

ICT SERVICES AGREEMENT SCHEDULES

SCHEDULE 2.4

CONTINUOUS IMPROVEMENT

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Section A

Product Description

1. PRODUCT TITLE

ICT Services Agreement - Schedule 2.4 (Continuous Improvement)

2. PURPOSE OF PRODUCT

The purpose of the schedule is to set out any specific obligations related to improving the value for money of the Services over the contract term as well as the general service improvement provisions set out in clause 14 of the Agreement.

- details of the specific Service streams that will be subject to continuous improvement activities;
- activities to be undertaken as part of the continuous improvement process (e.g. how improvements are to be identified);
- detailed processes and procedures for proposing and agreeing changes resulting from the continuous improvement regime; and
- specific provisions relating to costs and (where appropriate) benefit-sharing.

3. COMPOSITION

- The general provisions relevant to the continuous improvement process will be set out in clause 14 of the Agreement (Services Improvement).
- The Authority's requirements may also specify which (if any) service streams/items will need to be subject to specific continuous improvements. In practice, the specific obligations are likely to evolve in parallel with the development of the Services Description (i.e. the future requirements and need to maintain standards and flexibility will become more apparent as the Service Description takes shape).
- If no specific/more detailed obligations are required in addition to the general provisions in clause 14 (e.g. in the case of less complex projects, contracts with a shorter term or where the Authority has a finite requirement for the Services) then this schedule may be omitted.

4. DERIVATION

- Authority's requirements.
- Bidder's Proposal.
- Financial Model.

5. RELATED CLAUSES AND SCHEDULES

Clauses: 14 (Services Improvement)

Schedules: 2.1 (Services Description)

2.2 (Service Levels and Performance Monitoring)

7.3 (Value for Money Provisions)

8.2 (Change Control Procedure)

6. ALLOCATION

- The general provisions will be set out in the draft Agreement issued as the descriptive document at the start of the competitive dialogue process. Any specific requirements and/or any parameters against which the Contractor should make proposals may be set out in the draft schedule issued as the descriptive document.
- The finalised provisions and schedule will be issued by the Authority as part of the ITT.

7. QUALITY/REVIEW

- Authority to review bidder proposals. Any specific obligations (if applicable) may be developed and agreed during the development/negotiation phase of the procurement.
- Authority expertise: technical, commercial/procurement, financial.

Section B

Guidance

1. INTRODUCTION

1.1 The Continuous Improvement schedule supplements the general provisions of clause 14 (Services Improvement) by setting out any specific obligations, requirements or targets in relation to the process and may also set out further details in relation to the process itself.

1.2 In general terms, the key principles and objectives underlying the continuous improvement process should be those of:

1.2.1 improving quality and efficiency;

1.2.2 reducing costs; and

1.2.3 encouraging innovation.

It is important that the process reflects the need to achieve value for money over the full term of the Agreement.

1.3 The need for the type of specific obligations set out in the Continuous Improvement schedule should be considered on a project-by-project basis. The schedule is likely to be more relevant to larger scale or complex projects where one or more of the following elements is present:

1.3.1 a long contractual term;

1.3.2 a strong likelihood of contract renewal or transfer of service provision to a replacement supplier for further long-term provision;

1.3.3 the Services are of a type that are typically subject to cost reductions and increased efficiency as a result of technological advance;

1.3.4 a likelihood that a large volume of continuous improvement measures will need to be implemented during the life of the Agreement (e.g. where the service is complex and includes a number of service streams),

in smaller and less complex projects, the basic provisions set out in clause 14 should be adequate to ensure that regard is had to the key aims described in paragraph 1.2 (above).

1.4 Service Levels can provide for a gradually increasing level of performance or for additional service levels to be added through the life of the project (see clause 10.7) (Service Levels). Service Levels tend to take a more structured approach where a continuous improvement provision will usually be more flexible and *ad hoc* in its operation. However, sophisticated continuous improvement regimes in more complex projects may use a combination of devices to provide: (i) a more stringent and structured approach to the requirement to improve; and (ii) an obligation on the Contractor to commit to achieving the aims described in paragraph 1.2 (above), in some cases, guaranteeing it. Devices often used are:

1.4.1 benchmarking exercises to be undertaken at regular intervals (see schedule 7.3 (Value for Money Provisions));

1.4.2 targets (with dates to meet those targets) for cost reductions (these could be binding or non-binding);

1.4.3 key dates for service revision/review based on predictable changes to the Authority's business processes or requirements.

2. DRAFTING CONSIDERATIONS

2.1 When drafting detailed continuous improvement provisions, the Authority will need to consider the following:

2.1.1 what types of improvement does the Authority intend to achieve? (e.g. consider the overriding objectives described in paragraph 1.2 (above));

2.1.2 how can the desired improvements be achieved both in the long term and the short term? e.g. what processes and methodologies for identifying and implementing improvements should be used?

