

# Invitation to Participate

REFERENCE:	RFQ 15314114
APPLICATION PROCESS FOR:	Flexible Agreement for the provision of Fostering Agency Placements.
CONTRACT REFERENCE:	KH CYP/LCC/22/717

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### Version Control

<b>Date Published</b>	<b>Version</b>	<b>Amendment Description</b>
14/01/2022	Original	-
18/01/2022	V2	Amendment to RFQ on front cover and updates to section 3.6.1 <i>Ofsted and Care Inspectorate (or equivalent) Registration and Rating – Newly Registered (page 20)</i>
19/01/23	V3	Updated Electronic Application Returns with Oracle Fusion information

## 1 DEFINITIONS AND INTERPRETATIONS

In this Invitation to Participate except where the context otherwise requires, the following words and expressions shall have the following meanings:

"Action Plan"	means the plan that a Provider must provide to the Council where they have been given a compliance notice or Inadequate or Requires Improvement judgement from Ofsted (or equivalent Regulatory Body) or Adequate or below judgement from Care Inspectorate (or equivalent Regulatory Body).
"Annual Tier Review"	means the review undertaken by the Council on or around the Flexible Agreement Commencement Date to ensure all Providers still meet the Minimum Criteria of the Flexible Agreement as set out in Section 2.4.9 of the ITP.
"Agreement"	means the Agreement set out at Appendix 2, to be finalised with the successful Applicants
"Applicant"	means the organisations who have not yet been appointed to the Flexible Agreement and where applicable this shall include the service provider's employees, Sub-Contractor, agents, representatives, and permitted assigns and, if the service provider is a consortium or consortium leader, the consortium members;
"Application"	means the Applicant's response to this Invitation to Participate, a Request to Participate;
"Applicant Return Deadline"	means the date upon which Applicants must submit their Applicant in response to this ITP;
"Blackburn, Blackpool, Cumbria and Lancashire (BBCL) Boundary"	means the locations identified within the Invitation to Participate document section 2.4.3 and Appendix 1.
"Blackburn, Blackpool and Lancashire (BBL) Boundary"	means the locations identified within the Invitation to Participate document section 2.4.3 and Appendix 1.
"Wider Blackburn, Blackpool, Cumbria and Lancashire (Wider BBCL) Boundary"	means the locations identified within the Invitation to Participate document section 2.4.3 and Appendix 1.
"Council"	means Lancashire County Council;
"Contracting Bodies"	means the Council and such other bodies as are identified and/or described in the Find a Tender Notice.

"Call-Off Procedure"	means the method by which Service Contracts are awarded to Providers as set out at Appendix 2 Flexible Agreement (see Schedule 2).
"Child/Children"	means Children and Young People being a CLA.
"Children Looked After (CLA)"	means a Child who is looked after by the Council as part of an interim or full call order or voluntarily through Section 20 of the Children Act 1989 updated 2004.
"Commencement Date"	means the 5th day of May 2022.
"Business Days"	means Monday to Friday excluding United Kingdom bank holidays;
"Clarifications Log"	means a list of clarifications and Council responses, published on the e-tendering portal;
"Evaluation Criteria"	means the criteria Applications will be marked against as part of the Evaluation of this ITP, as further detailed in Appendix 8.
"e-Tendering system"	means the Council's online system by which Applicants submit an Application Oracle Sourcing Supplier or any successor system;
"FOIA"	means Freedom of Information Act 2000 or any such regulation succeeding it;
"Foster Carer"	means a carer who is registered with Independent Fostering Agency and Ofsted (or equivalent Regulatory Body) and/or Care Inspectorate.
"ITP"	means this Invitation to Participate;
"Price"	means the submitted price for the Services specified Appendix 4 exclusive of Value Added Tax (VAT) or such other price as may be agreed between the parties and evidenced in writing when purchasing the Services;
"Offer"	means the Offer from the Provider to provide the Services.
"Ofsted"	means the Office for Standards in Education and any equivalent or other government body or agency which performs a similar function or succeeds or replaces it, or is transferred any of the functions of the Office for Standards in Education, or equivalent government bodies, during the Term.

"PCR 2015"	means the Public Contracts Regulations 2015 or any such regulation succeeding it;
"Placement"	means the act of accommodating a Child in a registered and appropriately matched Foster Carer's household for a period of time.
"Placement Request"	means a request for Offers from Provider(s) to deliver Placement(s);
"Provider"	means the organisations who have been appointed to the Flexible and where applicable this shall include the Provider's employees, Sub-Contractor, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members.
"Quality Criteria Questionnaire"	means any quality questions as further detailed in Appendix 6 and Appendix 7 to be scored in accordance with Appendix 8
"Registered Household"	means an approved Foster Carer(s) residence that can provide a Child with a safe and secure foster care placement.
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council.
"Services"	means all the services to be performed under the Agreement and shall where the context admits include any materials articles and goods provided together with the services;
"Service Contract"	means the Service Contract set out in Appendix 2 Flexible Agreement (at Schedule 1), the legally binding agreement (made pursuant to the provisions of this Agreement) for the provision of Services made between a Contracting Body and the Provider comprising: (i) the Call-Off Terms and Conditions; (ii) the IPA; (iii) the Tender (where applicable); (iiii) the Offer (where applicable)
"Specification"	means the document detailing the Services to be delivered by the Provider set out in Appendix 2

	Flexible Agreement at Schedule 1 of the Call-Off Terms and Conditions.
"Submission"	Means the Application submitted by the Applicant
"Term"	means the period commencing on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of the Flexible Agreement or it is otherwise lawfully terminated ending on the ninth anniversary of the Commencement Date.
"Timetable"	means the list of key dates for this procurement provided in section 3 <b>Error! Reference source not found.</b> of this ITP, which may change from time to time;

- 1.2 Words importing one gender include all other genders unless otherwise specified and words importing the singular include the plural and vice versa.
- 1.3 References to any statute or statutory provisions shall, unless the context otherwise requires be construed as including references to any earlier statute or the corresponding provisions of any earlier statute whether repealed or not directly or indirectly amended, consolidated, extended or replaced by such statute or provisions, or re-enacted in any such statute or provisions and to any subsequent statute or the corresponding provisions of any subsequent statute directly or indirectly amending, consolidating, extending, replacing or re-enacting the same and will include any orders regulations instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 1.4 References to “person” and “persons” and “Applicant” and “Applicants” and "Provider" and "Providers" include any individual firm and unincorporated association and body corporate or public body.
- 1.5 The list of contents and the headings to the parts and paragraphs of this Invitation to Participate and to the Clauses and paragraphs of the schedules to this Invitation to Participate are for ease of reference only and shall not affect the construction of this Invitation to Participate.
- 1.6 The Appendices and Schedules form part of this Invitation to Participate and will have the same force and effect as if expressly set out in the body of this Invitation to Participate.
- 1.7 In the event of any inconsistency between the provisions of this Invitation to Participate and any previously issued documents the provisions of this Invitation to Participate will prevail.
- 1.8 This procurement procedure is considered to be subject to the Light Touch Regime under the Public Contracts Regulations 2015.

## 2 INTRODUCTION AND BACKGROUND

### 2.1 Purpose and scope of this Invitation to Participate

This Invitation to Participate:

- Asks Applicants to submit their Applications in accordance with the instructions set out in the remainder of this Invitation to Participate.
- Sets out the overall timetable and process for the procurement to Applicants.
- Provides Applicants with sufficient information to enable them to submit a compliant Application (including providing templates where relevant).
- Sets out the Evaluation Criteria that will be used to evaluate Applications.
- Sets out the Flexible Agreement and Service Contract that will result from a successful Application.
- Sets out the Service Contract that could result from the Flexible Agreement.
- Explains the administrative arrangements for the receipt of Applications.

### 2.2 Summary

<p>Indicative total value of Services to be delivered is in the order of:</p>	<p>Estimated total value up to £375,000,000 - £415,000,000</p> <p>The estimated contract value for the Flexible Agreement allows for cost increases during the term.</p> <p>The estimated contract value for placements made by Lancashire County Council is £150,000,000 - £160,000,000 depending on demand.</p> <p>The estimated contract value for placements made by Cumbria County Council is £86,000,000 – £96,000,000 depending on demand.</p> <p>The estimated contract value for placements made by Blackpool Council is £108,000,000 - £118,000,000 depending on demand.</p> <p>The estimated contract value for placements made by Blackburn with Darwen Council is £31,000,000 - £41,000,000 depending on demand.</p>
<p>Flexible Agreement Commencement Date:</p>	<p>May 2022</p>
<p>Flexible Agreement Expiry Date:</p>	<p>May 2031</p>

*Note: details of value or potential future uptake is given in good faith to assist you in submitting your Application. They should not be interpreted as an undertaking that this will be the value of the services and do not form part of the Agreement.*

Applicants shall be assumed to have taken account of the implementation of the minimum wage as required under the National Minimum Wage Regulations 2015 (SI 2015/621 as amended in 2018 and from time to time thereafter) in the preparation of its Application. Applicants are also assumed to have considered their obligations referred to in Regulation 56(2) of The Public Contracts Regulations 2015, regarding compliance with applicable obligations in the fields of labour law. If there are any queries or clarifications regarding the breakdown, post Application clarifications will be submitted to the Applicant in line with this ITP. Failure to take into account cost increases reasonably foreseeable at the date of Application Return Deadline may result in the disqualification of your Application.

