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Award

Procurement of Source code licence

Department for Education

F15: Voluntary ex ante transparency notice

Notice identifier: 2024/S 000-016817

Procurement identifier (OCID): ocds-h6vhtk-046c3b

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Section I: Contracting authority/entity

I.1) Name and addresses

Department for Education

Sanctuary Buildings, 20, Great Smith Street

London

SW1P 3BT

Email

Commercial.DDAT@EDUCATION.GOV.UK

Country

United Kingdom

Region code

UK - United Kingdom

Internet address(es)

Main address

<https://www.gov.uk/government/organisations/department-for-education>

I.4) Type of the contracting authority

Ministry or any other national or federal authority

I.5) Main activity

Education

Section II: Object

II.1) Scope of the procurement

II.1.1) Title

Procurement of Source code licence

II.1.2) Main CPV code

- 48000000 - Software package and information systems

II.1.3) Type of contract

Supplies

II.1.4) Short description

The Department for Education (DfE) wishes to take a licence of from RM Education plc (RM) of the Source Code (Portland code 16-18 and DCAM Under and Overmatch checks) to relating to the provision of the National Pupil Data Achievement and Attainment Tables (NPDAAT).

II.1.6) Information about lots

This contract is divided into lots: No

II.1.7) Total value of the procurement (excluding VAT)

Value excluding VAT: £270,000

II.2) Description

II.2.3) Place of performance

NUTS codes

- UK - United Kingdom

II.2.4) Description of the procurement

The Department for Education (DfE) wishes to take a licence of from RM Education plc (RM) of the Source Code (Portland code 16-18 and DCAM Under and Overmatch checks) to

relating to the provision of the National Pupil Data Achievement and Attainment Tables (NPDAAT). Taking the licence is time-critical, for reasons of compliance with reporting requirements.

DfE wishes to rely on Regulation 32(2) of the Public Contracts Regulations 2015 (as amended) as justification for taking a licence of the Source Code direct from RM. DfE believes that such direct purchase is justifiable on the basis that:

- competition is absent for technical reasons (relying on Regulation 32(2)(b)(ii)); and/or
- RM has exclusive rights, including intellectual property rights, in the Source Code, meaning that the Source Code cannot be replicated (relying on Regulation 32(2)(b)(iii).
- DfE believes that no reasonable alternative or substitute to the Source Code exists, and that the absence of competition is not the result of any artificial narrowing down of the parameters of what should be a competitive procurement. The reasons for this belief are set out in this notice.
- In 2020, RM was the only supplier to bid in the final stage of the procurement for the NPDAAT service. Since then, several contract modifications have taken place and, on each occasion, details of them were published. No other suppliers reacted to the published modification notices.
- The service to which the Source Code relates is highly bespoke, and only RM has delivered it for the past fifteen years. As such, DfE considers that only RM, as incumbent supplier, can provide the existing technical solution required (namely that embodied in the Source Code).
- The Source Code represents the business rules of DfE's policies (as encapsulated in source code and database objects) and that, as such, the Source Code is only relevant in the context of DfE's specific system and for its specific purpose
- The intellectual property in the Source Code is vested in RM.

II.2.11) Information about options

Options: No

II.2.13) Information about European Union Funds

The procurement is related to a project and/or programme financed by European Union funds: No

Section IV. Procedure

IV.1) Description

IV.1.1) Type of procedure

Negotiated without a prior call for competition

- The products involved are manufactured purely for the purpose of research, experiment, study or development
- The works, supplies or services can be provided only by a particular economic operator for the following reason:
 - protection of exclusive rights, including intellectual property rights

Explanation:

DfE believes that competition is absent for technical reasons and/or as a result in the exclusive rights held in the Source Code by RM. DfE believes that no reasonable alternatives to, or substitutes for, the Source Code exist, for the following reasons.

(i) It is not technically possible for there to be an alternative or substitute to the Source Code, or to the overarching service provided by RM. The Source Code represents a very small, specialised and bespoke element of the overarching RM service. For example, the Source Code relates to:

o the matching of learners from educational attainment data. More specifically it helps identify false and positive learner matches, but within a very specific range of data and values.

o the performance measures data for 16-18 year old learners. The Source Code represents the end-to-end process for the application of the rules and how the performance measures should be calculated. These are DfE policy rules that are extremely unlikely to exist in any other system.

(iv) The NPDAAT service to which the Source Code relates is aligned with the England's education system, which is unique to England. Therefore, the ability to replicate the Source Code is unlikely to exist elsewhere.

(v) For the 16-18 age group, there are around 1,700 'indicators' that are driven by DfE policies and rules. The total extent of code for these indicators is estimated to range from 85,000 to

170,000 lines of code.

(vi) For the over/under matching code there are 15 datasets, 15-20 scenarios per dataset, 50-100 lines of code per dataset so 11,000 – 30,000 lines of code in total.

(vii) Whilst the Source Code represents a small component of the wider NPDAAT service, it is bespoke to DfE policies and rules, and is a highly nuanced technical subset of the overall NPDAAT system.

(viii) The Source Code (specifically) is proven to work at scale in a production environment, and has done so reliably for the past fifteen years.

(ix) The code has been refined to deal with anomalies that have occurred while processing live data over that fifteen-year period. No other code set that might be similar can possibly have the same level of testing and reliability achieved during this period.

(x) The Department produces a range of measures to assess pupil and school performance for students aged 16-18. This data is shared with schools and colleges in October each year to inform their own target setting and ahead of wider publication and use by the Department and Ofsted. It is critical that the performance measures data is produced by the end of September to meet this established timetable and shared with schools/colleges ahead of the school holidays at the end of October. Therefore, there is insufficient time to conduct production testing to prove that any previously unknown code might be reliable

IV.1.8) Information about the Government Procurement Agreement (GPA)

The procurement is covered by the Government Procurement Agreement: Yes

Section V. Award of contract/concession

A contract/lot is awarded: Yes

V.2) Award of contract/concession

V.2.1) Date of conclusion of the contract

29 May 2024

V.2.2) Information about tenders

The contract has been awarded to a group of economic operators: No

V.2.3) Name and address of the contractor/concessionaire

RM Education

Oxford

Country

United Kingdom

NUTS code

- UK - United Kingdom

The contractor/concessionaire is an SME

No

V.2.4) Information on value of contract/lot/concession (excluding VAT)

Total value of the contract/lot/concession: £270,000

V.2.5) Information about subcontracting

The contract/lot/concession is likely to be subcontracted

Section VI. Complementary information

VI.4) Procedures for review

VI.4.1) Review body

High Court

London

Country

United Kingdom