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E-mail:

DATE 7 February 2019
Your reference:
Our reference: IG 01218

Dear

FREEDOM OF INFORMATION ACT 2000 - DISCLOSURE

The council has completed its search relating to your request for information about contracts, which we received on 7 February 2019.

The council does hold information within the definition of your request.

REQUEST & RESPONSE

1) Council's Standard Conditions of Contract for the Purchase of Goods/Services.
Cumbria County Council used the Northumbria Framework Contract.

2) Council's Conditions of Contract for the Purchase of Goods/Services including full details of the terms of Council's early payment discount agreed with Oxygen Finance
Please see attached.

Disclaimer

Most of the information that we provide in response to requests submitted under the Freedom of Information Act 2000 and Environmental Information Regulations 2004 will be subject to copyright protection. In most cases the copyright will be owned by Cumbria County Council. However the copyright in other information may be owned by another person or organisation, as indicated on the information itself.

You are free to use any information supplied in this response for your own non-commercial research or private study purposes. The information may also be used for any other purpose allowed by a limitation or exception in copyright law, such as news reporting. However, any other type of re-use, for example by publishing the information in analogue or digital form, including on the internet, will require the permission of the copyright owner. Where the copyright owner is the council you will need to make an application under the Re-use of Public Sector Information Regulations 2005.

For information where the copyright is owned by another person or organisation you must apply to the owner to obtain their permission.

If you are dissatisfied with the way the council has responded to your request you can request an Internal Review. If you would like to request a Review please contact the Information Governance Team using the details at the top of this letter.

Further information can be found on the council's website: <http://www.cumbria.gov.uk/council-democracy/accesstoinformation/internalreviewscomplaints.asp>

Yours sincerely

Anita

Anita Timperon
Information Governance Team
Corporate, Customer and Community Services

By clicking on the button marked “I agree to the Terms and Conditions” you confirm you have authority to bind the organisation (the “Vendor”) on whose behalf you join the Premier Supply Service.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“Contract”: means every contract, including those which are created via the issue of a purchase order, between the Council and the Vendor entered into before, on or after the Effective Date and **“Contracts”** shall be construed accordingly.

“Council”: Cumbria County Council of 117 Botchergate, Carlisle, Cumbria, CA1 1RD which expression includes its permitted successors in title and assigns.

“Early Payment Programme”: means the early payment element of the Cumbria County Council Premier Supply Service.

“Effective Date”: means the date that you accept these Terms and Conditions by clicking the “I agree to the Terms and Conditions” box.

“Invoiced Debt”: means the gross amount that is invoiced by the Vendor (including all sums invoiced).

“Vendor”: means your organisation.

1.2 A reference to **writing** or **written** includes e-mail.

2. If the Council pays any Invoiced Debt owed to the Vendor under or in connection with the Contracts before the due date for payment of that Invoiced Debt, the Council shall be entitled to deduct and retain from that Invoiced Debt, for its own benefit, such percentage of that Invoiced Debt (**“Rebate”**) calculated in accordance with Schedule 1.

3. The Early Payment Programme shall be managed in accordance with the terms and conditions set out in this Agreement.

4. Nothing in this Agreement obliges the Council to pay any Invoiced Debt owed to the Vendor before its due date.

5. If the Council does not pay an Invoiced Debt before its due date, the Council shall not be entitled to the Rebate.
6. This Agreement shall override anything to the contrary in the Contract terms and conditions regarding payment of invoices to the extent of any inconsistency.
7. The Council and Vendor agree that save as varied by this Agreement the remainder of the Contract terms and conditions are unaffected by this Agreement and shall remain in full force and effect.

8. Contracts to which this Agreement is to apply.

Every Contract between the Council and the Vendor entered into before, on or after the Effective Date. For the avoidance of doubt this includes those contracts which are created via the issue of a Council purchase order.

9. Duration.

This Agreement shall be for a minimum of 15 months duration and shall continue until terminated in accordance with clause 11 below.

10. Commencement.

- 10.1. This Agreement shall apply to all Invoiced Debts issued on or after the Effective Date.
- 10.2. This Agreement shall apply to any Invoiced Debt issued before the Effective Date of the Agreement to the extent they remain unpaid by the Council.

11. Termination.

- 11.1. This Agreement will terminate in the case of each individual Contract, where that Contract naturally expires or earlier termination.
- 11.2. In the case of all Contracts, the Council or Vendor may issue 3 months' written notice of its intention to terminate this Agreement, provided that 12 months have expired since the Effective Date.
- 11.3. This Agreement may be terminated by mutual agreement between the Parties at any time following the minimum 15 months duration.
- 11.4. In all cases, any payments due or Invoiced Debts that remain unpaid up to and including the date of termination or expiry of either the Contracts or this Agreement will remain subject to this Agreement.
- 11.5. In circumstances where a Contract is still in place following termination of this Agreement, payment of any future sums due shall revert to the original payment provisions of that Contract.
- 11.6. Termination of this Agreement shall not affect other rights and obligations of the Parties in connection with the Contracts.

12. Deemed receipt of Invoices by the Council (the "Invoice Date").

The date a valid invoice is received by the Council.

13. Deemed payment by the Council for the purposes of determining the applicable Rebate according to Schedule 1 (the "Invoice Payment Date")

The Invoice Payment Date is the date on which the Council executes its payment run.

