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Contract

Prisoner Payphone Service

Ministry of Justice

F25: Concession award notice

Notice identifier: 2022/S 000-024585

Procurement identifier (OCID): ocds-h6vhtk-036527

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Section I: Contracting authority/entity

I.1) Name and addresses

Ministry of Justice

102 Petty France

London

SW1H 9AJ

Email

soydan.osman@justice.gov.uk

Telephone

+44 02033343555

Country

United Kingdom

Region code

UK - United Kingdom

Internet address(es)

Main address

<https://www.gov.uk/government/organisations/ministry-of-justice>

I.4) Type of the contracting authority

Ministry or any other national or federal authority

I.5) Main activity

Public order and safety

Section II: Object

II.1) Scope of the procurement

II.1.1) Title

Prisoner Payphone Service

Reference number

con_13325

II.1.2) Main CPV code

- 64200000 - Telecommunications services

II.1.3) Type of contract

Services

II.1.4) Short description

This is a concession contract between the Secretary of State for Justice (MoJ) and British Telecommunications plc (BT), dated 30 August 2022, for the provision of telephone services to prisoners in prisons operated by MoJ through its executive agency, HM Prison and Probation Service (the Extension). The Extension updates, on similar terms, an existing contract procured under the Public Contracts Regulations 1993 (the Contract). The Extension will expire on 31 May 2026, with a further optional 12-month period during

which BT will provide exit assistance. This is the minimum required duration to facilitate MOJ going to market for the procurement of, and smooth transition to, a next generation service solution. Under the Extension BT will provide substantially the same services on substantially the same terms as the Contract with additional investment from BT to provide necessary service improvements as described in section II.2.4.

II.1.5) Estimated total value

Value excluding VAT: £116,900,000

II.1.6) Information about lots

This concession is divided into lots: No

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

Value excluding VAT: £116,900,000

II.2) Description

II.2.2) Additional CPV code(s)

- 64212000 - Mobile-telephone services
- 64212100 - Short Message Service (SMS) services
- 64212800 - Pay phone provider services
- 64212900 - Pre-paid phone card provider services
- 64215000 - IP telephone services

II.2.3) Place of performance

NUTS codes

- UK - United Kingdom

II.2.4) Description of the procurement

The Extension facilitates the procurement of, and smooth transition to, a next generation prison telephone service solution, as well as providing for necessary service improvements. Provisions are included in the Extension around intellectual property, exit planning and asset transfer. During the term of the Extension, BT will complete the installation of an internet protocol-based service in all HMPPS prisons. This will replace the current ISDN-based service, which will become unavailable in 2025. BT will also make investments to improve the service provided to MoJ and prisoners, to better align the

services with current technologies available to members of the public.

The Extension also introduces some amendments to ensure greater consistency with current Government commercial and procurement policies (e.g., freedom of information and transparency, compliance with tax obligations and modernised security requirements).

The Extension is permitted by virtue of the concession contract award procedure or the negotiated procedure (as applicable) without the publication of a concession or contract notice, as applicable, because the services can only be provided by BT. This is because competition is absent for technical reasons and/or the protection of exclusive rights, no reasonable alternative or substitute exists, and MoJ has not artificially narrowed the scope of the procedure, as more fully described in section IV.1.1 below.

Alternatively, MoJ considers that neither the Concession Contracts Regulations 2016 nor the Public Contracts Regulations 2015 apply to the Contract, the Extension is an amendment to the Contract, and MoJ has published this notice voluntarily in the interests of maximum transparency.

Alternatively, the Extension is a modification of the Contract and the modifications provided for by the Extension are not substantial and therefore permitted because:

(1) the modified Contract will be substantially of the same character as the Contract when it was originally let. BT will continue to provide telephone services to prisoners on a concession basis and will not provide additional services unrelated to telephony. BT will continue to provide telephone services to prisoners in each case subject to meeting MoJ's security requirements to prevent misuse;

(2) the modified Contract will require BT to make additional investment, change the contract management mechanisms, clarify the position concerning intellectual property rights, and make better provision for the transition of service from BT to any replacement supplier(s). The conditions would not - had they been part of the original contract award procedure - have attracted additional participants to the award procedure, seen the selection of different applicants to participate in the procurement, or seen the award of the Contract to a different organisation;

(3) the terms of the Extension require BT to make investment in the system used to provide the services within prisons;

(4) the extension does not extend the scope of the Contract, in that it continues to relate only to prisons operated by HMPPS. The duration of the proposed extension is up to 31 May 2026 (with an additional optional 12 month exit period) . This is not a considerable extension of scope compared to the duration of the Contract provided for in the original Contract, and/or compared to the existing duration of the Contract.

