

## **St Austell Town Council**



### **Volume One (1)**

## **Catering Concession for: Poltair Park, St Austell**

### **INVITATION TO TENDER (ITT)**

### **Background Information, Instructions and Conditions of Tender**

**Applicants should read this Volume first**

**If you would like this information in another format please email**

**[info@staustell-tc.gov.uk](mailto:info@staustell-tc.gov.uk)**

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# Contents

Information and Instructions .....	3
Section 1 – About the Council .....	3
1.1 The Council .....	3
Section 2 – About the Tender.....	4
2.1 The Tender.....	4
2.2 Contract Period .....	4
2.3 Insurance Levels .....	4
Section 3 - About the Procurement Process.....	5
3.1 Procurement Procedure.....	5
3.2 Instructions for Completion .....	5
3.3 Clarification Process.....	5
3.4 Authority Representatives.....	6
3.5 Format of Response / Submission.....	6
3.6 Validity Period .....	6
3.7 Procurement Timetable .....	6
3.8 Evaluation Approach .....	7
3.9 Award Criteria.....	7
3.10 Scoring Guidelines .....	8
3.11 Commercial / Price Evaluation.....	9
Section 4 – Conditions of Tender .....	10
4.1 Authority's Warranties and Disclaimers .....	10
4.2 Bribery Act.....	10
4.3 Public Services (Social Value) Act.....	10
4.4 Freedom of Information Act 2000 and Environmental Information Regulations 2004 and Data Protection Act 2018 .....	11
4.5 Transparency in Local Government.....	11
4.6 GDPR and Data Protection Act 2018.....	11
4.7 Counter Terrorism and Security Act 2015.....	12
4.8 Modern Slavery Act 2015 .....	12
4.9 Late Payment Directive 2015.....	12
4.10 Study of the Document .....	12
4.11 Consortia and Sub-contracting .....	13
4.12 Ownership .....	14
4.13 Discrepancies, Omissions and Enquiries concerning the Documents .....	14
4.14 Terms and Conditions .....	14
4.15 Clarification and Circular Advices .....	15
4.16 Completion of the Document .....	15
4.17 Applicant Site Visits .....	15
4.18 Alternatives and Variations .....	16
4.19 Return of Document .....	16
4.20 Applicant's Warranties .....	17
4.21 Evaluation of Bids.....	17

4.22 Applicant's Price .....	17
4.23 Errors and Omissions in the Applicant's Bid .....	18
4.24 Abnormally Low or High Bids.....	18
4.25 Authority Site Visits.....	18
4.26 Rejection of Offers.....	18
4.27 Acceptance of Offers .....	19
4.28 Award of Contract.....	19
Definitions .....	20

# Information and Instructions

## Section 1 – About the Council

### 1.1 The Council

- 1.1.1 The Client for this Project and in effect Contracting Authority is St Austell Town Council which is situated close to the south coast of Cornwall approximately 10 miles south of Bodmin and 30 miles west of Devon.
- 1.1.2 St Austell Town Council covers Bethel, Gover, Mount Charles, Poltair and Holmbush and is represented by 20 councillors. St Austell, currently the largest town in Cornwall, has had a long and varied past and is most famous for its China Clay heritage

## Section 2 – About the Tender

### The Tender

- 2.1.1 This is a Concession tender for Catering facilities at St Austell's Poltair Park, with full details contained in the accompanying Specification document (see Schedule 1).
- 2.1.2 Poltair Park is the Council's premier park situated between Carlyon Road and Trevarthian Road in St Austell. It is in close proximity to the railway station, bus station, Police station, leisure centre and library. It is a short walk from the Town centre and has a good footfall throughout the day.
- 2.1.3 The park has been awarded a 4\* award for the last two years under the South West in Bloom Pride in Parks Award and has undergone major refurbishment since the Town Council took over its ownership and maintenance in 2017.
- 2.1.4 The park includes well equipped children's play areas, a skateboard park, a multi sports area, a bowls club and a large open space. It is maintained to a high standard with excellent floral displays, mature trees and permanent planting.
- 2.1.5 The Tender consists of the following documents:
  - i. Volume 1: Information, Instructions and Conditions of Tender (this document)
  - ii. Volume 2: Applicant's Offer
  - iii. Schedule 1: Specification
  - iv. Schedule 2: Commercial Document
  - v. Schedule 3: Headline Terms

### 2.2 Contract Period

- 2.2.1 It is intended that any resultant Concession Contract shall commence as soon as practically possible after receipt of a formal letter of award as may be agreed.
- 2.2.2 Contract period to be a five year term with the option to extend for a further 2 years.

### 2.3 Insurance Levels

- 2.3.1 **Employer's Liability Insurance:** The Authority's minimum requirement for Employer's Liability Insurance is £5m
- 2.3.2 **Public Liability Insurance:** The Authority's minimum requirement for Public Liability Insurance is £5m.

## **Section 3 - About the Procurement Process**

### **3.1 Procurement Procedure**

- 3.1.1 The Authority is issuing this Concession Invitation to Tender (ITT) and is inviting expressions of interest and Bids from Applicants in response to the published advertisement. All Applicants that submit a Bid shall be evaluated in accordance with the Evaluation Criteria and process outlined within Volume Two (2) Applicant's Offer and the information contained within it shall be used by the Authority as the means to make a Contract award decision.

### **3.2 Instructions for Completion**

- 3.2.1 All responses must be written in English and costs submitted are to be presented in Pounds Sterling, exclusive of VAT, but inclusive of all other costs where not stated in the Pricing Document.
- 3.2.2 Where details are provided by the Applicant in literature that they submit in connection with the response, they must ensure that clear cross-references are given to the Council.
- 3.2.3 The following documents must be completed, signed and returned with the tender:
- Certificates and Declarations
  - Volume 2 – Pass / Fail Questions
  - Volume 2 – Response to Method Statements
  - Schedule 2 – Commercial Document (Pricing Schedule)
- 3.2.4 Any information relating to the Council and supplied by the Council shall be kept by the Applicant in strictest confidence.
- 3.2.5 Applicants are advised that the Council is not bound to accept the lowest tender submitted, nor to reimburse any expense incurred during the process.