14. Calculation of the Rebate

- 14.1 The Rebate is calculated by establishing the number of days that have elapsed between the date a valid invoice is received and the Invoice Payment Date and comparing the number of days elapsed with the table at Schedule 1 to determine the Rebate to be applied to the invoiced amounts. The Rebate percentage (%) is calculated to 14 decimal places and it is this value that is applied in all calculations. However, for simplicity, the Rebate % displayed in the table at Schedule 1 has been rounded to 2 decimal places.
- 14.2 Rebates applied to invoices are calculated at an invoice line item level. Rebates are applied in the manner described in clause 14.1 above against the value of each line item. The result of this calculation is rounded to the nearest pence. Once the Rebates for all line items have been calculated, they are aggregated to provide the total Rebate value to be deducted from the Vendor's invoice on early payment of the invoice.

15. Application of Rebate.

- 15.1 The Rebate shall be applied to all amounts owed by the Council to the Vendor in connection with the Contracts, including without limit, fees, charges or the like, and the reimbursement of any expenses and any applicable VAT unless the Vendor has non-exempt status under the Construction Industry Scheme (CIS) rules in which case the provisions of clause 15.2 shall apply.
- 15.2 If the Vendor has non-exempt status under the CIS rules the rebate shall be applied to all amounts owed by the Council to the Vendor in connection with the Contracts, including without limit, fees, charges or the like, and the reimbursement of any expenses and any applicable VAT but excluding the direct cost of any materials supplied.
- 15.3 For every 0.25% change in the Bank of England Base Rate the Rebate will be adjusted in the same direction as the Base Rate change by 0.02%.

16. Rights of set off.

The Council may retain or set off any sums owed to it by the Vendor which have fallen due and payable against any sums due to the Vendor under a Contract.

17. Council Procedure if the Rebate is claimed.

The Council shall issue a debit note indicating the value of the Rebate that has been applied.

18. Incorrect application of Rebates.

- 18.1 In the event the Vendor believes in good faith that the Council has incorrectly applied a Rebate it shall contact the Council's Accounts Payable section (whose details will be provided to the Vendor in the welcome pack, as updated from time to time) within 7 days of the relevant payment.
- 18.2 If that period passes without such contact having been made or genuinely attempted, the Council shall be deemed to have applied the Rebate correctly in that instance.
- 18.3 The parties shall use reasonable endeavors to resolve the problem in a timely manner, including making relevant personnel available for the purpose.

19. E-invoicing

The Council may make proposals to implement e-invoicing with the Vendor and the Vendor agrees to consider such proposals in good faith and not refuse reasonable amendments to this Agreement to reflect such proposals.

20. Supplier Portal

- 20.1 The Council may make proposals to implement a supplier portal to administer the Early Payment Programme and the Vendor agrees to consider such proposals in good faith and not refuse reasonable amendments to this Agreement to reflect such proposals.
- 20.2 In the event that the Council implements a supplier portal the Council shall grant (insofar as it has the power to do so) to the Vendor a revocable, royalty free non-exclusive worldwide licence to use the platform for the sole purpose of meeting its obligations under and realising its benefits arising from this Agreement.
- 20.3 Such licence shall carry the right to sub-licence and shall be transferable only with the prior written consent of the Council.
- 20.4 Such licence shall continue for the duration of this Agreement or its earlier termination or until the Council decides for any reason to terminate the licence, whichever occurs first.
- 20.5 All intellectual property rights in the platform shall remain vested in the Council and/or any other person who supplied the platform.

21. Confidential Information.

- 21.1. This Agreement shall only be regarded as Confidential Information to the extent it is to be regarded as that Party's Confidential Information according to the Contracts.
- 21.2. Nothing in this Agreement creates additional confidentiality obligations to those contained in the Contracts.

22. Freedom of Information

- 221 The Vendor acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and shall assist and co-operate with the Council (at the Vendor's expense) to enable the Council to comply with information disclosure requirements under the FOIA or EIR.
- 222 The Council shall be responsible for determining at its absolute discretion whether any information in connection with this Agreement is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and/or is to be disclosed in response to a request for information.

23. Governing Law and Jurisdiction

- 23.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 23.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

Schedule 1

Rebates that the Council may deduct and retain

| Number of days elapsed between Invoice Receipt Date and Invoice Payment Date. | % of the amount owed that may be deducted and retained by the Council as a Rebate ^{1 2} |
|---|--|
| 0 | 1.50% |
| 1 | 1.45% |
| 2 | 1.40% |
| 3 | 1.35% |
| 4 | 1.30% |
| 5 | 1.25% |
| 6 | 1.20% |
| 7 | 1.15% |
| 8 | 1.10% |
| 9 | 1.05% |
| 10 – target | 1.00% |
| 11 | 0.95% |
| 12 | 0.90% |
| 13 | 0.85% |
| 14 | 0.80% |
| 15 | 0.75% |
| 16 | 0.70% |
| 17 | 0.65% |
| 18 | 0.60% |
| 19 | 0.55% |
| 20 | 0.50% |
| 21 | 0.45% |
| 22 | 0.40% |
| 23 | 0.35% |
| 24 | 0.30% |
| 25 | 0.25% |
| 26 | 0.20% |
| 27 | 0.15% |
| 28 | 0.10% |
| 29 | 0.05% |
| 30 | 0.00% |

¹ For every 0.25% change in the Bank of England Base Rate the early payment Rebate will be adjusted in the same direction as the Base Rate change by 0.02%.

² Rebate % is displayed with a precision of 2 decimal places. The actual Rebate applied is to a precision of 14 decimal places.