This Flexible Agreement for the provision of Fostering Agency Placements is for use by Contracting Authorities identified in the contract notice and any successor council as defined in The Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 to the Contracting Authorities.

*Please note: As of 01 April 2023 Cumbria County Council and the six district councils in Cumbria will be dissolved and replaced by two new unitary authorities. Where Cumbria is referenced in any of the procurement documents, this relates to the two new unitary authorities – Cumberland Council and, Westmorland and Furness Council.*

*Cumberland Council's geographical footprint includes the areas of Allerdale, Carlisle and Copeland. Westmorland and Furness' geographical footprint includes Barrow, Eden and South Lakeland.*

### **2.3 Service Background**

Blackburn with Darwen Council, Blackpool Council, Cumbria County Council and Lancashire County Council (BBLC) have a statutory duty to provide a sufficiency of Placements for Children Looked After (CLA) that they hold responsibility for.

Since 2019 BBLC have been collaborating as part of a Department of Education funded project to improve the sufficiency of foster care placements across the authorities. The first part of this project involved the development of a feasibility study, identifying methods the four authorities could utilise to increase their sufficiency. A key recommendation from this feasibility study was the development of a sub-regional independent foster care agreement between the four Contracting Bodies. By working together, the four Contracting Bodies have developed the Flexible Agreement which this procurement intends to establish, with the aim to influence the behaviour of these agencies in order to prioritise the Children from the four Contracting Bodies within the combined authorities' geographical footprint.

Each of the Contracting Bodies maintain their own in-house foster care service which assesses, registers, supervises and supports their own foster carers, however each of the Contracting Bodies also rely upon independent foster care agencies to meet

their overall need of local placements. On 31<sup>st</sup> December 2020, the four Contracting Bodies placed 873 CLA with independent foster care agencies.

On 31<sup>st</sup> March 2020 (most recent published figures), the four Contracting Bodies combined CLA population was 3881, with 2606 of these CLA placed within Foster Care.

	Children Looked After	Foster Care	Independent Foster Care (31/12/20)
Blackburn with Darwen	411	269	48
Blackpool	652	469	170
Cumbria	722	525	157
Lancashire	2096	1343	498
Combined	3881	2606	873

The Flexible Agreement will provide the availability of a greater number of independent foster care agencies which can be utilised based on individual need.

See Appendix 10 for all market engagement documentation and below position statements for all Contracting Bodies:

Lancashire County Council - <https://www.lancashire.gov.uk/media/917996/bbcl-lancashire-fostering-market-position-statement.pdf>

Cumbria County Council - <https://www.lancashire.gov.uk/media/917997/bbcl-cumbria-fostering-market-position-statement.pdf>

Blackburn with Darwen - <https://www.lancashire.gov.uk/media/917999/bbcl-bwd-fostering-market-position-statement.pdf>

Blackpool Council - <https://www.lancashire.gov.uk/media/917998/bbcl-blackpool-fostering-market-position-statement.pdf>

## **2.4 Flexible Agreement - New Arrangements for These Services**

### 2.4.1 Benefits of the new Flexible Agreement

The Council wishes to establish an open Flexible Agreement for Fostering Agencies who are suitable, capable and experienced to deliver the required services. This will greatly improve option, capacity and the ability to meet the needs of children with appropriate services.

*Benefits for Providers:*

- Providers don't have to demonstrate suitability and capability every time they wish to compete for a Placement.
- A Flexible Agreement is more accessible for SMEs.
- Award of individual Placement for Children can be quicker than under some other procurement procedures.
- A Flexible Agreement remains open to new Providers throughout the period of the agreement. This enables Providers who may not be able to meet the criteria at the time the Flexible Agreement is first established to review their processes, finances, capabilities and proposals and apply for acceptance onto the Flexible Agreement at a later stage.
- A Service Provider who fails the selection and Flexible Agreement Minimum Criteria can reapply later if circumstances have changed (for example if it gains new Registered Households or their regulatory body rating improves).

The overarching objective of the Flexible Agreement is to ensure that suitable and safe fostering Placements can be made within appropriate timescales and to ensure the Child's welfare, safety and needs are at the centre of the fostering process.

#### **2.4.2 How will the Flexible Agreement Work?**

The Flexible Agreement will establish lists of Providers across 3 Lots which cover the range of Placement types:

*Lot 1 Standard Foster Care Placement*

*Lot 2 Enhanced Foster Care Placement*

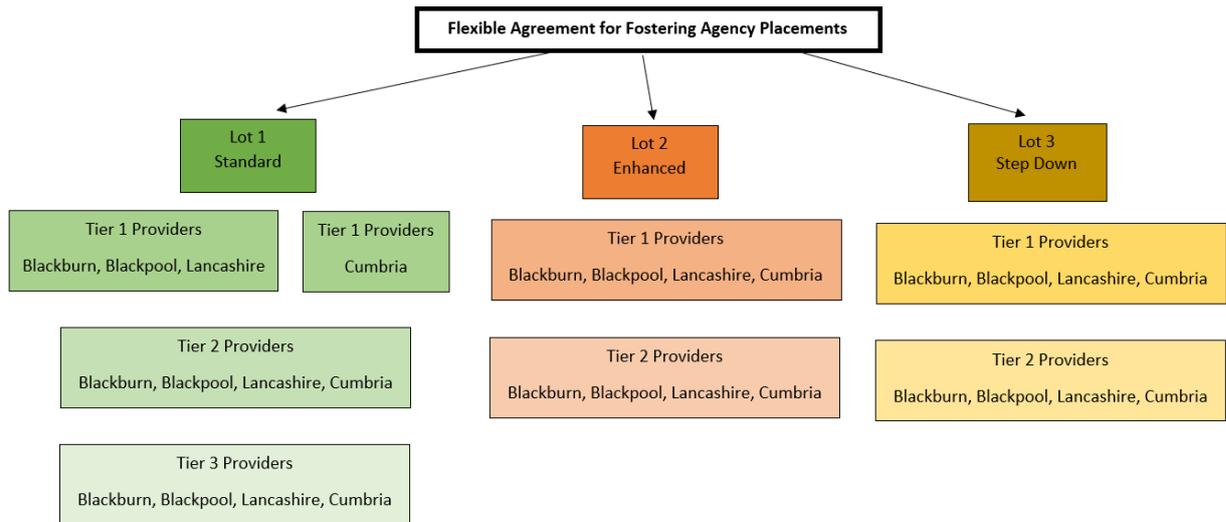
*Lot 3 Step Down into Foster Care Placement*

See Appendix 2 Flexible Agreement for Service Specification for the Lots. Placements will be commissioned via the Call-Off Procedure as outlined in Appendix 2 Flexible Agreement.

#### **2.4.3 Structure of the Flexible Agreement**

***Please refer to Appendix 1 Flexible Agreement Process Chart when reading the below sections of the ITP.***

Within the Lots there will be Tiers of Providers, Providers will need to meet the Lot Essential Criteria to be placed in the Lot. See criteria details below. The evaluation of each Lot's Essential Criteria will determine the Applicant's tier position.



The Flexible Agreement will cover the following sufficiency areas:

*Refer to Appendix 1 Process Chart for maps.*

Lot 1	Tier 1 Only	Area A	Blackburn with Darwen, Blackpool and Lancashire's Fostering Sufficiency Area	Map 3 (BBL)
Lot 1	Tier 1 Only	Area B	Cumbria's Fostering Sufficiency Area	Map 2 (C)
Lot 1	Tier 2	Combined Area A and Area B	Combined Area A Blackburn with Darwen, Blackpool, and Lancashire's Fostering Sufficiency Area and Area B Cumbria's Fostering Sufficiency Area	Map 4 (BBCL)
Lot 1	Tier 3	Wider Area A and Area B	Wider Blackburn with Darwen, Blackpool, Cumbria and Lancashire.	Map 1 (Wider BBCL)
Lot 2 Lot 3	Tier 1 & Tier 2 Tier 1 & Tier 2	Combined Area A and Area B	Combined Area A Blackburn with Darwen, Blackpool, and Lancashire's Fostering Sufficiency Area and Area B Cumbria's Fostering Sufficiency Area	Map 4 (BBCL)

#### 2.4.4 Tiers

The Council will work in a more collaborative way with all Providers, across Lot 1, Lot 2 and Lot 3 and more specifically with Tier 1 Providers.

##### Benefits of a Tier 1 Provider

Working more closely with the respective Contracting Bodies to better meet the needs of their Children Looked After.

Commitment to:

- notifying the appropriate Contracting Body when vacancies become available.
- working closely to increase chances of securing these vacancies, (including possible use of a retainer fee).
- identifying and addressing Placement stability.
- identifying when an alternative Placement is required and planning the move to a suitable alternative solution.
- improved ways of working to improve sufficiency and to ensure that more of our Children are placed in local Registered Households.
- regularly share and discuss data on Placement demand and address gaps in provision.
- work closely with Providers to recruit more Foster Carers where there are gaps.
- support greater retention of local Foster Carers, those individual Foster Carer(s) with specialist skills and targeted intervention experience.
- greater review, consideration, and feedback for those Children with no match identified as well as considerations towards identifying closest best match.