### **3.3 Clarification Process**

- 3.3.1 All clarification enquiries should be directed to the Authorised Representative shown below and by no later than the date indicated in the Procurement Timetable detailed elsewhere in this document.
- 3.3.2 Applicants are advised that where such enquiries have been made, and it is appropriate to do so, the Council will provide access to all Applicants and interested parties a copy of the Clarification and the written reply, with anonymity preserved.
- 3.3.3 The process for providing updates on Clarification will be via publishing updates on the Council's website where the tender is published and via Contracts Finder. In addition, Applicants and interested parties are asked to provide their contact details to the Authorised Representative whereby the Council will endeavour to provide relevant updates to the contact point provided.

### 3.4 Authority Representatives

- 3.4.1 No person in the Authority's employ or other agent, except as so authorised by the Authority Authorised Representative, has any authority to make any representation or explanation to Applicants as to the meaning of the Contract or any other document or as to anything to be done or not to be done by Applicants or the **successful** Applicant or as to these instructions or as to any other matter or thing so as to bind the Authority.

#### Authority Authorised Representative contact details:

David Pooley

Email: info@staustell-tc.gov.uk

### 3.5 Format of Response / Submission

- 3.5.1 The response must be delivered by no later than the time and date stated on Volume 2 Applicants Offer, and submitted electronically to info@staustell-tc.gov.uk
- 3.5.2 When submitting your response, please be aware of the speed of your Internet connection, your system configuration and general web traffic that may impact on the time required to complete the transaction. Loading and submitting of the tender must be completed by the final submission time.

### 3.6 Validity Period

- 3.6.1 The Tender response must remain valid for acceptance for a period of 90 days from the return date.

### 3.7 Procurement Timetable

- 3.7.1 This procurement will follow a clear, structured & transparent process, to ensure that all Applicants are treated equally. The key dates for this procurement are anticipated as:

Procurement Stage	Applicable to	Dates
Publication of advertisement / Docs issued	ITT	17/02/2020
Bid Deadline (15:00 hrs on)	ITT	12/04/2020
Notification of Contract award	ITT	05/05/2020
Contract start	ITT	19/05/2020
Contract End date (inc. options)	ITT	18/05/2027

- 3.7.2 The Authority reserves the right to change the above timetable and Applicants will be notified accordingly if there is a change.



### 3.8 Evaluation Approach

- 3.8.1 Bids will be evaluated initially based on Pass / Fail questions and then by evaluation of the Method Statements and then Price. All those who are able to positively progress through the Pass / Fail will then be assessed on the Method Statement response and Commercial / Price Evaluation.
- 3.8.2 In the event of any provider not being able to Pass all of the questions they will not have their bid further evaluated.

### 3.9 Award Criteria

- 3.9.1 Award is the process that considers the extent to which the Applicant's Bid delivers the Most Economically Advantageous solution to the Authority's requirements and as such Applicants responses to the questions asked should give a clear indication of what the organisation is offering for the quoted price.
- 3.9.2 The Authority has not provided a word limit for responses to the Award questions however, the Authority would like to inform Applicants that responses should be relevant to the question and be proportionate in length. Supporting information may be submitted, provided that it is clearly referenced in the question to which it relates and appended to the main bid.
- 3.9.3 The following Award criteria and weightings will be applied in the evaluation of the Applicants response:

Evaluation Criteria Breakdown		Means of Evaluation	
		Sub Criteria	Main Criteria
<b>Criteria: Quality</b> The tenderer will be required to submit a detailed response to the Method Statements as set out in Volume 2.			<b>50%</b>
Supporting the Objectives (MS1)	10%		
Operational Delivery (MS2)	40%		
<b>Criteria: Social Value, inc. environmental (MS3)</b>			<b>10%</b>
<b>Criteria: Commercials</b>			<b>40%</b>
Concession Sum return (over the 5 year term)	40%		

Method Statement (MS)

### 3.10 Scoring Guidelines

3.10.1 The questions asked of Applicants as part of their response to the tender shall be scored using the marking system described within this section. Applicants should refer to the Authority's requirements to ensure that they meet what is set out. All scored questions shall be evaluated in accordance with the guidelines below:

Scoring Matrix for Quality Criteria		
Score	Judgement	Interpretation
5	Excellent	Exceptional demonstration of the relevant ability, understanding, experience, skills, resource and/or quality measures required to provide the services. Full evidence provided where required to support the response.
4	Good	Above average demonstration of the relevant ability, understanding, experience, skills, resource and/or quality measures required to provide the services. Majority evidence provided to support the response.
3	Acceptable	Demonstration of the relevant ability, understanding, experience, skills, resource and / or quality measures required to provide the services, with some evidence to support the response.
2	Minor Reservations	Some minor reservations of the relevant ability, understanding, experience, skills, resource and / or quality measures required to provide the services, with little or no evidence to support the response.
1	Serious Reservations	Considerable reservations of the relevant ability, understanding, experience, skills, resource and / or quality measures required to provide the services, with little or no evidence to support the response.
0	Unacceptable	Does not comply and/or insufficient information provided to demonstrate that there is the ability, understanding, experience, skills, resource and / or quality measures required to provide the services, with little or no evidence to support the response.

### 3.11 Commercial / Price Evaluation

3.11.1 The Pricing Document contains the details and requirements relating to the price element of this Tender. This may include, but is not limited to, the inclusion of specific instructions, documents, templates, pricing structures, etc for the Applicant's to return as part of their response.