The value of the Extension in section V.2.4 is an estimate of the total amount that prisoners will pay to BT under the Extension and does not represent any sums that MoJ will pay to BT. The amount that BT will receive under the Extension depends on prisoner use of the system, which has significant uncertainties. The value in section IV.2.4 represents an estimate based on certain usage scenarios.

II.2.5) Award criteria

Concession is awarded on the basis of the criteria described below:

- Criterion: The Extension is permitted by virtue of the concession contract award procedure or the negotiated procedure (as applicable) without the publication of a concession or contract notice, as applicable, because the services can only be provided by BT. This is because competition is absent for technical reasons and/or the protection of exclusive rights, no reasonable alternative or substitute exists, and MoJ has not artificially narrowed the scope of the procedure, as more fully described in section IV.1.1 below.

II.2.7) Duration of the concession

Start date

1 September 2022

End date

31 May 2027

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) Form of procedure

Award procedure without prior publication of a concession notice in the cases listed below

- The services can be provided only by a particular economic operator for the following reason:
 - absence of competition for technical reasons

Explanation:

MoJ has awarded the Extension following a new concession contract award procedure under the Concession Contracts Regulations 2016 or a new procurement procedure under the Public Contracts Regulations 2015, as the case may be. MoJ may do so without the publication of a contract or concession notice, as applicable, because competition is absent for technical reasons and/or the protection of exclusive rights, no reasonable alternative or substitute exists, and MoJ has not artificially narrowed the scope of the procedure.

Reasons:

(1) MoJ must provide telephone services for prisoners at all times. Allowing prisoners to communicate with the outside world helps ensure that MoJ complies with its Article 8 duties under the European Convention on Human Rights. The services encourage good behaviour and support relationships, reducing re-offending. The loss of services is highly likely to lead to reduced order, and risk disruption and physical harm to prisoners and officers;

(2) MoJ could not award a new contract before the Contract expired on 31 August 2022. BT is replacing the current ISDN-based service with an internet protocol (IP)-based service across all prisons. This must occur before the ISDN network closes in 2025, a matter outside MoJ's control. BT is the only provider that can provide the services until the implementation of the new service. It owns, and has the exclusive rights to, the intellectual property rights in the ISDN service. It is not possible due to technical reasons relating to interoperability of telephones and charging systems, and exclusive rights granted to BT and provided for in the initial procurement, to have two concurrent providers.

(3) following transition to the IP-based service, as a concession contract, the Contract allows BT to recover its investment. It owns the intellectual property rights in the software implementing the IP-based service.

(4) MoJ requires time to procure a replacement service. Any replacement supplier must develop and implement its solution, even one taking advantage of the IP network. A new solution must meet MoJ's security policies, with a resilient service in a secure environment across many sites. MoJ will start the re-procurement before the IP-based service is complete to limit the Extension duration. MoJ estimates it will take at least 42 months, including mobilisation. Any replacement supplier will require additional time to design, implement and test any solution.

(5) there was insufficient time to procure and implement a replacement while guaranteeing service continuity. BT is the only provider that can provide the services until any new solution commences. The Contract scope - all HMPPS publicly run prisons - has not been artificially narrowed. The Extension provides sufficient time for MoJ to procure and have implemented a new service, with limited contingency, and is no longer than reasonably required.

Section V. Award of concession

Title

Prisoner Payphone Service

A concession/lot is awarded: Yes

V.2) Award of concession

V.2.1) Date of concession award decision

30 August 2022

V.2.2) Information about tenders

Number of tenders received: 1

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

V.2.3) Name and address of the concessionaire

British Telecommunications plc

One Braham, 1 Braham Street

London

E1 8EE

Country

United Kingdom

NUTS code

- UK - United Kingdom

National registration number

01800000

The concessionaire is an SME

No

V.2.4) Information on value of concession and main financing terms (excluding VAT)

Total value of the concession/lot: £116,900,000

Section VI. Complementary information

VI.4) Procedures for review

VI.4.1) Review body

Ministry of Justice Commercial & Contract Management Directorate Compliance Team

102 Petty France

London

SW1H 9AJ

Email

commercialcompliance@justice.gov.uk

Country

United Kingdom