#### 2.4.5 How Can I Join the Flexible Agreement?

Applicants must meet the Flexible Agreement Minimum Criteria to be eligible for a place on Lot 1 of the Flexible Agreement. Applicants must be successful in Lot 1 to be eligible for Lot 2 and/or Lot 3.

The Flexible Agreement Minimum Criteria is summarised below, see Appendix 8 for further details of the Minimum Criteria and how it will be evaluated.

An Applicant must:

Criterion	Document Ref	Evaluation Stage
Pass all sections of the Selection Criteria Questionnaire	Appendix 3, 4 and 5	Stage 1.0
Have Ofsted (or equivalent Regulatory Body) registration and rating of Requires Improvement or above, or Care Inspectorate rating of Adequate or above. See Appendix 8 for further options	See Appendix 3 and 4	Stage 1.1
2 or more Registered Households residing within Wider Blackburn with Darwen, Blackpool, Cumbria and Lancashire (Wider BBCL) Boundary (see Process Chart Map 1)		

*See Appendix 8 for more details and how the criteria will be evaluated.*

Below sections provide a summary of each Lot and Tier, for detail of how the criteria will be evaluated see Appendix 8 Application Evaluation Criteria.

### Lot 1 Tier 3 Criteria

All Applicants must have met the above Flexible Agreement Minimum Criteria. Applicants will also be placed in this tier if they have a Price more than 10% higher than the mean average Lot 1 Price or have failed to meet the Tier 2 Essential Criteria.

### Lot 1 Tier 2 Essential Criteria

Applicants who want to be considered Lot 1 Tier 2 must meet the following Essential Criteria:

Criterion	Document Ref	Evaluation Stage
Pass the Minimum Criteria for the Flexible Agreement	Appendix 3, 4 and 5	Stage 1.0 – 1.1
Have a Lot 1 Price no more than 10% of the Lot 1 mean average price	Appendix 4	Stage 2.0
Have an Ofsted registration and rating of Good or Outstanding or Care Inspectorate registration and rating of Good or above	Appendix 3, 4	Stage 3.1
Have <b>2 or more</b> Registered Households residing within Combined Area A Blackburn with Darwen, Blackpool, and Lancashire's Fostering Sufficiency Area and Area B Cumbria's Fostering Sufficiency Area (BBCL) Boundary <b>Map 4</b> .	Appendix 3, 4	Stage 3.1

See Appendix 8 for more details and how the criteria will be evaluated.

### Lot 1 Tier 1 Essential Criteria

Applicants who want to be considered for Area A and/ or Area B and must meet the following Essential Criteria:

Criterion	Document Ref	Evaluation Stage
Pass the Minimum Criteria for the Flexible Agreement	Appendix 3, 4 and 5	Stage 1.0 – 1.1
Have a Lot 1 Price no more than 10% of the Lot 1 mean average price	Appendix 4	Stage 2.0
Have an Ofsted registration and registration and rating of Good or Outstanding	Appendix 3, 4	Stage 3.2.1
Have <b>5 or more</b> Registered Households residing within: <b>Area A</b> Blackburn with Darwen, Blackpool, and Lancashire's Fostering Sufficiency Area (BBL) Boundary Map 3. And / or <b>Area B</b> Cumbria's Fostering Sufficiency Area (C) Boundary Map 2.	Appendix 3, 4	Stage 3.2.1

Applicants that meet the above Lot 1 Tier 1 Essential Criteria will then be subject to an additional criteria which includes Quality and Price evaluation.

Applicants will be required to respond to all questions in Appendix 5 Lot 1 Quality Criteria Questionnaire which will be scored by a panel. They must also provide a Price for each price category with the Appendix 4 Selection Criteria Additional Info and Price Schedules.

Applicants will be allocated a score for quality and a score for price, the sum of these scores will be the Applicants Lot 1 Tier 1 score (See Appendix 8 Application Evaluation Criteria for more details of the evaluation criteria).

The Applicants will be ranked according to Lot 1 Tier 1 score for each Area and the top 12 ranking Applicants will be awarded a place in Lot 1 Tier 1, this will be repeated for Area A and then Area B.

*See Appendix 8 for more details and how the criteria will be evaluated.*

### Lot 2 Tier 2 Criteria

Applicants who want to be considered Lot 2 Tier 2 must meet the following Essential Criteria:

Criterion	Document Ref	Evaluation Stage
Pass the Minimum Criteria for the Flexible Agreement	Appendix 3, 4 and 5	Stage 1.0 – 1.1
Have an Ofsted registration and rating of Requires Improvement or above or Care Inspectorate registration and rating of Adequate or above.	Appendix 3, 4	Stage 3.3.1
Have 2 <b>or more</b> Registered Households residing Combined Area A Blackburn with Darwen, Blackpool, and Lancashire's Fostering Sufficiency Area and Area B Cumbria's Fostering Sufficiency Area (BBCL) Boundary Map 4.	Appendix 3, 4	Stage 3.2.1
Achieved a score of 2 or more for Lot 2 question 1 of the Lot 2 Quality Criteria Questionnaire. See Appendix 7 for further details.	Appendix 7	Stage 3.3.1

### Lot 2 Tier 1 Criteria

Applicants that meet the above Lot 2 Tier 1 Essential Criteria will then be subject to an additional criteria which includes Quality and Price evaluation.

Applicants will be required to respond to all Lot 2 questions in Appendix 7 - Lot 2 and Lot 3 Quality Criteria Questionnaire which will be scored by a panel. They must also provide a price for each price category with the Appendix 4 - Selection Criteria Additional Info and Price Schedules.

Applicants will be allocated a score for quality and a score for price, the sum of these scores will be the Applicants Lot 2 Tier 1 score (See Appendix 8 Application Evaluation Criteria for more details of the evaluation criteria).

The Applicants will be ranked according to Lot 2 Tier 1 score and the top 5 ranking applicants will be awarded a place in Lot 2 Tier 1.

*See Appendix 8 for more details and how the criteria will be evaluated.*

### Lot 3 Tier 2 criteria

Applicants who want to be considered Lot 3 Tier 2 must meet the following Essential Criteria:

Criterion	Document Ref	Evaluation Stage
Pass the Minimum Criteria for the Flexible Agreement	Appendix 3, 4 and 5	Stage 1.0 – 1.1
Have an Ofsted registration and rating of Requires Improvement or above or Care Inspectorate registration and rating of Adequate or above.	Appendix 3, 4	Stage 3.3.1
Have 2 <b>or more</b> Registered Households residing Combined Area A Blackburn with Darwen, Blackpool, and Lancashire's Fostering Sufficiency Area and Area B Cumbria's Fostering Sufficiency Area (BBCL) Boundary Map 4.	Appendix 3, 4	Stage 3.2.1
Achieved a score of 2 or more for Lot 3 question 1 of the Lot 3 Quality Criteria Questionnaire. See Appendix 7 for further details.	Appendix 7	Stage 3.3.1

### Lot 3 Tier 1 Criteria

Applicants that meet the above Lot 3 Tier 1 Essential Criteria will then be subject to an additional criteria which includes Quality and Price evaluation.

Applicants will be required to respond to all Lot 3 questions in Appendix 7 Lot 2 and Lot 3 Quality Criteria Questionnaire which will be scored by a panel. They must also provide a price for each price category with the Appendix 4 Selection Criteria Additional Info and Price Schedules.

Applicants will be allocated a score for quality and a score for price, the sum of these scores will be the Applicants Lot 3 Tier 1 score (See Appendix 8 Application Evaluation Criteria for more details of the evaluation criteria).

The Applicants will be ranked according to Lot 3 Tier 1 score and the top 5 ranking applicants will be awarded a place in Lot 3 Tier 1.

*See Appendix 8 for more details and how the criteria will be evaluated.*

#### **2.4.6 Call Off Procedure from the Flexible Agreement**

Once the Flexible Agreement has been established any Contracting Bodies wishing to make a Placement using the Flexible Agreement must follow the Call-Off Procedure within Appendix 2, an IPA must be signed and the Call Off Terms and Conditions at Appendix 2 will apply.

Placements can be made using one of the three methods as detailed in the Call-Off Procedure:

- Placement Request
- Mini competition
- Direct award

#### **2.4.7 Performance Monitoring**

All Providers who are awarded a place on the Flexible Agreement will have it's performance monitored. See Lot 1 Foster Care Specification Section 7 for further details. See also Appendix 2 Flexible Agreement, Schedule 5 Tiering System, which details movement between tiers within each Lot.

Through monitoring report and monitoring reviews, the performance against key performance indicator will be monitored. Any concerns will be discussed with the Provider. Failure to address concerns identified to the satisfaction of the Council or Contracting Body will result in the issue of a Formal Improvement Notice by the Council. This will set out actions that must be delivered in a specific timeframe. It will also detail actions that the Council intends to take account if continuing concerns are not addressed in full. This is likely to include the suspension of Placement Requests until the matter is resolved. If the issue persists then the Council reserves the right to demote the Provider from their current tier allocation or remove the Provider from the Flexible Agreement. (See Appendix 2 Flexible Agreement, Schedule 5 Tiering System).