3.11.2 Price shall be evaluated using the following scoring methodology, with the Tenderer's prices being scored on a comparative basis. For example:

3.11.3 This will be done by recording the Highest Concession Sum at the total Year 5 price submitted by any of the Tenderers, then for each Tenderer, dividing this price by the Tenderers' price and then multiplying it by the allocated weighting (e.g. 40% if that is the percentage chosen by the Council). The equation set out below explains this in a simpler way:

$$(\text{Tenderer price} \div \text{Highest Concession Sum Tenderer's price}) \times \text{Weighting} = \text{Score}$$

3.11.4 To accompany the above there is a worked example below to help explain this. The example assumes only 3 prices were submitted and that price was awarded 40% of the overall marks (i.e. quality / Social was awarded 60%). Figures as shown are for illustrative purpose only:

	L	W	Tenderer 1		Tenderer 2		Tenderer 3	
Evaluation Elements	Highest Concession Sum Submitted price (£)	Max Weighting %	Tendered Price	Score	Tendered Price	Score	Tendered Price	Score
Total Contract Sum	£5,000	40%	£5,000	40%	£3,200	26.0%	£1.00	0.01%
Quality and Social Value Score		60%		32%		53		55%
<b>Total Score</b>				<b>72%</b>		<b>79%</b>		<b>55.01</b>

## **Section 4 – Conditions of Tender**

### **4.1 Authority's Warranties and Disclaimers**

- 4.1.1 The fact that an Applicant has been invited to bid does not necessarily mean that the Applicant has completely satisfied all the Authority's criteria and the Authority may require further information as appropriate and assess this as part of the evaluation process.
- 4.1.2 The Applicant shall have no claim whatsoever against the Authority in respect of such matters and in particular (but without limitation) the Authority shall not make any payments to the successful Applicant save as expressly provided for in the (Call-Off) Contract and (save to the extent set out in the (Call-Off) Contract) no compensation or remuneration shall otherwise be payable by the Authority to the Applicant in respect of the services by reason of the specification being different from that envisaged by the Applicant or otherwise.
- 4.1.3 Whilst the information in this document has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified. With the exception of statements made fraudulently, the Authority does not accept any liability or responsibility for the adequacy, accuracy or completeness of such information. The Authority does not make any representation or warranty (express or implied) with respect to the information contained in the document or with respect to any written or oral information made or to be made available to any Applicant or its professional advisors.
- 4.1.4 Each Applicant to whom the document is sent must make its own independent assessment of the proposed terms after making such investigation and taking such professional advice as it deems necessary to determine its interest in the Contract.
- 4.1.5 This document is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded the Applicant to bid or enter into any other contractual agreement. Under no circumstances shall the Authority be liable to an Applicant in respect of any costs incurred by an Applicant (whether directly or otherwise) in relation to the preparation or submission of an offer.

### **4.2 Bribery Act**

- 4.2.1 The Bribery Act 2010 requires Public Bodies to ensure that they have procedures in place to prevent bribery by persons associated with them. As part of this responsibility all Applicants should make themselves aware of the obligations set out at <http://www.justice.gov.uk/legislation/bribery>.

### **4.3 Public Services (Social Value) Act**

- 4.3.1 The Public Services (Social Value) Act 2012 brings in a statutory requirement for public authorities to have regard to economic, social and environmental well-being in connection with public services contracts in a way that is relevant to the subject matter of the contract and compliant with the Public Contracts Regulations 2015. Applicants must note that they may be asked to comply with particular requirements based around such considerations as part of the selection and/or award process.

## **4.4 Freedom of Information Act 2000 and Environmental Information Regulations 2004 and Data Protection Act 2018**

- 4.4.1 The Authority is subject to the provisions of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR"). This provides that anyone can ask the Authority for any information held by it, or on its behalf and, unless an exemption applies, the information must be supplied. This means that all the information which an Applicant has provided in respect of this procurement and may provide in future to the contracting authorities will be subject to the FOIA or EIR.
- 4.4.2 In the absence of special circumstances, any part of the procurement documentation may be regarded as not subject to any exemptions, and therefore capable of being disclosed under the FOIA or EIR.
- 4.4.3 In respect of any completed Bid, where the Authority is required to consider whether any information contained therein should be disclosed further to the FOIA, it will be necessary to consider whether any exemption applies. Where the Applicant considers that any of the information contained in its Bid is subject to any exemption, this shall be stated in the submitted Bid at Volume Two (2) Applicant's Offer and Schedule 3 Price Schedule with an explanation setting out what exemption it considers applicable and the reasons for it. The Authority may have regard to this explanation when considering its response to FOIA requests.
- 4.4.4 The attention of Applicants is drawn to Section 43 of the Freedom of Information Act Guidance ([http://www.ico.gov.uk/for\\_organisations/guidance\\_index/freedom\\_of\\_information\\_and\\_environmental\\_information.aspx](http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx)) which provides that information may be exempt information if it constitutes a trade secret, or if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the Authority). Applicants are further advised that, if the Authority considers this exemption applies, it will then be necessary for the Authority to determine whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

## **4.5 Transparency in Local Government**

- 4.5.1 As part of the transparency agenda, the Government has made the following commitments for procurement and contracting.
- 4.5.2 Local authorities must publish details of any contract, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000.
- 4.5.3 The Authority may also publish the contract entered into with the successful Applicant. In making publication the Authority intends to follow guidance set out in A practitioner's guide to publishing information in accordance with the local government Transparency Code 2015.

## **4.6 GDPR and Data Protection Act 2018**

- 4.6.1 The Applicant and Authority shall comply with the provisions of the EU General Data Protection Regulation (GDPR) and the DPA 2018 where it applies in regards to any contract resulting from this procurement procedure.

## **4.7 Counter Terrorism and Security Act 2015**

- 4.7.1 Section 29 of the Counter Terrorism and Security Act 2015 places a duty on Local Authorities in the performance of their duties to have “due regard to the need to prevent people from being drawn into terrorism”. The Act requires the Authority to ensure that its procedures help to ensure a better understanding of radicalisation so that strategies can be put in place to deal with it. As part of this responsibility all Applicants should make themselves aware of the obligations set out at <http://www.legislation.gov.uk/ukpga/2015/6/contents>.