2.1.3 if a continuous improvement change is implemented what will be the effect on other aspects of the Agreement e.g. adjustments to the Financial Model, benefit-sharing payments, Service Description, Service Levels;

- 2.1.4 how will the continuous improvement regime relate to the other contractual mechanisms for effecting improvements/enhancements to the Services? e.g. Change process, benchmarking.
- 2.2 Whilst it will be difficult to settle a definitive position in relation to the points set out in paragraph 2.1, it is important that the Authority has a clear idea of what it intends to achieve through the continuous improvement regime (even if at a high-level). The detailed provisions will need to be developed in collaboration with bidders and each bidder will have a different approach.

[Guidance: Any technology refresh requirements should be dealt with in schedule 2.1 (Services Description).]

3. BENEFITS SHARING

- 3.1 The guiding principle of a continuous improvement process should be to deliver benefit to the Authority, primarily in the form of value for money. A key benefit to be achieved is that of reducing costs and it is important that this is passed through to the Authority.
- 3.2 In certain circumstances it may be appropriate, and even desirable, to allow the Contractor to share in the costs benefits of a continuous improvement change. As a rule of thumb:
 - 3.2.1 it may be appropriate to share a saving with the Contractor where:
 - 3.2.1.1 the improvement was suggested by the Contractor; or
 - 3.2.1.2 the implementation of the improvement requires the Contractor to incur costs.
 - 3.2.2 it will be unlikely to be appropriate to share a saving where:
 - 3.2.2.1 the Authority identifies an improvement that requires minimal effort from the Contractor to implement;
 - 3.2.2.2 the saving results from a predicted change in the Authorities business processes that the Contractor was required to plan for; or

3.2.2.3 the saving results from an improvement made to realign the Contractor's performance to the desired contractual curve.

- 3.3 Where a change is suggested by and/or driven by, the Contractor, a benefit-share is appropriate and the value to the Authority of that sharing is clear: the Contractor needs to be encouraged to exceed its obligations whenever possible and the only way of ensuring this is to deliver an appropriate incentive. It is often far more effective to incentivise good performance than to deter poor performance i.e. setting realistic obligations and encouraging over-performance rather than setting more robust obligations and deterring under-performance. It is also important to remember that it is not in the Contractor's interests to propose a change that could undermine its margin whilst it might be prepared to do so where its margin is bolstered through a benefit-sharing mechanism.
- 3.4 In relation to changes that will require resources or capex investment to implement, it may be preferable to meet those costs through a sharing mechanism. A Contractor may be willing to invest in implementation on the strength of a share in the return; this may reduce the need for Authority capex and reduce the risk of change by getting the Contractor to share in the financial risk/reward.
- 3.5 Percentage savings are invariably used as, logically, if the Contractor shares in the percentage of a saving achieved it is highly incentivised to increase the saving in order to increase its share in it.
- 3.6 The Contractor's proposals in relation to benefit-sharing should be carefully reviewed, as key elements of its costs base and financial model may be predicated upon an assumption that the Authority will accept its benefit-sharing proposals. Bidders should always be asked to price the Service both with and without the benefit-sharing proposals so that the Authority can fully consider the advantages and fairly compare bidders.

4. IDENTIFYING IMPROVEMENTS

- 4.1 Improvements may either be identified as part of the Service review process or on an *ad hoc* basis by either party.
- 4.2 Each party should have the right to propose improvements, although the Authority will usually retain the right to decide whether a change should be implemented or not.

Where a benefit-sharing mechanism is applicable, bidders will often seek to refer the final decision as to whether a change should be made to a joint forum. The Authority should be wary of relinquishing its discretion in relation to implementation of changes and any move towards a "joint decision" would only be appropriate where it is proven that the change is a genuine improvement rather than a cost cutting exercise that could result in a diminution in quality.

- 4.3 It is important that in relation to the mandatory improvements (e.g. refresh obligations) that the Authority has the right to compel the Contractor to implement the requisite change and the provisions in the Agreement relating to these types of improvement need to be clear and enforceable.

5. IMPLEMENTING IMPROVEMENTS

- 5.1 Changes as a result of improvements identified after the Effective Date will be implemented through the Change Control Procedure. This provides transparency both in terms of time, costs and impact on the Agreement/Services associated with implementing the improvement.

Section C

Pro-forma/Example Schedule

[Guidance: the Authority should consider the following for inclusion:

- *details of specific refresh obligations (hardware and software);*
- *key dates for cost reductions;*
- *key dates for service revision;*
- *procedures and proposals for proposing and agreeing changes resulting from the continuous improvement regime;*
- *specific provisions relating to costs; and*
- *identifying improvements.]*