#### **2.4.8 Annual Adjustment to Prices**

The prices submitted by Providers at Application stage shall remain fixed until the anniversary of the Flexible Agreement Commencement Date. Thereafter from the first anniversary of the Agreement, the Council shall offer a maximum annual adjustment in respect of all Services to cover inflation. Please see Clause 11 of the Call Off Terms and Conditions for more details.

#### **2.4.9 Annual Tier Review**

*Please see Appendix 2 Flexible Agreement, Schedule 5 Tiering System for more details.*

An Annual Tier Review will take place once per annum to ensure existing Providers still meet the Essential Criteria for the Lot(s) and Tier in which they are currently placed.

The Council intends to carry out the review annually at a date/dates to be specific by the Council but expected to be around the anniversary of the Flexible Agreement Commencement Date and will be after the Annual Adjustment to Prices.

*For the avoidance of doubt the performance of Providers against the Specification(s) and KPIs will be monitored throughout the Term of the Flexible Agreement and Providers will be informed of their performance at quartering contract monitoring reviews (see section 7 of the Specification)*

See Appendix 2 Flexible Agreement, Schedule 5 Tiering System for more details.

### 3 ESTABLISHING THE FLEXIBLE AGREEMENT

#### 3.1 Application Process

The Flexible Agreement will be an open list. Applicants can apply to join during its term if the Applicant satisfies the required criteria and is able to deliver the Service as described in the Service Specifications. The Flexible Agreement will be open for new Applications from the date of publication of this Invitation to Participate to the initial Application Return Deadline (See below table or as amended via the Council's iSupplier portal). Following the initial Application evaluation stage, it is intended that the Flexible Agreement will remain open for new Applications, however evaluation of Applications will be at least every three years as detailed below.

The Council reserves the right to evaluate new Applications sooner and/or amend the evaluation dates. Evaluation dates will be published on the Council's iSupplier portal as an online discussion or any other format which the Council stipulates.

Any Applications submitted after the Application Return Deadline will be evaluated as part of the next evaluation period.

If an Applicant wishes to amend their Application after it has been received by the Council, they may resubmit their Application, however, their Application may be deferred and evaluated at the next evaluation.

#### 3.2 Initial Application and Evaluation Process/Timetable

Intended Calendar Month	Cycle	Application	Evaluation	Appointment / Rejection
January 2022	<i>Initial</i>	<i>Open for initial Application</i>		

<b>March 2022</b>		<i>Initial Application Return Deadline</i>		
<b>March - April 2022</b>			<i>Initial Applications evaluated</i>	
<b>May 2022</b>				<i>Initial Applicants Appointed or Rejected</i>
<i>Flexible Agreement Established</i>				

<b>Initial Application Clarification deadline</b>	Friday 25 <sup>th</sup> February 2022
<b>Initial Application Return Deadline</b>	<b>10 am Friday 4<sup>th</sup> March 2022</b>
<b>Outcome of Initial Application</b>	Approx. April 2022
<b>PDPS commencement date</b>	May 2022

These dates are subject to change at the Council's sole discretion. Any significant changes to the dates shall be notified to all Applicants as soon as practicable. Changes to these dates will be notified to Applicants via the means of the online discussions function within the e-Tendering system. Dates communicated to Applicants via these means take precedence over the dates listed in the table.

Applicants are advised to regularly check the e- Tendering for communications from the Authority following the submission of their Application. The Authority may require further information from Applicants and failure to provide the information may result in the rejection of the Application.

Responses to this ITP must be returned no later than the Applicant Return Deadline and, in the manner, prescribed under section 5. Any Applications received after the Application Return Deadline shall not be opened or considered until the next cycle Applicant Return Deadline. The Council may, however, in its own absolute discretion extend the Applicant Return Deadline and in such circumstances the Council will notify all Applicants of any change.

The clarification deadline for the Initial cycle will be 1 week before the Application Return Deadline. The Council may stipulate clarification deadlines for future cycles, however Applicants are advised to provide sufficient time for the Council to respond before the Application Return Deadline, otherwise the Council may not be able to provide a response before the Application Return Deadline.

Following the evaluation process Applicants will receive an outcome notification according to the cycles above, if successful, Applicants will be required to sign a Flexible Agreement, will be appointed as a Provider.

Applicants that have been rejected will have the opportunity to reapply by submitting an improved Application.

### **3.3 Ongoing Applications and Evaluation Process/Timetable**

The Flexible Agreement will remain open for new Applications following the initial Application Return Deadline. The Council intends to evaluate new Applications at least every three years at the Flexible Agreement Commencement Date anniversary, unless otherwise advised by the Council. The Council reserve the right to do this sooner, at its discretion, if demand for placements increases or existing Flexible Agreement Providers lack capacity and it does not meet Contracting Body's needs. The Council will notify Applicants of evaluation dates via the e-tendering system, therefore Applicants are encouraged to check the online discussion function on a regular basis.

**The exact timetable for evaluation will be communicated via the online discussions function within the e-Tendering system.**

New Applicants can apply to be part of the Flexible Agreement following the Application Process as describe in this ITP and the Application Evaluation Criteria document.

At least every three years, existing Providers will have the opportunity to apply for different Lot(s), if not already part of, and be considered for a higher Tier or may wish to remain in the existing Lot/Tier they are placed. They will be subject to the evaluation criteria as set out in Appendix 8, which details of how existing Flexible Agreement Providers will be evaluated.

Following the evaluation process Applicants will receive an outcome notification, if successful, Applicants will be required to sign a Flexible Agreement, will be appointed as a Provider.

Applicants that have been rejected will have the opportunity to reapply by submitting an improved Application.

### **3.4 NOT IN USE**

### **3.5 NOT IN USE**

### **3.6 Evaluation of Applications**

Applications will be evaluated in accordance with Appendix 8 Application Evaluation Criteria. This will include how Applications will be evaluated for Selection, Quality and Price. Ofsted/Care Inspectorate requirements are further particularised below.

#### **3.6.1 Ofsted and Care Inspectorate (or equivalent) Registration and Rating**

**Selection Criteria:**

Please also see Appendix 8 Application Evaluation Criteria for more information on how this will be evaluated for each Lot and Tier.

Applicants must be registered for each regulated activity they carry out.

Applicants must refer to Ofsted and/or Care Inspectorate guidance, and it is the Applicants responsibility to follow the relevant guidance to comply with the regulations regarding the registration for regulated activities.

Applicants are asked to list the most relevant registered office according to location for the purpose of Service delivery (nominated location) within Appendix 4 Selection Criteria Additional Information and Price Schedule. This registered office must meet the requirements as set in this section.

These requirements relate to the report published by Ofsted/Care Inspectorate as of the **Application Return Deadline**.

**Applicants must be compliant with Ofsted and/or Care Inspectorate expectations (as applicable) and must not be rated 'Inadequate' by Ofsted or 'Weak' or 'Unsatisfactory' by the Care Inspectorate.**

Where an Applicant's location has an overall rating from Ofsted of 'requires improvement' or overall rating from the Care Inspectorate of 'adequate', they may be considered for the Flexible Agreement. However, if successful they must provide the agreed Ofsted/Care Inspectorate action plan to the Council. The action plan must show remedial actions for each area of improvement.

If the Council is not satisfied by the action plan, it will follow the terms of the Flexible Agreement clause 10 regarding Ofsted (or any equivalent Regulatory Body including the Care Inspectorate).

Applicants must maintain the required Ofsted/Care Inspectorate rating and registration requirements throughout the procurement process. Where the status of your nominated office changes, you must notify the Lead Procurement Officer immediately. Where Applicants no longer meet the minimum criteria of the Flexible Agreement your Application will be rejected.

## **Newly Registered**

### *Lot 1*

If an Applicant is newly registered with the relevant Regulatory Body therefore has not received a published rating, and does not have another registered office which meets the requirements as set in this section, they can apply for Lot 1 Tier 2 or 3 only, but could only be awarded a place in Lot 1 Tier 3 whilst waiting for a rating.

If successful and awarded a place on the Flexible Agreement and then given a first rating, from Ofsted which is 'Outstanding' or 'Good' or Care Inspectorate rating of 'Good', they may be able to move up to Lot 1 Tier 2 if they meet all other Tier 2 Essential Criteria.

### *Lot 2 and Lot 3*

If an Applicant is newly registered with the relevant Regulatory Body therefore has not received a published rating, and does not have another registered office which meets the requirements as set in this section, they can apply for Lot 2 and/or Lot 3 but can only be successful in Tier 2 whilst waiting for a rating. (Applicants must have also been successful in Lot 1 to be awarded a place on Lot 2 and/or Lot 3)

### All Lots

Once an Applicant has been awarded a place on the Flexible Agreement, they may apply for other Lots and/or Tiers if they wish, however this will be evaluated as per the evaluation cycles in section 3.3 in this ITP. If successful and is given a first rating which does not meet the Flexible Agreement Minimum Criteria, the terms of the Flexible Agreement will apply (see Clause 10 of the Flexible Agreement).