## **4.8 Modern Slavery Act 2015**

- 4.8.1 Regulation 19 of the Modern Slavery Act 2015 incorporates the offences under Section 1, 2 or 4 of the Modern Slavery Act 2015 into Regulation 57 of the Public Contract Regulations as grounds for mandatory exclusion at selection stage. Section 54 of the Act also requires businesses which meet certain criteria to prepare and publish a slavery and human trafficking statement.
- 4.8.2 As part of this responsibility all Applicants should make themselves aware of the obligations set out at <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.

## **4.9 Late Payment Directive 2015**

- 4.9.1 The Authority must maintain compliance with the following legislation:
- Late Payment of Commercial Debts (Interest) Act 1998
  - Late Payment of Commercial Debts Regulations 2002
  - Late Payment of Commercial Debts Regulations 2013
- 4.9.2 The latter set of Regulations implements an EU Directive on late payment (Directive 2011/7/ EU). In line with this directive, the Authority requires that all contracted suppliers pay their sub-contractors within 30 days.

## **4.10 Study of the Document**

- 4.10.1 Documents issued by the Authority to a prospective Applicant must not be passed on to a third party without the express permission of the Authority.
- 4.10.2 Applicants are expected to read, understand and agree to the Volumes (inc. the terms & conditions) of the document as they will in their entirety form part of the resultant Contract.
- 4.10.3 The Applicant is required to obtain all information as it may require them to make a Bid. The Applicant shall be deemed to have satisfied itself as to the correctness and sufficiency of its Bid. No claims whatsoever shall be entertained arising out of the Applicants failure to study the documents; the information provided will be relied upon as being true and accurate and will form part of the Contract with the successful Applicant. If any of the information given by your organisation within the document is subsequently identified as being inaccurate, this may exclude your organisation from further consideration.
- 4.10.4 The Applicant's price shall (except in so far as it is otherwise provided in the Contract) cover all obligations under the (Call-Off) Contract and Applicants shall also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other

circumstances which might reasonably influence or affect its Bid.

- 4.10.5 The Applicant is responsible for all costs, expenses and liabilities incurred by the Applicant in connection with preparing its Bid.

## **4.11 Consortia and Sub-contracting**

- 4.11.1 Where an Applicant wishes to make its application as a Consortium or utilising sub-contractors the Authority advises the group of organisations to select a Lead Applicant in whose name the Bid is to be submitted.
- 4.11.2 The Lead Applicant is advised to confirm precisely what the arrangements are within its Bid including providing the names of all of the organisations to be involved, the nature and extent of their involvement and proposals regarding the structure and management of the Consortium or arrangements. Such details should be provided within the Selection Questionnaire where appropriate and should enable the Authority to assess the overall Consortium or core supply base. All members of the consortium are required to provide the information required in all sections of the Selection Questionnaire.
- 4.11.3 The Lead Applicant should provide details of the actual or proposed percentage shareholding of the constituent members within the Consortium or the exact nature of and degree to which the Supplies/Services or Works will be sub-contracted.
- 4.11.4 Applicants that wish to bid as a Consortium or sub-contractor are discouraged from also making their own individual application or from participating in Consortia or providing sub-contracting arrangements for multiple Lead Applicants.
- 4.11.5 The Authority recognises that arrangements in relation to Consortia and sub-contracting may (within limits) be subject to future change. Applicants should therefore respond to this opportunity in the light of the arrangements as they are currently envisaged. Applicants are informed that any future change in relation to Consortia and sub-contracting must be notified to the Authority during the procurement process or in the event that they are the successful Contractor and, in any event, as soon as that change is known.
- 4.11.6 The Authority may then make a further evaluation of that Applicant or Contractor by applying the Selection criteria to the new information provided. In the event that the Authority's evaluation of the new information results in an outcome that is different from the original, the Authority reserves the right to deselect that Applicant from the process on those grounds and the Applicant shall be notified accordingly. As such, the Lead Applicant shall undertake to ensure that any change to its Consortium or sub-contractors shall not have a negative impact upon the arrangements.
- 4.11.7 If a Consortium is not proposing to form a corporate entity, full details of alternative proposed arrangements should be provided. Where the proposed Lead Applicant is a special purpose vehicle or holding company, information should be provided regarding the extent to which it will call upon the resources and expertise of its members.
- 4.11.8 Please note that the Authority reserves the right to require a successful Consortium to form a single legal entity in accordance with Reg. 19 of the Public Contracts Regulations 2015.
- 4.11.9 Where an Applicant requires additional time in the procurement process to establish relationships with suitable consortia partners it is advised to notify the Authority at the earliest convenience and request an extension to the procurement timescales. Applicants may do this through the messaging facility described at the clarification section.



## **4.12 Ownership**

- 4.12.1 The procurement documentation and all copies thereof are and shall remain the property of the Authority and save for the purposes of the Bid, must not be copied or reproduced in whole or in part and must be returned to the Authority upon demand.

## **4.13 Discrepancies, Omissions and Enquiries concerning the Documents**

- 4.13.1 Should the Applicant find discrepancies in, or omissions from, the procurement documents, the Authority shall be immediately notified by the Applicant:
- 4.13.2 Should any additions or deletions arising from such notification, or in the event that the Authority requires an amendment to be made, these will be issued by the Authority to all Applicants and will be deemed to form part of the documentation.
- 4.13.3 The Authority reserves the right to extend any date of submission accordingly.

