIES

1. Bidding Ltd (Company Number: 09443892), whose registered office is at Stonebridge Court, Wakefield Road, WF4 5HQ and
2. 'The Client'

BACKGROUND

1. Bidding Limited provide bid support and software services to organisations
2. This contract is for the writing of a bid - by Bidding Limited, for the Client, subject to the clauses below
3. The term of the contract shall last until the submission of the piece of work contracted for completion (This will be referred to henceforth as "The submission date")

IT IS AGREED THAT

1. Duration
    a. The term of the contract shall begin on the date of quote acceptance/signature
    b. The term of the contract shall last until the submission date of the work being completed (with exceptions noted in clause 2 and 9d below), or until the completion of any agreed postbid activities
        i. If the submission date is modified by the commissioner, then, unless otherwise agreed by Bidding Limited and the Client, Bidding Limited will continue to complete the bid by the **original** submission date.
        ii. The Client and Bidding Limited may agree to extend this contract to cover the new submission date.
            1. The cost of any work carried out after the original submission date until the new submission date will be £895 per day
            2. This will be confirmed via email by a member of the Bidding Limited team
        iii. Should the terms of any extension to this contract be unacceptable, then Bidding Limited will hand over the bid on the **original** submission date, and invoice for the full amount articulated in Section 9 of this agreement
2. Obligations
    a. Bidding Limited shall provide the following services (the "Services") for the Client during the term, subject to the stipulations of clause 1 above":
        i. Where agreed the management of any electronic portal
        ii. Agree a plan to respond to the tender iii. Appropriate kick off for the bid process

iv. Writing of responses

v. Review of these responses with for the Client

b. Bidding Limited shall have no authority, and shall not hold itself out, or permit any person to hold itself out, as being authorised to bind the Client in any way, and shall not do any act which might reasonably create the impression that Bidding Limited is so authorised.

c. Bidding Limited shall not make or enter into any contracts or commitments or incur any liability for or on behalf of the Client and shall not negotiate any terms for the provision of services by the Client.

d. Bidding Limited shall not, without the Client's prior written consent, make or give any representations, warranties or other promises concerning the services which the Client may provide.

e. Bidding Limited comply with all applicable laws, statutes, regulations and codes, including but not limited to the Bribery Act 2010, Equality Act 2010 and Modern Slavery Act 2015.

f. For the bid, the Client will identify a lead individual (the "Lead") from their team to be the person responsible for queries. They will also identify the individual responsible for confirming that the bid is signed off and ready for submission.

g. The Client is responsible for any other post-submission activities – for example creating presentations, or meeting with commissioners.

h. Bidding Limited shall agree with the Client a reasonable timescale for provision of the Services and provide the Services promptly

i. Should dispute arise over content, then Bidding Limited will offer advice, but defer to the Client's judgement on final language.

3. Client obligations

a. Ultimately the Client is responsible for the content of all bids produced by Bidding Limited. Bidding Limited will provide a final version of the bid to the Client for review and final sign off, prior to submission to commissioners.

b. The Client will price their bid, and complete any pricing matrix. Bidding Limited cannot advise on the pricing of bids.

c. Pricing elements must be provided to Bidding Limited in a timely manner, as per the agreed project plan for each bid and the services to be provided are to be clearly listed by the Client.

d. There may be other elements that it is agreed that the Client will produce during the bid. These requirements will be confirmed via email by Bidding Limited.

e. The Client will provide all information reasonably required by Bidding Limited in a timely manner. Failure to do so will hinder the Client's chances of winning the bid

4. Copyright

a. Bidding Limited warrants that any material used to provide the Services will not infringe the copyright or other rights of any third party. Bidding Limited shall indemnify the Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and

expenses) suffered or incurred by the Client arising out of or in connection with any claim made against the Client for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Services and/or this Agreement.