### Following the *Current* Application Return Deadline:

If at any time following the current Application Return Deadline, you become aware through the receipt of a published report from the Ofsted that your location is to receive an overall 'inadequate' rating or Care Inspectorate 'weak' or 'unsatisfactory' or does not meet the published requirements under the Selection Criteria you must inform the Lead Procurement Officer immediately. If the Council is not satisfied your Application meets the published requirements it will be disregarded.

### Consortia Applications:

All consortium members, subject to Ofsted/ Care Inspectorate regulation, must maintain the Ofsted/ Care Inspectorate requirements stated in this ITP and associated documents throughout the Flexible Agreement term. More details are available in the Flexible Agreement Schedule 5 Tiering System

Note to Applicants – please note that if you are bidding as a consortium, you must provide Ofsted/Care Inspectorate details for ALL members of the consortium in the Appendix 4 Selection Criteria Additional Information and Price Schedule.

Each member of the consortium, will need to complete Parts 1 and 2 of the Selection Questionnaire.

Where applicable, each member of the consortium subject to regulation by Ofsted/Care Inspectorate will be required to provide the Ofsted/Care Inspectorate registration number and rating of their nominated office. (Recorded on – Appendix 4- Selection Criteria Additional Information and Price Schedule.)

For the consortium to pass, all members subject to regulation by Ofsted/Care Inspectorate must meet the requirements detailed herein.

All members must maintain the required rating throughout the procurement process and notify the Lead Procurement Officer of any changes immediately when they become aware.

If the Council is not satisfied the Application meets the published requirements in respect of each Consortium member it will be disregarded.

### **Post Flexible Agreement Award:**

Following successful Applicant's appointment to the Flexible Agreement the terms and conditions of the Flexible Agreement will apply.

All Providers subject to Ofsted/Care Inspectorate regulation, **must maintain** the Ofsted/ Care Inspectorate requirements stated in this ITP and associated documents **throughout the Flexible Agreement term**

If at any time following Flexible Agreement award a Provider wishes to **change or remove location(s)**, the Service Provider must have received approval from Ofsted/Care Inspectorate where applicable to confirm the change before delivering services from the chosen location(s). The Provider will need to evidence how they will meet the service requirements from the new location as per their Application.

If at any time following Flexible Agreement award a Provider wishes to have a **complete change of legal entity or any other reason which requires you to re-register with Ofsted/Care Inspectorate**, but will be continuing to provide the same service to the Children using the service, the Provider must have received approval from Ofsted/Care Inspectorate, if applicable, in the form of an updated Certificate of Registration before delivering services the Provider must seek approval from the Council for any proposed change.

For the period the new location is not rated by Ofsted/Care Inspectorate, the Contracting Bodies are at liberty to carry out reasonable further and additional inspections beyond the scope carried out with those Providers on the Flexible Agreement that are rated.

Once the Provider's new nominated office has been rated, the terms of the Flexible Agreement applies.

### **Ofsted/ Care Inspectorate Requirements and Consortia Applications:**

All consortium members, subject to Ofsted/ Care Inspectorate regulation, must maintain the Ofsted/ Care Inspectorate requirements stated in this Invitation to Participate throughout the Flexible Agreement term. If any of the consortium members' Ofsted/ Care Inspectorate rating for their nominated office identified in the selection criteria falls below the requirements, the applicable provisions of the Flexible Agreement and Service Contract will be engaged. The Council shall, in such circumstances, have the discretion to terminate the Consortium's appointment to the Flexible Agreement. Alternatively, the Council, may, at its discretion and if it is deemed necessary and appropriate, require the Lead Member of the consortium to terminate its arrangements with the failing consortium member(s), allowing the remaining consortium member(s) to continue to deliver the Services, however the remaining

consortium member(s) must confirm they can continue to deliver the Services as per the Specification and responses given to the Quality criteria. The Council must be satisfied that the remaining consortium member(s) can continue to meet the terms of the Flexible Agreement and Service Contract(s).

### **Future Developments of the Ofsted/Care Inspectorate Approach**

During the period over which the Flexible Agreement will remain in effect the Ofsted/Care Inspectorate may review and develop their methodology for registration and / or ratings.

As such the Council may review the requirements in this Paragraph 3.6.1 and align them to any new Ofsted/Care Inspectorate requirements.

### **3.7 Agreement and Term**

It is important that the Flexible Agreement and Call Off terms and conditions are considered thoroughly, please ensure you consult with the relevant personnel within your organisation when considering these terms.

Any Applicant admitted to the Flexible Agreement will sign a Flexible Agreement establishing their status as a Provider. Where Placement are awarded, the Provider will be issued an IPA which will encompass service specific requirements, to which the Call-Off Terms and Conditions will apply. A Provider will have one Flexible Agreement but may have several IPAs that set out the Services they must provide in accordance with the Call-Off terms and conditions.

### **3.8 Business Transition**

Contracting Bodies Children who are placed within Foster Carer's Households as at Flexible Agreement Commencement Date will continue under the terms and conditions that are in place at that date. Should any Applicant, that currently has Children placed with them be unsuccessful in their Application submission to be included within the new Flexible Agreement, the Child will be permitted to remain in the foster placement under the existing terms and conditions and financial arrangements, unless the Contracting Body has any concerns with regards to the delivery of quality services. The terms and conditions of this new Flexible Agreement will apply to all new Placement with effect from Flexible Agreement Commencement Date.

## **4 ARRANGING SERVICES THROUGH THE FLEXIBLE AGREEMENT**

### **4.1 Call Off Arrangement within the Flexible Agreement**

There will be no guarantee of Placement for Providers awarded a place on the Flexible List. When a need arises the Contracting Body will follow the Call-Off procedure to arrangement Placements. Each call-off awarded will have the specific requirements refined in the IPA, all which is set out at within the Call Off Procedures (**see Appendix**

**2 Flexible Agreement).** For each call-off from the Flexible Agreement the Call-Off Terms and Conditions will apply (See Appendix 2 Flexible Agreement Schedule 1)

## 4.2 Price

All Applicants must complete Lot 1 pricing within Tab 4 Price Schedule within Appendix 4 Selection Criteria Additional Information and Price Schedule.

If an Applicant also wishes to apply for Lot 2 and/or Lot 3, they must also submit prices for each price category within the Lot(s) price schedule.

These are the prices that will be used should any Placement be awarded to a Provider. Applicants are encouraged to submit competitive prices because when a Call-Off is made via a Placement Request, if more than one Provider is able to Offer a suitable Placement, then the lower priced Offer will be chosen, (see Schedule 2 of the Flexible Agreement for the Call Off Procedure).

The prices submitted at this Application stage will be fixed for the first 12 months following the Flexible Agreement Commencement Date.

**Prices will then be subject to an optional annual inflationary adjustment. See clause 11 of the Call-Off Terms and Conditions for Charges and Payment terms.**

To be awarded a place on the Flexible Agreement prices submitted for Lot 1 will be subject to a **price assessment** as described in Appendix 8 Application Evaluation Criteria.

If an Applicant also wishes to apply for Lot 2 and/or Lot 3, the prices submitted will be evaluated for Tier 1 applications only. See Appendix 8 Application Evaluation Criteria.

## 4.3 Use of Flexible Agreement by third parties

The following authorities have expressed an interest in purchasing through the Council's Flexible Agreement:

- Cumbria County Council
- Blackpool Council
- Blackburn with Darwen Council

This Flexible Agreement for the provision of Fostering Agency Placements is for use by Contracting Authorities identified in the contract notice and any successor council as defined in The Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 to the Contracting Authorities. Please note that Cumbria County Council is currently undergoing a local government reorganisation and Government has announced that Cumbria County Council is to be replaced by two unitary authorities with effect from 01 April 2023. Therefore Cumbria County Council shall be entitled to novate the Flexible Agreement for the provision of Fostering Agency Placements to any successor council.

## 5 APPLICATION COMPLETION INFORMATION

The completed documents that will form the Application to be returned by the Applicant, by the Application Return Deadline are:

Document	Appendix	Applicant to Submit
Selection Questionnaire	3	One per Applicant
Selection Additional Information and Price Schedule	4	One per Applicant
Selection Criteria Reference Request	5	Up to three per Applicant – please see instructions in the selection criteria questionnaire
Lot 1 Tier 1 Quality Criteria Questionnaire	6	One per Applicant, if applying for Tier 1. Respond to all questions.
Lot 2 and 3 Tier 1 & 2 Quality Criteria Questionnaire	7	One per Applicant, if applying for Lot 2 and/or Lot 3. Tier 2 Applicants must only respond to Question 1, Tier 1 Applicants must respond to all questions.
Form of Application	9	One per Applicant

### 5.1 Clarifications about the Services or ITP

Any clarifications relating to this ITP must be submitted through the e-tendering portal.

The Council will respond to all reasonable clarifications as soon as possible through publishing the Applicants' questions and the Council's response to them on the e-tendering portal (**Clarifications Log**).

If an Applicant wishes the Council to treat a clarification as confidential and not issue the response to all potential Applicants, it must state this when submitting the clarification. If, in the opinion of the Council, the clarification is not confidential, the Council will inform the Applicant who will have an opportunity to withdraw it. If the clarification is not withdrawn, the response will be issued to all potential Applicants.