## **4.14 Terms and Conditions**

- 4.14.1 The applicable terms and conditions accompany this tender. Applicants will be required to declare that they have read and understood and will comply with said clauses as part of the submission process.
- 4.14.2 Any queries regarding the terms and conditions, including an Applicant's request to suggest alternative drafting on some or all of the clauses contained therein, may be raised during the clarification period and in accordance with the Clarification Process. The Authority requests that Applicants' comments, queries and/or suggestions are clear and precise, otherwise they may be rejected.
- 4.14.3 Where the Authority is in agreement with any changes to the terms and conditions proposed during that period it will update and republish the relevant documentation and all Applicants will be notified accordingly. The Authority reserves the right to extend the submission deadline date in order to allow Applicants sufficient time to take these changes into account. Where the Authority is not in agreement with any changes those proposals shall have been judged to have been rejected and the Authority shall provide an explanation to the Applicants as to the reason/s why it has been judged so.
- 4.14.4 When the period for clarification has closed Applicants shall no longer be allowed to raise any further queries regarding the terms and conditions and the Applicant shall not be permitted to reserve their right to comment or negotiate upon the terms and conditions at any point thereafter.
- 4.14.5 Applicants are required to agree to the terms and conditions associated with this procurement opportunity as part of the submission process and the Authority reserves its right to class any Bid submitted to the contrary as non-compliant. All such Applicants shall be judged to have failed with their submitted Bids, shall be evaluated no further and notified accordingly.
- 4.14.6 The Contractor(s) shall accept the terms and conditions as they are drafted in the final Contract. No further negotiation shall take place nor changes allowed. Where a Contractor disputes this position the Authority reserves the right to withdraw the Contract award and class the submission as non-compliant.



## **4.15 Clarification and Circular Advices**

- 4.15.1 Upon commencement of the procurement process the Applicant shall not approach any member of the Authority in relation to the opportunity, other than by using the agreed contact email.
- 4.15.2 Applicants should note that unless your question is innovation based, responses will be provided to all Applicants. Where a question is of a commercially confidential nature and the Applicant does not wish it or the associated answer to be shared with other Applicants, the Applicant shall state this clearly within its question. The identity of Applicants raising any questions will remain confidential.
- 4.15.3 Relevant questions together with the answers will be posted on Contracts Finder and it will be the requirement for the Applicant to check any updates.
- 4.15.4 When Applicants first access the procurement documentation they should satisfy themselves that they have seen any messages posted. It is in the Applicant's interest to visit the messages area regularly as clarifications may fundamentally affect their planned response.
- 4.15.5 If during the period the Authority , issues any circular letters to Applicants in order to clarify or alter part of the documents then such circular letters shall form part of the (Call-Off) Contract and Applicants shall be deemed to have taken account of them in preparing their Bid. Applicants shall promptly acknowledge any circular letters that they receive.

## **4.16 Completion of the Document**

- 4.16.1 For the avoidance of doubt all of the sections included within Volume Two (2) Applicant's Offer, Price Schedule must be completed and submitted by the Applicant in order to be considered by the Authority as a fully complete and official Bid.
- 4.16.2 Any Bids made omitting any of the sections, or any of the requirements therein, will be considered as incomplete and may be disqualified from further evaluation and therefore exclusion from the procurement process.
- 4.16.3 Documents should only be completed and submitted in the format in which they currently appear. It is essential that Applicants do not re-format or re-brand any of the procurement documentation in accordance with their own standards on formatting. An example of this is if the documents are issued in Microsoft Word format, the Authority requires them to be returned in the same format.
- 4.16.4 Applicants will answer all appropriate questions and sign (if possible) where specified. Applicants will clearly reference its replies and any supporting documentation.
- 4.16.5 Any pro-formas must be fully completed even if your organisation has previously submitted Bids to the Authority. It is not sufficient to cross-refer to previous responses.
- 4.16.6 Where an Applicant requires assistance in completing the documents or meeting the submission requirements it is advised to notify the Authority at the earliest convenience and request additional support, to include meeting with the Authority Authorised Representative.

## **4.17 Applicant Site Visits**

- 4.17.1 The Applicant may visit the site prior to completing its offer to ensure that it is fully familiar

with the site location, where relevant. The information in the attached schedules is given as an indication of the general requirements of the Contract. Claims on the grounds of lack of knowledge of site location/conditions will not be accepted by the Authority.

## **4.18 Alternatives and Variations**

- 4.18.1 Innovative offers may be made in addition to making a full and complete Bid unless otherwise stated. The submission of an alternative or variant Bid will not be considered if the Applicant fails to make a compliant Bid in the prescribed format.
- 4.18.2 Should the Applicant wish to offer a variation or alternative Bid, including innovations to the Specification, please complete the Bid as described. This will constitute the 'compliant Bid'.
- 4.18.3 The Applicant's alternative or variant Bid should be prepared separately and submitted as such, giving clear details of your organisation's departure from the compliant Bid.
- 4.18.4 Applicants may submit alternative or variant Bids in instances where it believes it is able to offer an innovative solution to a 'traditional' specification or where elements of its proposed service delivery deviate from the specification and/or procurement requirements such that this may render an Applicant's Bid as non-compliant.

## **4.19 Return of Document**

- 4.19.1 Documents must be returned in the correct and proper process for submitting the Applicant's Bid electronically. All Bids shall be submitted via the email address highlighted.
- 4.19.2 Applicants will not email their Bids directly to any named person(s) within the Authority.
- 4.19.3 Applicants will not send their Bids to the Authority in a paper or other 'hard' format unless specifically requested to do so within the associated bid documentation.
- 4.19.4 It is the Applicant's responsibility to ensure that its Bid is submitted prior to the deadline date/time.
- 4.19.5 Any submissions that do not accord with the guidelines set out above shall be considered as non-compliant and will be treated as such.
- 4.19.6 Submissions must be received in advance of the deadline in order to qualify as timely offers. As such, Applicants are urged to make their submission well in advance of the stated deadline in order to avoid such issues as technical difficulties with the electronic system that may be due to the high volume of traffic attempting to submit offers, for example.
- 4.19.7 Submissions made after the date and time specified on the documents or to a different address, electronically or otherwise, will not be considered under any circumstances.

## **4.20 Applicant's Warranties**

- 4.20.1 In submitting their Bid the Applicant warrants and represents and undertakes to the Authority that it has not done any of the acts or matters referred to in Regulation 57 of the Public Contracts Regulations 2015 and has complied in all respects with the requirements;
- it has full power and authority to enter into the Contract and provide the Supplies/Works or Services and if requested will produce evidence of such to the Authority;
  - it is of sound financial standing and the Applicant and its partners, directors, officers and employees are not aware of any circumstances (other than such circumstances as may be disclosed in the audited accounts or other financial statements of the Applicant submitted to the Authority) which may adversely affect such financial standing in the future.