5. Intellectual property

    a. At all times the bid remains the intellectual property of the Client and if the Client wishes to make any amendments or changes to the bid, they retain the right to do so.

    b. Subject to pre-existing rights intellectual property rights, all rights in connection with any patent, registered or unregistered trademark or service mark, copyright, registered design or mark, any application for any of the foregoing, any right in respect of technical or commercial information and any other form of protection (the "Intellectual Property") for all bids, written and supporting materials and all matters associated with the Services shall vest in and are the property of the Client at all times.

    c. Bidding Limited shall at the request of the Client take all steps and execute all such assignments and other documents as the Client may reasonably require to ensure all Intellectual Property vests in and belongs to the Client and for the registration of or protection of the Client's rights in Intellectual Property.

    d. the Client bid materials associated with this Agreement and the Services will not be used for any other bid by Bidding Limited that is not a bid of the Client.

    e. All bid materials will be retained on Bidding Limited systems, in line with Bidding Limited's information governance policy.

    f. Bidding Limited shall maintain accurate and complete records in connection with the performance and running of this Agreement and the Services. Upon request, Bidding Limited shall permit the Client and its representatives access to such records, supporting documentation and information during normal office hours and allow and provide facilities to enable, copies of such information to be taken by or on behalf of the Client.

6. Personal Data

    a. In so far as a Party processes ("Processing Party ") any personal data (as defined in the Data Protection Act 1998 ("Act")) ("Personal Data") on behalf of the other Party ("Provider Party"), the Processing Party shall:

        i. process the Personal Data only on behalf of the Provider Party only for the purposes of performing their obligations under this Agreement;

        ii. not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party other than as required to perform their obligations under this Agreement and to deliver the Services (as applicable), unless specifically authorised in writing by the Provider Party;

        iii. at all times comply with the provisions of the Seventh Data Protection Principle set out in Schedule 1 of the Act.

    b. The Parties shall comply at all times with the Act and shall not perform their obligations under this Agreement in such a way as to cause either Party to breach any of its obligations under the Act.

7. Confidentiality

a. "Confidential Information" means all information disclosed (by whatever means and whether directly or indirectly) by the disclosing Party to the recipient, relating to or connected with the affairs of the disclosing Party, including without limitation:

i. the existence of this Agreement and the fact that discussions and negotiations are taking place and the status of those discussions and negotiations; and

ii. operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, sample materials, market opportunities, business affairs, raw materials, customer and supplier lists, contractual details and any other matters concerning the business affairs or finance of the disclosing Party and/or the business of the NHS, clients, customers or other persons having dealings with the disclosing Party; and

iii. information or analysis derived from Confidential Information, but not including any information that

iv. is or becomes generally available to the public other than as a result of its disclosure by the recipient in breach of this Agreement; or

v. the recipient can show to the reasonable satisfaction of the disclosing Party was available to the recipient on a non-confidential basis prior to disclosure by the disclosing Party; or

vi. was, is or becomes available to the recipient on a non-confidential basis from a person who, to the recipient's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the recipient; or

vii. was lawfully in the possession of the recipient before the information was disclosed to it by the disclosing Party; or viii. the disclosing Party confirms in writing is not confidential or may be disclosed; or ix. is developed by or for the recipient independently of and without reference to or use of the Confidential Information.

b. The recipient shall keep the Confidential Information confidential and, except with the prior written consent of the disclosing Party, shall:

i. not use or exploit the Confidential Information in any way except for the purpose of fulfilling this Agreement;

ii. not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement;

c. The recipient shall make every effort to prevent the use or disclosure, other than in accordance with the terms of this Agreement, of Confidential Information and shall apply security measures and the degree of care to the Confidential Information as may reasonably be expected by the disclosing Party.

d. The recipient may disclose the Confidential Information to the minimum extent required by:

i. any order of any court of competent jurisdiction or any competent judicial, governmental or regulatory body; or ii. the rules of any listing authority or

stock exchange; or iii. the laws or regulations of any country with jurisdiction over its affairs.

e. The recipient may disclose Confidential Information to its representatives only to the extent strictly necessary for the purposes of this Agreement. Before disclosure of Confidential Information to such a person, the recipient shall ensure that such person is fully aware of the recipient's obligations under this Agreement and shall procure that such person shall comply at all times with those obligations. The disclosing Party shall remain liable for any breach of this clause 8 by its representatives.

f. The obligations of the Parties to maintain and safeguard confidentiality shall remain effective for a period of five (5) years after expiry or earlier termination of this Agreement.