The deadline for receipt of clarifications relating to the Services or this ITP is set out in the Timetable section. Applicants are advised not to rely on communications from the Council in respect of the Services or ITP unless they are made in accordance with these instructions.

Written responses must be secured as a pre-requisite to an Applicant placing any reliance upon any responses. Oral information will not be held valid unless and until it has been confirmed in writing.

The Council will not guarantee that any requests made after the clarification deadline will be answered.

Applicants are required to check for the Council's responses to clarification requests on a regular basis throughout the procurement.

Applicants are obliged to promptly notify the Lead Procurement Officer of any ambiguity, inconsistency or error which they discover that could impede their ability to submit a valid Submission within the indicated timescale.

## 5.2 Not In Use

## 5.3 Clarifications about the contents of the Applications

The Council reserves the right (but is not obliged) to seek clarification of any aspect of an Applicants Application during the evaluation phase where necessary for the purposes of carrying out a fair evaluation.

Applicants are asked to respond to such requests promptly. Vague or ambiguous answers are likely to score poorly or render the Application non-compliant.

Should there be any element of your Application that requires clarification by the Application evaluation panel, provided that it is appropriate to do so, this will be requested via the 'online discussion' function on the e-Tendering system or via Email. The e-Tendering system will likely send an automated email notification to the Applicant's registered email address. A response date and time will be given of not less than 48 hours from the time of the clarification request being sent and any response must be submitted via the e-tendering messaging system to ensure that a clear audit trail is maintained. Your response will then be made available to the formal Application evaluation panel for further consideration, **where appropriate**.

In the event the Council considers it appropriate to seek clarification in relation to any aspect of the Application that aspect of the Application will not be awarded a final score until such time as the information requested by the Council has been provided or the deadline for the provision of the information specified in the request for clarification has expired (whichever occurs sooner).

## 5.4 Award

The Council may award Agreement(s)/Contract(s) on the basis of an Application submitted in accordance with the instructions within this document.

Award is subject to the formal approval process of the Council. Until all necessary approvals are obtained, no Agreement(s)/Contract(s) will be entered into. Once the

Council has reached a decision in respect of an award, it will notify all Applicants of that decision.

## 5.5 Electronic Application Returns – Oracle Fusion

This ITP was advertised as being available to potential Applicants through the Authority's electronic tendering (e-tendering) system, the Oracle Fusion Supplier Portal.

Applicants are required to submit their Application through this same portal, via the Sourcing module within their account:

### [Fusion Supplier Portal - Lancashire County Council](#)

Use of this portal does not require the purchase of high specification IT equipment or connections, nor high level personal IT skills/capabilities. Access to the portal and advice/training is free of charge. However, please note the help and assistance provided is to assist Applicants on use of the e-tendering system and the assistance does not extend to basic IT skills or training. Unfortunately, we will not be able to assist non-PC users in how to use the e-tendering system.

Use of the Authority's e-tendering system will benefit Applicants in terms of efficiency and cost savings when compared with hard copy Application submissions. The Authority is committed to utilising this system for all current and future business/procurement opportunities. Users only need to register (for free) with the system once to obtain long term access to the Authority's tendering opportunities.

Please read the information and instructions carefully. Failure to follow the instructions in the ITP documentation may compromise the integrity of any subsequent Submission and incomplete proposals may be deemed non-compliant. Any non-compliant proposal will be excluded from the evaluation process.

Applicants who decide after the Application Return Deadline not to proceed with their Submission are requested to inform the Authority's Lead Procurement Officer via the online discussions function within the e-Tendering system.

### **Support**

Oracle Fusion Supplier Portal is the replacement to iSupplier Portal. All existing active suppliers to the Authority will be automatically registered in Fusion.

Guidance will be available within the 'How to do Business with the Council' section of the LCC website.

The contact details for advice or assistance relating to the use of the e-tendering system are:

#### **E-tendering Help Desk**

Telephone Number: 01772 534966

Normal support line hours are between 9am and 4.30pm, Monday to Friday

It is the responsibility of the Tenderer to ensure that the contact information it has entered for its organisation within Oracle Fusion is accurate and kept up to date. Important notification messages relevant to this or other tender opportunities may not be received by a Tenderer should the contact information be inaccurate. The Authority cannot be held responsible for any inaccurate or incomplete information entered into the electronic tendering system by a Tenderer.

If at any stage a Tenderer needs to update the contact information held for its organisation this can be completed via Oracle Fusion. The Authority is under no obligation to respond/follow up on automated 'out of office' responses that it may receive from a tenderer.

**Any queries regarding the tender documents or the tender content should be directed via the e-tendering portal using the 'Messages' function.**

### **Electronic Application Returns – The Application Submission**

The Application Return Deadline will be detailed on the e-tendering system. Please allow sufficient time to complete and submit your Application whilst you become familiar with the portal and how it operates. **No extensions will be given to the Application Return Deadline due to any potential Applicant being unfamiliar with, or making mistakes in respect of the portal.**

All aspects (documents/attachments/responses) of the Application can and must be submitted via the e-tendering system.

The Authority will not accept email or hard copy/paper Applications in relation to this Application and you must submit your Application electronically via the e-tendering portal.

You are not permitted to return by email or postal service any element of your Tender. To do so may result in your Tender being disqualified.

You *are* permitted to re-send your Application again electronically via the e-tendering portal should you realise you have made an error or submitted an incomplete bid as long as you re-submit it before the Application Return Deadline. You must return ALL of the documents again – not just the amended or extra documents. Your most recent submission will be taken as your final submission.

The following requirements must be adhered to when submitting Applications:

- Where documents are embedded within other documents, Applicants must upload separate copies of the embedded documents.
- The Application must be in English and drafted in accordance with the drafting guidance set out in this ITP.
- Each Application must be uniquely named or referenced.

- A table of contents must be provided.
- The Selection Criteria Questionnaire and Award Criteria Questionnaire Submission must be in Microsoft Word.

The Application must be clear, concise and complete. The Authority reserves the right to mark an Applicant down or exclude them from the procurement if its Application contains any ambiguities, caveats or lacks clarity. Applicants should submit only such information as is necessary to respond effectively to this ITP.

Applications will be evaluated on the basis of information submitted by the Application Return Deadline.

Where the Applicant is a company, the Application must be signed by a duly authorised representative of that company.

Where the Applicant is a consortium, the Application must be signed by the lead authorised representative of the consortium, which organisation shall be responsible for the performance of the Contract.

In the case of a partnership, all the partners should sign or, alternatively, one only may sign, in which case he must have and should state that he has authority to sign on behalf of the other partner(s). The names of all the partners should be given in full together with the trading name of the partnership. In the case of the sole trader, he should sign and give his name in full together with the name under which he is trading.

### 5.6 Character Limits

The Council reserves the right to set a limit upon the size of an Applicant's response to any question in the Quality Stage Questionnaire by setting a maximum limit to the number of characters per question response. Where a limit is set, this will be indicated in the question *and will include spaces*.

Where a character limit has been set for a question, please use the table provided at the end of each response to indicate a character count (the number of characters in the response). When specifying your character count you must include all characters used as part of your answer to that question, including spaces and those characters contained within any **tables, flow charts, maps, process diagrams, pictures and spreadsheets**.

Applicants are reminded that undefined or unclear abbreviations may render their response ambiguous and unable to achieve a higher score that might otherwise have been awarded.

In circumstances where the character limit has been exceeded the Council reserves the absolute discretion to take such action as it deems appropriate and proportionate which may include curtailing responses to the published character limit (and discarding the remainder) or disqualification of the Application in its entirety.

Where it appears that an Applicant has tried to gain an unfair advantage and distort competition the subsequent Application may be deemed non-compliant. Any non-compliant Application may be excluded from the evaluation process.

## 5.7 Submission of Applications

Each Application must meet the Council's Flexible Agreement Minimum Criteria, operate as a standalone bid and not be dependent on any other bid or any other factors external to the Application itself. That is, each Application must be capable of being accepted by the Council in its own right.

## 5.8 Agreement and Service Contract Terms

The draft Flexible Agreement that the Council proposes to use is attached at Appendix 2. By submitting an Application, Applicants are agreeing to be bound by the terms of this ITP and the Agreement and Service Contract(s) without further negotiation or amendment.

The Council **cannot** accept any qualifications to this ITP.

A qualification is a restriction or condition which the Applicant attaches to their Application.

Any qualifications recorded in the submitted Application documentation may result in your Application being disqualified.

All requests for clarification on any terms and conditions within this Application must be made in writing in accordance with this document. All requests for clarification must be made prior to the deadline for receipt of clarifications as outlined in the Timetable within this document. The Council will consider whether any amendment to the terms and conditions is required. Any amendments shall be published through the Clarifications Log and shall apply to all Applicants.

No requests for clarifications can be made after the deadline for receipt of clarifications has passed.

In the event that the Council does not receive the signed Agreement or Service Contract(s) within **10 Business Days** of it being sent to the successful Applicant following the decision to award the Agreement/Contract, the Council reserves the right to disqualify the Applicant and award the Agreement/Contract to the Applicant submitting the next highest scoring bid.