## **4.21 Evaluation of Bids**

- 4.21.1 All Bids will be treated equally and assessed with transparency throughout the evaluation process. The successful offer(s) will be that which achieves the highest score within a best value framework (optimum combination of whole-life costs and quality) in line with the best value principles of Most Economically Advantageous Tender (MEAT).
- 4.21.2 The evaluation process is a critical part of the procurement process and is the means by which the Authority is able to assess to whom the Authority wishes to select to progress to the next stage of this procurement process and/or award the Contract.
- 4.21.3 The information disclosed by Applicants in its Bid will be used for the purposes of evaluation and shall form part of the resultant Contract.
- 4.21.4 Any responses to any of the Selection or Award questions or any other part of your Bid that are later found to be incorrect may lead to you being exempted from this procurement process or any future procurement process lead by the Authority and could cause the termination of any resultant Contract.

## **4.22 Applicant's Price**

- 4.22.1 The price offered by the Applicant shall be firm and fixed for the duration of the Contract. Any percentage discounts that may be applied must be detailed by the Applicant in its Bid. Price variation during the Contract term will be by negotiation only via formal performance review meetings. Any price variations will not take effect until they have been mutually agreed by both Authority and Applicant and the former receives confirmation in writing from the latter.
- 4.22.2 All prices submitted shall be in pounds sterling and shall be exclusive of Value Added Tax (VAT).
- 4.22.3 The Applicant's price will be evaluated in accordance with the scoring methodology and weightings as set by the Authority and declared within Volume Two (2) Applicant's Offer and Schedule 3 Price Schedule.

## **4.23 Errors and Omissions in the Applicant's Bid**

4.23.1 If the Authority discovers errors or omissions in the Bid, the Applicant may be required to justify the price or item(s) concerned. Any price adjustments to the Bid made by agreement between the parties concerned shall be confirmed in writing by the Applicant to the Authority before final acceptance of the Bid.

## **4.24 Abnormally Low or High Bids**

4.24.1 In the event that the Authority receives a Bid which is abnormally low or high, in accordance with Regulation 69 of the Public Contracts Regulations 2015, it shall require the Applicant to explain in writing the price or cost proposed in the submission. The Authority shall assess the information provided by the Applicant and may reject the Bid where the evidence supplied does not satisfactorily account for the level of price or costs proposed.

## **4.25 Authority Site Visits**

4.25.1 The Authority reserves the right to pay a site visit to short listed Applicant's premises and/or exemplar site/s at which it performs the service required under the Contract.

4.25.2 Applicants may or may not be contacted to be made aware that a site visit will take place. Any notification that is made will detail the date, time and details of those Members/Officers that are anticipated to attend.

4.25.3 Applicants must grant access to any premises requested to be visited by the Authority within that allocated time period.

4.25.4 Site visits will be for the purpose of ensuring that Applicants are appropriately skilled and experienced to deliver the service required under the Contract and that any claims made to that effect are accurate.

## **4.26 Rejection of Offers**

4.26.1 The Authority may at its absolute discretion refrain from considering or reject a Bid if:

- (i) it is incomplete or vague or is submitted later than the prescribed date and time; or
- (ii) it is not in accordance with the approved format and all other provisions of the documents; or
- (iii) is in breach of any condition contained within it.

4.26.2 The Authority reserves the right, subject to relevant legislation, at any time to reject any Bid and / or terminate the procurement process with one or all of the Applicants.

4.26.3 The Authority reserves the right to disqualify any or all Applicants who make material changes to, or (in the Authority's opinion) a material change takes place in respect of, any aspect of either its pre-qualification submission or Bid unless substantial justification can be provided to the satisfaction of the Authority.

4.26.4 Any submission in respect of which the Applicant:

- has directly or indirectly canvassed any Official, Member, Officer, Agent or Advisor of the Authority or obtained information from any other person who has been contracted to supply Supplies or provide the Service or Works to the Authority concerning the award of the Contract or who has directly or indirectly obtained or attempted to obtain

information from any such Official, Member, Officer, Agent or Advisor concerning any other Applicant; or

- fixes or adjusts the prices by or in accordance with any agreement or arrangement with any other person; or
- communicates to any person other than the Authority the price or approximate price except where such disclosure is made in confidence in order to obtain quotations necessary for the bid preparation or for the purposes of insurance or financing; or
- enters into any agreement with any other person that such other person shall refrain from submitting an offer or shall limit or restrict the prices to be shown or referred to by another Applicant; or
- offers to agree to pay to any person having direct connection with the procurement process or does pay or give any sum of money, inducement or valuable consideration, directly or indirectly, for doing or having done or causing or having caused to be done in relation to any other Applicant or any other person's proposal, any act or omission;

shall not be considered for acceptance and shall accordingly be rejected by the Authority provided always that such non-acceptance or rejection shall be without prejudice to any other civil remedies available to the Authority or any criminal liability which such conduct by an Applicant may attract.

## **4.27 Acceptance of Offers**

4.27.1 The Authority does not bind itself to accept the lowest or highest or any Bid, and reserves the right to accept a Bid either in whole or in part, or such item or items specified in the procurement documents, and for such place or places of delivery as it thinks fit, each item and establishment being for this purpose considered as bid for separately, or to make no award at all.

## **4.28 Award of Contract**

4.28.1 Submitted documents shall constitute an irrevocable offer to provide the Supplies/Works or Services. Any acceptance of it by the Authority shall be communicated in writing to the Applicant. Upon such acceptance the Contract shall become binding on all parties.

4.28.2 The successful Applicant shall conclude a formal Contract with the Authority, which shall embody the Applicant's offer. No Applicant may consider itself successful unless and until a formal Contract has been signed by a Duly Authorised Officer of the Authority and co-signed by the Applicant's Authorised Officer.

4.28.3 The offer shall remain open for acceptance for a period of six (6) months from the closing date for the receipt of submission.

