



Terms and Conditions of Funding

For

**Applications relating to West Sussex County
Council Waste Prevention Community Grant Fund**

1.1. **DEFINITIONS**

In these Terms and Conditions

“**Application Pack**” consists of the documents listed in the table set out in the Application Guidance

1.2. **TERMS AND CONDITIONS**

1.1. All applications shall each be deemed subject to these terms and conditions unless West 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.

1.3. **CONFIDENTIALITY**

2.1. 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 at all times 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 happen;
- c) Applicants shall not use the Information for any purpose other than for the purposes of preparing for, and engaging in the application process and making (or deciding whether to make) a response during it;
- d) Applicants shall comply with the provisions of Paragraph 10 (Publicity); and
- e) Each Applicant shall ensure that each 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 it were an Applicant.

2.2. Any Applicant who, in the Council’s opinion, breaches any of the requirements above may at the Council’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).

2.3. Applicants may disclose, distribute, or pass the Information to another person (including but not limited to, for example, employees, consultants, sub-contractors or advisers to the Applicant, the Applicants insurers, or the Applicant’s funders) if either:

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

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

3. **DISSEMINATION OF INFORMATION TO OTHER APPLICANTS**

3.1. 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.

3.2. 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 response.

- 3.3. The Council will act reasonably as regards the protection of commercially sensitive information relating to the Applicant, subject to the Council duties under the Freedom of Information Act 2000 and Environmental Information Regulations 2004 (“the Information Laws”) and in the light of the latest published guidance in this area.
- 3.4. If a Applicant’s request for information is marked as confidential in accordance with this paragraph, and the Applicant indicates that the Council and/or ’s response should also be confidential, the Council shall notify the Applicant whether it agrees that the request and/or the response is commercially sensitive. The Applicant must confirm whether or not it accepts the Council and/or ’s decision. If an Applicant is not able to accept the Council and/or ’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.

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

- 4.1. 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.
- 4.2. 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.
- 4.3. 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 ’s 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.
- 4.4. 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.
- 4.5. 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.
- 4.6. Neither the Council nor its 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).
- 4.7. 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.
- 4.8. No dialogue or communication with the Council, 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.

5. PROVISION OF FURTHER INFORMATION BY APPLICANTS

- 5.1. 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).
- 5.2. 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.

6. MISREPRESENTATION

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

7. CANVASSING AND ANTI-BRIBERY

- 7.1. 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 a Applicant or member of a 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,
- 7.2. Such disqualification may be made at the Council and/or 's 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).

8. NON-COLLUSION

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

9. INTELLECTUAL PROPERTY

- 9.1. 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.
- 9.2. 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.

10. PUBLICITY

- 10.1. 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.

11. RIGHT TO REJECT APPLICANTS

- 11.1. The issue of this Application Pack does not commit the Council and/or Biffa to enter into a grant agreement and/or contract pursuant to this application process. The 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 governance 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.
- 11.2. 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 its 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.
- 11.3. The Council reserves the right, subject to relevant legislation, at any time to reject a response.
- 11.4. 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 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.
- 11.5. 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, as a general principle the Council will seek to prevent or restrict the scope of confidentiality obligations sought to be imposed upon it other than in accordance with the Information Laws. As such the Council reserves the right not to accept, in whole or in part, 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 remembered that even where an Applicant has indicated that information should be exempted, the Council may disclose this information following its own consideration of the request for disclosure. The Council may, in its absolute discretion, consult with the Applicant before making a decision on a request for disclosure. The decision of the Council in relation to the application of an 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 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 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 and/or Biffa 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 its position as to whether or not it will enter any contractual arrangements as a result of this application process and the Applicants' participation in the application process will be entirely at their own risk.
- 16.3. The Council and/or Biffa shall bear no liability whatsoever for the outcome of this application process, whether withdrawn or altered or recommenced, including any loss of application costs, profit or economic loss incurred by Applicants or 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:
 - a) not to consider responses/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) to enter dialogue with one or more of the Applicants during the application process to obtain arrangements which best meet its requirements to the extent permitted pursuant to the procurement regulations and/or the Procurement Act 2023;
 - c) to issue amendments or modifications to this Application Pack during the application process;
 - d) to require an Applicant and/or the members of an Applicant Team to clarify their submission in writing and/or to provide additional information. Failure to respond adequately may result in an Applicant being rejected;
 - e) to alter the timescale of any aspect of the application process;
 - f) not to award a contract or appoint to a framework or issue a grant agreement as a result of the application process; and /or
 - g) to 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 responses, 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 as at the date communicated and as at the date of submission of the response(s);
 - b) it has made its own investigations and undertaken its own research and due diligence and has satisfied itself in respect of all matters (whether actual or contingent) relating to the Information and that it has not submitted its response(s) in reliance upon any information, representation or assumption which may have been made by or on behalf of the Council (save in respect of any information which is expressly warranted by the Council under the terms of the grant agreement and/or contract); and
 - c) it has full power and authority to respond to the Application Pack and to perform the obligations in relation to the grant agreement and/or contract and will, if requested produce evidence of such to the Council and/or 's reasonable satisfaction.
- 18.2. The Applicants acknowledge that the confirmation they provide in response to the questions and the requirements and associated documents, and all statements made by them within their application, shall



remain true and accurate in all material respects throughout the application process (save to the extent specifically highlighted by them).

- 18.3. Applicants must ensure that their applications are accurate and complete. Exceptionally, where there is a change to the information provided to the Council at any time the Applicant must advise the Council as soon as practicable, even if this is after the date of submission of a response and disclose such changes in full.
- 18.4. Applicants are to be aware that the Council may comply with the Government's transparency agenda by publishing procurement documentation and contracts on appropriate publicly accessible websites. The application documents, the fact that the Applicant has submitted a proposal and the text of any grant agreement and/or contract awarded may therefore be published (subject to possible redactions at the Council and/or 's discretion, relating to information which is exempt from disclosure under the Information Laws).

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