## 5.9 Documents forming the Agreement

The following documents shall form part of the Agreement between the Council and the successful Applicant:

- Agreement and its schedules.
- Service Contract(s)
- Specifications
- Schedules (such as service levels, site plans, asset lists, contracts list, list of transferring employees, relevant policies and so on).
- A pricing schedule completed by the Applicant
- Responses to requirements **OR** questions as completed by the Applicant
- A list of commercially sensitive information (as completed by the successful Applicant).
- The Invitation to Participate Document and its appendices.

### **5.10 Simultaneous Competition, Consortia and Subcontractors**

The Council requires all Applicants to identify whether and which subcontracting or consortium arrangements apply in the case of their Application, and in particular specify the share of the Contract/Agreement it intends to sub-contract, any proposed sub-contractors, and precisely which entity they propose to be the Service Provider.

#### **5.10.1 Simultaneous Competition**

Where an Applicant is affiliated to more than one bidding model for example; Consortia, Subcontracting arrangements, Special purpose vehicles, or as an Individual Applicant, then the Applicant is under an obligation to ensure that such arrangements do not detract from its ability to service any contracts awarded in the event that it is successful in being appointed under more than one bidding model.

Applicants can create and submit an entirely separate submission to their original submission, if they choose. But where Applicants revise their original submission for a new Application the Council's Oracle Fusion Supplier system is programmed to automatically archive the original submission, by way of understanding that subsequent submissions override all previous submissions.

The Oracle Fusion Supplier system does support suppliers to submit multiple bids during any one occurrence, although this may potentially cause technical issues (on the Oracle Fusion Supplier system) further into the procurement process where an Applicant may need to be selected for mini-competitions.

Therefore the recommended method to submit multiple bids, when submitting as an individual Applicant and also as the lead organisation (of a separate bidding model) would be by registering your organisation and the other bidding model(s) as separate entities on our Oracle Fusion Supplier system. In this example the individual Applicant could be registered as 'supplier A' and the other bidding model could be registered as 'supplier A and supplier B'.

Should Applicants require further assistance with this, the Council's Procurement Information Management (PIM) team can assist via 01772 534966 or pim@lancashire.gov.uk.

#### 5.10.2 Consortia and Subcontractors

For the purposes of this ITP, the following terms apply:

- **Subcontracting arrangement.** Groups of companies come together specifically for the purpose of bidding for appointment as the Service Provider, but envisage that one of their number will be the Service Provider, the remaining members of that group will be subcontractors to the :
  - Essential subcontractors must individually complete Parts 1 and 2 of the Selection Criteria Questionnaire. Notwithstanding that the Applicant will submit a composite response on behalf of all parties to Part 3 of the Selection Criteria Questionnaire, satisfactory responses must be received in respect of essential subcontractors in order for the Application to proceed to the evaluation stage.
- **Consortium arrangement.** Groups of companies come together specifically for the purpose of bidding for appointment as the Service. It is recognised that the Applicant need not necessarily be a single economic operator and that Applicants may wish to partner up to jointly provide the Services required. Please note the same expectations will be placed on the consortium as a single Service.
- The Council will consider Applications from consortia with the following caveats:
  - The Council will only contract with one lead member or special purpose vehicle, who will need to be identified in section 1.2 of the Selection Questionnaire;
  - All consortium members will have joint and several liability – each member is responsible for the actions and omissions of each other;
  - In the event of a consortium bid all members must be named and all Applicants bidding as a consortium will be required to provide a Consortium Agreement, including those with the same parent company.
  - **The Council reserves the right to approve the contractual relationship between the consortium members including but not limited to any applicable dispute resolution procedure;**
  - Please ensure the agreement between consortium members includes as a minimum;
    - A joint and several liability clause
    - Specific provisions relating to circumstances where the consortium is found to be at fault in its delivery of the services, up to and including provisions for a worst case scenario such as the negligent death of a service user are necessary
    - Any applicable dispute resolution procedure.

- Payments will be made by the Council to the lead member only. The lead member is then responsible for administering payments to the rest of the consortium members;
- The performance of any consortium member will affect and apply to the entire consortium. Poor performance is the responsibility of the consortium and the Council may issue sanctions against the consortium based on the actions of one member;
- Each member of the consortium must individually complete Parts 1 and 2 of the Selection Criteria Questionnaire. Notwithstanding that the lead member of the consortium will submit a composite response on behalf of all consortium members to Part 3 of the Selection Criteria Questionnaire, satisfactory responses must be received in respect of all consortium members in order the consortium to proceed to the evaluation stage.
- Parts 3 of the Selection Criteria Questionnaire must be completed by the lead member of the consortium on behalf of all consortium members.

Amendments to Consortia and Similar Arrangements Provided that the continuation of an Applicants participation in the procedure does not mean that other Applicants are placed at a competitive disadvantage, Applicants are advised of the following permitted amendments to consortia and similar arrangements:

1. In the event that a member of a group of economic operators, for example, a member of a consortium and/or sub-contractors or a party to a special purpose vehicle ceasing to be a member of the bidding model (e.g. fails the Selection Criteria or ceases trading), the lead member will have the opportunity to continue their Application with the member(s) who met the Selection Criteria. The lead member will be required to:
  - Confirm that the elements of the Application subject to the evaluation of the Quality and Price Criteria are unaffected;
  - give assurances that the amended bidding model will meet the requirements of Service delivery;
  - consider the withdrawal of the Application where the requirements of Service delivery will not be met; and,
  - consider replacing the sub-contractor(s) / consortium member(s) that have failed the Selection Criteria as required, provided that the new member(s) meet the Selection Criteria.
2. In the event that the lead member of a group of economic operators, for example, a member of a consortium and/or sub-contractors or a party to a special purpose vehicle ceasing to be a member of the bidding model (e.g. fails the Selection Criteria or ceases trading), the remaining members of the bidding model may continue with their Application by electing a new lead member. The new lead member will be required to:
  - Confirm that the elements of the Application subject to the evaluation of the Quality and Price Criteria are unaffected;
  - give assurances that the amended bidding model will meet the requirements of Service delivery;
  - consider the withdrawal of the Application where the requirements of Service delivery will not be met; and,

- consider admitting new sub-contractor(s) / consortium member(s) provided that they meet the Selection Criteria; and,
- resubmit the Selection Criteria Questionnaire including for the new bidding model and include a Selection Criteria Questionnaire concerning any new members, for evaluation by the Council.

### **5.11 Warnings and disclaimers**

While the information contained in this ITP is believed to be correct at the time of issue, neither the Council, its advisors, nor any other awarding authorities will accept any liability for its accuracy, adequacy or completeness, nor will any express or implied warranty be given.

This exclusion extends to liability in relation to any statement, opinion or conclusion contained in or any omission from, this ITP (including its appendices) and in respect of any other written or oral communication transmitted (or otherwise made available) to any Applicant. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the Council.

If an Applicant proposes to enter into the Agreement and subsequent Contract with the Council, it must rely on its own enquiries and on the terms and conditions set out in the Agreement/Contract(s) (as and when finally executed), subject to the limitations and restrictions specified in it.

Neither the issue of this ITP, nor any of the information presented in it, should be regarded as a commitment or representation on the part of the Council (or any other person) to enter into a contractual arrangement.

Neither the receipt of this document nor any information contained in it or distributed with it or subsequently communicated to any person is or is to be taken as constituting the giving of investment advice by the Council or any Representatives. The Council reserves the right at any time;

- to change its procedures and/or criteria or processes for procurement for this project;
- not to follow up this document in any way and/or to withdraw from the process;
- not to award an Agreement; or
- to alter the timetable for the procurement process to Agreement award.

No expense incurred by any person will be reimbursed and neither the Council nor any of their Representatives will as a result be liable in any way to any person.

### **5.12 Confidentiality and Freedom of Information**

This ITP is made available on condition that its contents (including the fact that the Applicant has received this ITP) is kept confidential by the Applicant and is not copied,

reproduced, distributed or passed to any other person at any time, except for the purpose of enabling the Applicant to submit an Application.

As a public body, the Council is subject to the provisions of the Freedom of Information Act 2000 (FOIA) in respect of information it holds (including third-party information). Any member of the public or other interested party may make a request for information.

Applicants should be aware that, in compliance with its transparency obligations, the Council routinely publishes details of its contract(s), including the contract values and the identities of its suppliers on its website without consulting the provider of that information.

The Council has provided Applicants with the opportunity to identify any information they would consider to be exempt as part of their Application in the Award questionnaire for the relevant Application. Applicants should be aware that, in compliance with its transparency obligations, the Council routinely publishes details of its contract(s), including the contract values and the identities of its suppliers on its website without consulting the provider of that information.

The Council shall treat all Applicants' responses as confidential during the procurement process.

Requests for information received following the procurement process shall be considered on a case-by- case basis, applying the principles of FOIA, which permits certain information to be withheld, for example where disclosure would be prejudicial to a party's commercial interests, and in accordance with the Council's transparency obligations.

Therefore, Applicants are responsible for ensuring that any confidential or commercially sensitive information, the disclosure of which would be likely to diminish the Applicant's competitive edge, has been clearly identified to the Council in the template provided in the Quality Criteria Questionnaire.