## **Definitions**

<b>Ad hoc Service Requests</b>	Shall mean requests from the Authority for additional Services beyond the scope of the Core Services as detailed in the specification and associated Schedules.
<b>Applicant</b>	Shall mean the organisation responding to the procurement through the procurement process
<b>Authority</b>	Shall mean the organisation preparing the procurement documents and/or the organisation for whom the resultant Contract will be performed
<b>Authorised Operatives / Contractor's Operatives</b>	Shall mean appointed person(s) duly authorised by the Appointed Contractor eligible to undertake duties in connection with delivery of the Contract.
<b>Authorised Personnel (Council)</b>	Shall mean appointed person(s) of the Council eligible to make necessary formal instructions in connection with the delivery of the Contract.
<b>Authority Authorised Representative</b>	Shall mean the main client Officer for the procurement process and/or resultant Contract
<b>Award</b>	Shall mean the process by which the Authority shall determine to whom the Contract will be awarded in accordance with the criteria listed at Regulation 67 of the Public Contracts Regulations 2015
<b>Awarding Authority</b>	Shall mean the organisation for whom the resultant Contract will be performed; this may be a different organisation than is referred to under Authority (in instances where the Authority is procuring a Contract on behalf of another organisation, for example)
<b>Bid / Tender</b>	Shall mean the Applicant's offer to the Authority, which shall be submitted as the completed procurement documents
<b>Call-Off Contract</b>	Shall mean a Contract awarded under a Framework Agreement
<b>Clarification</b>	Shall mean the process by which queries on the Authority's procurement document are raised by the Applicants and the process by which queries on the Applicant's Bid are raised by the Authority
<b>Commercially Sensitive information</b>	Shall mean the information listed by an Applicant within its Bid at Volume Two (2) Applicant's Offer and Price Schedule comprising the information of a commercially sensitive nature relating to the Contractor, its intellectual property rights or its business or which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss
<b>Consortia / Consortium</b>	Shall mean the information listed by an Applicant within its Bid at Volume Two (2) Applicant's Offer / Appendix A and Price Schedule comprising the information of a commercially sensitive nature relating to the Contractor, its intellectual property rights or its business or which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss
<b>Contract</b>	Shall mean a formal and legally binding agreement entered in to between two or more parties to provide Supplies, Services or Works in return for financial remuneration including all documents to which reference may properly be made in order to ascertain the rights and obligations of all the parties involved
<b>Contract Notice</b>	Shall mean the publication in the OJEU of an Authority's intention to procure a public supplies, services, or works Contract
<b>Contracting Authority</b>	Shall mean the Authority and any other organisation on whose behalf the Authority may be working
<b>Contractor</b>	Shall mean the Applicant awarded the Contract culminating from an offer to supply accepted by this Authority
<b>Core Services</b>	Shall mean the main defined Services forming the delivery and fulfilment of the Contract, as set out in the Specification and associated Schedules.
<b>Council</b>	As Authority
<b>DPA 2018</b>	Data Protection Act 2018
<b>Data Protection Legislation</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;



<b>Default / Default Notice</b>	Shall mean a failure to perform as set out against the Key Performance Indicators within this Contract and the associated Notice issued to the Contractor outlining the default and corrective actions required to rectify.
<b>Defects</b>	Shall mean Defects to surfaces and object which the Contractor is responsible for cleaning which either impair the Contractor from undertaking the required tasks, and / or form a hazard to health of wider safety of Operatives and users of the premises.
<b>Disclosure and Barring Service (DBS) check</b>	Shall mean the organisation formed on 01 December 2012 from the merger of the Criminal Records Bureau and Independent Safeguarding Authority. Further information can be found at the following:  <a href="http://www.homeoffice.gov.uk/dba">www.homeoffice.gov.uk/dba</a>
<b>Eligible User</b>	Shall mean any organisation given access to a Contract as a result of the procurement process and on whose behalf the Authority may be establishing the arrangements
<b>Employers' Liability (Compulsory Insurance)</b>	Shall mean an insurance that enables organisations to meet the costs of damages and legal fees for employees who are injured or made ill at work through the fault of the employer. Employees injured due to an employer's negligence can seek compensation even if the organisation goes into liquidation or receivership. The NHS can also claim the costs of hospital treatment (including ambulance costs) when personal injury compensation is paid. This applies to incidents that occur either on or after 29 January 2007.  By law, an employer must have EL insurance and be insured for at least £5 million. Most insurers automatically provide cover of at least £10 million. The insurance must cover all the organisation's employees in England, Scotland, Wales and Northern Ireland.  If the organisation is not a limited company, and you are the only employee or you only employ close family members, you do not need compulsory Employers' Liability Insurance. Limited companies with only one employee, where that employee also owns 50 per cent or more of the issued share capital in the company, are also exempt from compulsory Employers' Liability Insurance. However, there is nothing to prevent an exempt employer from choosing to buy this insurance in view of the financial security it can provide.
<b>Evaluation</b>	Shall mean the process through which the Applicant's Bid is reviewed in accordance with the Evaluation Criteria, following which a decision to award a Contract is made
<b>Evaluation Criteria</b>	The means by which the Authority will Evaluate an Applicant's Bid, to include all of the issues that must be considered so as to be able to judge the suitability of an Applicant's Bid
<b>Framework Agreement</b>	Shall mean an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies
<b>Further Competition</b>	Shall mean the procurement process by which the Authority shall call a Contract off against a Framework Agreement
<b>GDPR</b>	the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> )
<b>Invitation to Tender (ITT)</b>	Shall mean the written request by the Authority for an interested Applicant to submit a written Bid to facilitate the Authority's requirements
<b>Key Performance Indicators (KPI)</b>	Shall mean the standards of performance against which overall performance is to be assessed under the Contract by the Contractor
<b>Lead Applicant</b>	Shall mean the organisation leading the bidding process on behalf of its consortia or sub-contractor partners
<b>Lowest Price</b>	Shall mean a means of evaluation whereby all Applicants to a procurement process will be assessed solely on the basis of their offer of price
<b>Mandatory Requirements: Pass/Fail</b>	Shall mean the Authority's essential requirements that Applicants will be required to demonstrate their ability to meet so as to be able to pass through to the next stage of the procurement process