8. Pricing

a. The total cost is outlined on the quotation/proposal

b. All pricing excludes VAT and reasonable travel expenses

c. At least 50% of the cost will be invoiced on the date of the quotation signature.

d. The rest of the cost will be invoiced on the completion of the work, unless otherwise stated during the sales process.

e. During the bidding process, should the Client decide to not bid for any reason having accepted the quotation, then Bidding Limited will charge for the entire initial quotation.

f. Should the bid be split into multiple lots, then this contract is for the lots agreed during the sales process – outlined in quotation documents or email confirmations.

g. Should the Client decide after the bid has commenced to not go ahead with particular lots, then the principals above will be applied

h. Travel expenses will be invoiced with the final invoice

i. Invoice payments are due within 14 days of invoice date

j. Either Party shall be entitled to charge interest that shall accrue on a daily basis at the rate of 4.5% per annum above the base lending rate of Barclays Bank PLC from time to time in respect of any outstanding invoice not paid within the terms set out in this Agreement until payment is made in full irrespective of whether payment has been formally demanded or judgment entered.

9. Expenses

a. Bidding Limited are based in Leeds and shall agree the members of the Bidding Limited team with the Client in relation to a bid prior to delivery of Services.

b. All travel will be by car at standard HMRC rates, or by train, using second class tickets, unless first class is cheaper. The base site for Bidding Limited team members' journeys will be taken as being Stonebridge Court, WF4 5HQ unless otherwise stated.

c. In the unlikely event of overnight accommodation being required, Bidding Limited will agree this in advance with the Client, and be of a reasonable cost, with a total cost of no more than £150 per night

10. Limitation of Liability

    a. Bidding Limited shall indemnify and keep indemnified the Client in respect of all damage or injury to any person or to any physical property and against all actions, suits, claims, demands, costs, losses, damages and expenses arising from such damage or injury suffered or incurred by the Client to the extent that the same has been caused by any act, omission, default, breach or negligence on the part of Bidding Limited.

    b. Notwithstanding any other provision to the contrary, neither party shall be liable to the other party for the indirect, consequential or economic losses or damages suffered by the other party including, but not limited to, loss of profit, loss of revenue, exclusion, loss of use, , loss of production, increased cost of working, loss of contract or business interruption regardless of cause and even if caused or contributed to by the negligence, fault, strict liability, strict products liability, or breach of duty, statutory or otherwise of the other party and whether or not foreseeable and each party hereby releases the other party in this regard.

    c. Notwithstanding the foregoing, the maximum aggregate liability of the Parties to each other in contract, tort (including negligence and breach of statutory duty) or otherwise for any breach of this Agreement or any matter arising out of or in connection with the Services to be provided in accordance with this Agreement shall be the value of the contract as specified in Clause 10(a) of this Agreement.

    d. Neither party excludes or limits liability to the other party:

        i. for death or personal injury resulting from the negligence of that party or its directors, officers, employees, agents or sub-contractors; or

        ii. for its own fraud (or that of its directors, officers, employees, agents or sub-contractors); or iii. breach of any data protection laws; or iv. breach of any intellectual property rights of a third party.

11. Boilerplates

    a. This Agreement may not be varied except by an agreement in writing expressed to vary this Agreement signed by duly authorised representatives of the Parties.

    b. No variation shall be permitted to this Agreement unless expressly agreed in writing by the Parties.

    c. This Agreement contains the entire agreement between the parties and supersedes and replaces all previous agreements and understandings between the parties.

    d. If any provision of this Agreement is held by a Court or any other competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.

    e. Pursuant to the Contracts (Rights of Third Parties) Act 1999 and not withstanding any other provision of this Agreement, this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions.

    f. Clause and paragraph headings shall not affect the interpretation of this Agreement.

    g. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and the person's legal and personal representatives, successors and permitted assigns.

h. A reference to a statute or a statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

i. References to clauses are to clauses of this Agreement and reference to a gender is to all genders.

j. The Agreement is governed by English Law and the Parties submit to the exclusive jurisdiction of the English Courts.