### **5.13 Publicity**

No publicity regarding the Services or the award of any Agreement/Contract will be permitted unless and until the Council has given express written consent to the relevant communication. For example, no statements may be made to the media regarding the nature of any Application, its contents or any proposals relating to it without the prior written consent of the Council.

### **5.14 Applicant conduct and conflicts of interest**

Any attempt by Applicants or their advisors to influence the contract award process in any way may result in the Applicant being disqualified. Specifically, Applicants shall not directly or indirectly at any time:

- Devise or amend the content of their Application in accordance with any agreement or arrangement with any other person, other than in good faith with

a person who is a proposed partner, supplier, consortium member or provider of finance.

- Enter into any agreement or arrangement with any other person as to the form or content of any other Application, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Application.
- Enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting an Application.
- Canvass the Council or any employees or agents of the Council in relation to this procurement.
- Attempt to obtain information from any of the employees or agents of the Council or their advisors concerning another Applicant or Application.

Applicants are responsible for ensuring that no conflicts of interest exist between the Applicant and its advisers, and the Council and its advisors. Any Applicant who fails to comply with this requirement may be disqualified from the procurement at the discretion of the Council.

The use of a bid writer or similar service does not alleviate any requirement set out in this section. Where a bid writer or similar service is used the Applicant must take all reasonable steps to prevent the distortion of competition or conflicts of interest arising. As such Applicants may have a preference for services that offer exclusivity in the context of this procurement exercise.

### **5.15 Council's rights**

The Council reserves the right to:

- Waive or change the requirements of this ITP from time to time without prior (or any) notice being given by the Council.
- Seek clarification or documents in respect of an Applicant's Application.
- Disqualify any Applicant that does not submit a compliant Application in accordance with the instructions in this ITP.
- Disqualify any Applicant that is guilty of serious misrepresentation in relation to its Application, expression of interest, the PQQ or the Application process.
- Withdraw this ITP at any time, or to re-invite Applications on the same or any alternative basis.
- Choose not to award any Agreement/Contract or Lot as a result of the current procurement process.
- Make whatever changes it sees fit to the Timetable, structure or content of the procurement process, depending on approvals processes or for any other reason.

### **5.16 Bid costs**

The Council will not be liable for any bid costs, expenditure, work or effort incurred by an Applicant in proceeding with or participating in this procurement, including if the procurement process is terminated or amended by the Council.

### **5.17 Alterations**

The Council reserves the right to make changes of a drafting nature to this ITP and any other documentation which must be accepted without reservation. Applicants will be notified of any and all changes as soon as is possible.

### **5.18 Information**

Each Applicant is responsible for obtaining all information necessary for the preparation and Submission of its Application; and all costs, expenses, statutory fees and liabilities incurred by each Applicant in connection with this ITP and with the preparation and Submission of any Application shall be borne by that Applicant.

### **5.19 Anti-Collusion**

Applicants must confirm in their Applications that they are submitting a bona fide Application and must certify that this is the case in the Application Declaration set out in the Application Documents. The Council shall be entitled to disqualify any Application where it has contravened the anti-collusion requirements. Where in its reasonable opinion the Council considers that an Application exhibits characteristics indicative of anti-competitive practices which are likely to distort competition, the Council reserves the right to conduct such investigations as in its absolute discretion it deems appropriate. In the event that the Council's investigations conclude that anti-competitive practices are likely to have occurred, the Council shall be entitled to disqualify any affected Applications from further consideration.

The Council will recover the amount of any losses it has suffered if a successful Applicant is found subsequently to have contravened the anti-collusion requirements or if any person employed by or acting for them, has done or does any of the following:

- Committed an offence Under the Prevention of Corruption Act 1889-1916; OR Commits an offence under the Bribery Act 2010; OR
- Gives or offers a fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

The Council will not regard as “collusive” any bona fide discussions or disclosure of information of the contents of these documents or of any communications or discussions with the Council between one or more Applicants held solely for the purpose of submitting a joint Application. Where Applicants commission support from third party bid writers in the development of their bid, they should take reasonable steps to avoid allegations of collusion with other Applicants.

Any Applicant who, in connection with these Contracts/Agreement:

- Fixes or adjusts its Application by or in accordance with any agreement or arrangement with any other Applicant (other than a member of its own consortium);
- Or
- Enters into any agreement or arrangement with any other Applicant that it shall refrain from making an Application as to the price set out in its Application;
- Or
- Offers or agrees to pay or give or does 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 Application or proposed Application any act or omission;
- Or
- Communicates to any person other than the Council the amount or approximate amount of any price in its proposed Application (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Application for insurance or a contract guarantee bond);

may be disqualified (without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by a Tenderer may attract).

## **5.20 Environmental Policy Statement**

The Council has adopted a positive stance with regard to the protection of the environment. Details can be found on:

<http://www.lancashire.gov.uk/council/strategies-policies-plans/environmental/environmental-policy-statement.aspx>

## **5.21 Equality And Diversity**

The Council wishes to put its values into practice by being an exemplary employer and to take a lead in combating discrimination and promoting equality of opportunity throughout Lancashire. To do that we will embrace equality and diversity as a central part of all that we do. Details can be found at:

<http://www.lancashire.gov.uk/corporate/web/?siteid=5580&pageid=30516&e=e>

## **5.22 Copyright**

All recipients of this ITP are reminded that copyright in this document and any attachments is vested in the Council. Therefore any recipient shall not reproduce in any material form (including photocopying or storing it in any medium by electronic

means) all or any of this ITP without written permission of the Council other than for use strictly for the purpose of preparing its Submission.

### **5.23 Procurement Process**

Applicants will be deemed to understand the process which the Council is required to follow under European and domestic legislation (particularly in relation to public procurement rules).

### **5.24 Performance And Information Management**

Applicants are directed to pay particular attention to the Council's requirements in respect of management information, Key Performance Indicators, monitoring and reviews in the terms and conditions.

### **5.25 Arithmetic Accuracy Of The Tender**

If the Council suspects that there has been an error in the pricing of the Submission, the Council reserves the right to seek such clarification as it considers necessary from the Tenderer.

### **5.26 Abnormally Low-Priced Tenders**

Under Regulation 69 of Public Contracts Regulations 2015, if a Tenderer returns what appears to be an abnormally low-priced Submission or has failed to take provide evidence of taking into account any year on year cost increases widely known at the time of submitting a tender, the Council reserves the right to request an explanation in writing from the Tenderer of the offer or those parts which it considers contribute to the offer being abnormally low. The Council will take account of the evidence provided and will subsequently verify the Submission or parts of the offer appearing abnormally low with the Tenderer. Only at the end of this clarification period taking into account the individual facts, will the Council decide whether the offer should be rejected or not. Any Tenderer must return the clarifying information within 48 hours (or such other period of time that may be agreed by the Council) of receipt of a request from the Council, via the e-Tendering system.

### **5.27 Guarantees**

The Council may have qualified the Applicant on the assumption that, where the Applicant is an operating company, it will be guaranteed by the parent company. As a result, the Council may require each Applicant to confirm the identity of the guarantor of its obligations under any Agreement(s). This guarantor should be the ultimate parent company of the Applicant, except in exceptional circumstances. In the case of consortia, the Council will require confirmation that the consortium will provide either a parent company guarantee from the lead consortium member or an equivalent level of security.

### **5.28 Prevent Duty for Local Authorities**

The Service Provider will have due regard to the need to prevent people from being drawn into Terrorism in line with the 'Prevent Duty for local authorities' within the Counter Terrorism and Security Act 2015. For further information, refer to this link.

<https://www.gov.uk/government/publications/prevent-duty-guidance>

## **5.29 Not Used**

## **5.30 Social Value Policy**

The Public Services (Social Value) Act 2012 places an obligation on the Council to consider how what is being procured will improve the economic, social and environmental well-being of our local area. The Council is seeking to increase Social Value in all goods, works and services that it procures and therefore Social Value may form part of the Award Criteria evaluation. Details about what Social Value means to the Council can be found at:

<https://www.lancashire.gov.uk/media/898255/approved-social-value-policy-and-framework.pdf>

## **APPENDIX 1 – APPLICATION PROCESS CHART**

*See separate attached document.*

## **APPENDIX 2 – FLEXIBLE AGREEMENT**

*See separate attached documents and associated schedules which includes.*

## **APPENDIX 3 – SELECTION CRITERIA QUESTIONNAIRE**

*See separate attached document.*

## **APPENDIX 4 - SELECTION CRITERIA ADDITIONAL INFORMATION AND PRICE SCHEDULES**

*See separate attached document.*

## **APPENDIX 5 - SELECTION CRITERIA REFERENCE REQUEST**

*See separate attached document.*

## **APPENDIX 6 –LOT 1 TIER 1 QUALITY CRITERIA QUESTIONNAIRE**

*See separate attached document.*

**APPENDIX 7 – LOT 2 AND LOT 3 TIER 1 & 2 QUALITY CRITERIA QUESTIONNAIRE**

*See separate attached document.*

**APPENDIX 8 – APPLICATION EVALUATION CRITERIA**

*See separate attached document.*

**APPENDIX 9 – FORM OF APPLICATION**

*See separate attached document.*

**APPENDIX 10 – PROVIDER CONSULTATION AND PROVIDER ENGAGEMENT**

*See separate attached document folder.*