<b>Mandatory Requirements: Scored</b>	Shall mean the Authority's essential requirements that Applicants will be required to demonstrate their ability to meet and that will be scored so as to be able to pass through to the next stage of the procurement process and/or as part of the Award criteria
<b>Most Economically Advantageous Tender (MEAT)</b>	Shall mean a means of evaluation whereby all Applicants to a procurement process will be assessed the basis of their offer of a combination of both quality factors and price
<b>Officer</b>	Shall mean the individual completing the procurement documents on behalf of the Authority
<b>Official Purchase Order</b>	Shall mean the Authority's Official Purchase Order, to which these conditions apply
<b>OJEU</b>	Shall mean the Official Journal of the European Union
<b>Open</b>	Shall mean the procurement process determined by the Public Contracts Regulations 2015 and which requires the publication of an OJEU Contract Notice plus an Invitation to Tender prior to the award of a Contract
<b>Premises</b>	Shall mean the various sites as detailed within the associated Schedules that are to be serviced by the Services defined under this Contract.
<b>Premises Manager / Corporate Health and Safety Team</b>	Shall mean the Authorised Officer of the Council with overall responsibilities and jurisdiction in relation to particular Premises serviced under this Contract
<b>Procurement and Contract Procedures</b>	Shall mean the Authority's internal rules regulating the award of Contracts
<b>Pricing</b>	Shall mean the value placed on a Bid by the Applicant that will purchase their offer to facilitate the Authority's requirements
<b>Procurement</b>	Shall mean the acquisition of Supplies, Services or Works from an external source
<b>Procurement Representative</b>	As Authority Authorised Representative
<b>Product Liability Insurance</b>	<p>In Product Liability Insurance terms, a product is any physical item that is sold or given away.</p> <p>Products must be 'fit for purpose'. The organisation is legally responsible for any damage or injury that a product it supplies may cause (in some circumstances this also includes products that the organisation does not manufacture).</p> <p>Product Liability Insurance covers the organisation against damages awarded as a result of damage to property or personal injury caused by the product. If damages are paid for personal injury, the NHS can claim to recover the costs of hospital treatment (including ambulance costs). This applies to incidents that occur either on or after 29 January 2007.</p>
<b>Professional Indemnity Insurance</b>	<p>Shall mean a liability cover that provides protection for negligent advice or a service provided by the organisation, it also protects against damages the organisation becomes liable for in relation to mistakes made such as errors of judgement, basic administration errors, mislay of or damage to clients' documents. It is designed to safeguard it against claims made by clients for any resulting financial loss or damage to their reputation. This type of insurance should also cover legal fees and costs.</p> <p>Individuals and organisations that provide professional advice or consultancy services need Professional Indemnity cover.</p>
<b>Project Brief</b>	This is a document which outlines to bidders the nature of the good/services or works against which you wish them to submit an expression of interest
<b>Public Contracts Regulations 2015</b>	Shall mean the legislation of the United Kingdom concerning the procedures for the award of public works contracts, public supply contracts and public service contracts
<b>Public Liability Insurance</b>	Shall mean an insurance that covers members of the public or customers coming to the organisation's premises or if the organisation's staff go to theirs (including if the organisation is based 'at home'). It covers any awards of damages given to a member of the public because of an injury or damage to their property caused by the organisation. It also covers any related legal



	fees, costs and expenses as well as costs of hospital treatment (including ambulance costs) that the NHS may claim from the organisation. Premiums are based on the type of business and rated on an estimate for the level of activity of the business.
<b>Responsive Cleaning</b>	Shall mean Cleaning Services to be performed by the Contractor in response to a specific instruction by the Authorised Personnel of the Council outside of scheduled Core Service delivery.
<b>Restricted</b>	Shall mean the procurement process determined by the Public Contracts Regulations 2015, which includes the publication of an OJEU Contract Notice plus a Supplier Questionnaire and Invitation to Tender prior to the award of a Contract
<b>Safeguarding</b>	The process of protecting children from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care that enables children to have optimum life chances and enter adulthood successfully
<b>Selection</b>	Shall mean the process by which Applicants will be selected to move forward to the next stage of the procurement process, in accordance with the criteria listed at Regulation 58 of the Public Contracts Regulations 2015
<b>Selection Questionnaire</b>	Shall mean the process by which Applicants will be selected to move forward to the next stage of the procurement process, in accordance with the criteria listed at Regulation 58 of the Public Contracts Regulations 2015
<b>Services</b>	Shall mean a system supplying a need such as communications and transport, utilities such as electricity and fuel, the provision of advice or the performance of routine maintenance or repair work
<b>Service Failure(s)</b>	Shall mean failure(s) by the Contractor to perform the Services as set out under the Contract and in line with the expectations of the Authority and the Key Performance Indicators as set out in Table 1.
<b>Specification</b>	Shall mean the detailed description of the Authority's requirements
<b>Standstill</b>	Shall mean the period between the notification of the Authority's intention to award a Contract and the award of the Contract, in accordance with Regulation 87 of the Public Contracts Regulations 2015
<b>Supplies</b>	Shall mean the items offered by an Applicant and/or the items requested by the Authority
<b>TUPE</b>	Shall mean the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014"
<b>Volume One (1) Instructions and Information</b>	Shall mean the document containing advice to Applicants concerning the way that the procurement process will be conducted and the way in which the documentation should be completed - the Selection and Award criteria to be used in the procurement process and shall be the document in which the Applicant shall make its response to those criteria plus pricing and information concerning the Applicant's organisation
<b>Volume Two (2) Applicant's Offer</b>	Shall mean the document containing information specific to the opportunity, to include the Specification
<b>Working Day</b>	Shall mean Monday to Friday inclusive, excluding Bank Holidays in England
<b>Works</b>	Shall mean the carrying out of any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property