



# PENZANCE COUNCIL

## **MECHANICAL AND ELECTRICAL PLANT REFURBISHMENT**

**Penlee House Gallery & Museum  
Penlee House  
Penzance**

**Volume 1: Invitation to Tender**

**Background, Instructions and Conditions of Tender**

**Applicants should read this document first.**

If you would like this information in another format please email  
[tenders@penzance-tc.gov.uk](mailto:tenders@penzance-tc.gov.uk)

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# Information and Instructions

## Section 1 – About the Council

- 1.1 Penzance Council operates at the most local level of government across the Parish and works for the town and surrounding areas and supported by a small team of officers based at the Penlee Centre and Penlee House Gallery & Museum in Penzance.
- 1.2 As well as Penzance, the distinct communities of Newlyn, Mousehole, Paul, Heamoor, and Gulval are represented by their own elected Councillors.
- 1.3 Further information can be found here: <https://www.penzance-tc.gov.uk/>

## Section 2 – About the Tender

- 2.1 The Council is seeking a partner to undertake mechanical and electrical plant replacement works and services to the Council, primarily in Penlee House Gallery & Museum, Penzance.
- <https://www.penzance-tc.gov.uk/penlee-house-gallery-museum/>
- <https://www.penleehouse.org.uk/>
- 2.2 The Council may reserve the right to utilise this Contract under instruction to seek any appointed Contractor to provide services on other premises, based on the rate and terms of the Contract.
- 2.3 The estimated overall expected maximum budget for the tender is £190k.
- 2.4 It is advised that any Applicant looking to bid for this work arranges a site visit prior to submitting a Tender. This to be arranged through contacting the Council's Authorised Representative.
- 2.5 Full details around the Tender can be found in the accompanying documentation, in particular:
- 2.5.1 Volume 2 – Applicant Response (Tender)
  - 2.5.2 Schedule 1 – Price Schedule
  - 2.5.3 Appendix 1 – Specification, General Preambles and Key Performance Indicators
  - 2.5.4 Appendix 2 and 2(a) – Asbestos Survey (Penlee House)
  - 2.5.5 Appendix 3 – Drawing list
  - 2.5.6 Appendix 4 – Pre-Construction Document (CDM Regulations) – TO FOLLOW
  - 2.5.7 Appendix 5 – HSE - Industry guidance for Principal Contractors
  - 2.5.8 Appendix 6 – Contract Particulars
- 2.6 This tender is an opportunity to submit a fixed price tender for the specified Services.

## Contract / Contract Period

- 2.7 The Terms and Conditions under which any Contract would be formed are proposed to be under the JCT Minor Works standard Contract.

## Insurance Levels

- 2.8 The Council's minimum requirements for insurance (*Minimum Cover for each and every incident*) are:
- 2.8.1 Employer's Liability (*minimum statutory limit as laid down by legislation*) = **£5m.**
  - 2.8.2 Professional Indemnity = **£1m.**

2.8.3 Public Liability Insurance = **£10m**

## **Transfer of Undertakings (Protection of Employment) Regus 2006 (TUPE)**

2.9 It is the responsibility of the Applicant to consider whether or not TUPE is likely to apply in the particular circumstances of this tender exercise and to act accordingly. Applicants should therefore take their own advice regarding the likelihood of TUPE applying.

2.10 In this case the Council believes that TUPE does not apply to this tender.

2.11 For more information please use the websites listed below: [www.gov.uk/transfers-takeovers](http://www.gov.uk/transfers-takeovers)  
/ <https://www.legislation.gov.uk/uksi/2006/246/contents/made>

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

### **Procurement Procedure**

- 3.1 The Tender is Below Threshold Works level and the Council is issuing this Invitation to Tender (ITT) and is inviting bids from Applicants in response to the published Contract Notice – see [https://assets.publishing.service.gov.uk/government/New\\_Thresholds\\_Values\\_and\\_Inclusion\\_of\\_VAT](https://assets.publishing.service.gov.uk/government/New_Thresholds_Values_and_Inclusion_of_VAT)
- 3.2 The procurement process that the Council has selected is the Open Procedure in line with the Public Contracts Regulations (the Regulations) 2015, which means that all Applicants that submit a Bid shall be evaluated in accordance with these Instructions and set process – see <https://www.legislation.gov.uk/uksi/2015/102/part/2/chapter/2/crossheading/procedures/made>

### **Instructions for Completion**

- 3.3 All response 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 Schedule.
- 3.4 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.
- 3.5 Any information relating to the Council and supplied by the Council shall be kept by the Applicant in strictest confidence.
- 3.6 Applicants are advised that the Council is not bound to accept the lowest tender submitted, nor to reimburse any expense incurred during the tender process.

### **Clarification Process**

- 3.7 All clarification enquiries should be directed to the Authorised Representative and by no later than the date indicated in the Procurement Timetable detailed elsewhere in this document.
- 3.8 Applicants are advised that where such enquiries have been made, and it is appropriate to do so, the Council will distribute to all Applicants a copy of the Clarification and the written reply, with anonymity preserved.

### **Council Representatives**

- 3.9 No person in the Town Council's employ or other agent, except as so authorised by the Council 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 Council.

**Council Authorised Representative contact details:**

Name: **Anna Renton** (*Director*) or in Anna's absence *Verity Anthony* (*Visitor Experience & Retail Manager*) may be contacted to arrange site visits etc.

Email: [arenton@penleehouse.org.uk](mailto:arenton@penleehouse.org.uk) / [info@penleehouse.org.uk](mailto:info@penleehouse.org.uk) /  
[vanthony@penleehouse.org.uk](mailto:vanthony@penleehouse.org.uk)

Phone: 01736 363625

**Format of Response / Submission**

3.10 The response must be delivered by no later than the time and date stated on Volume 2.

3.11 Submitting of the tender must be completed by the final submission time. Applicants must take into account the necessary document sizes, speed of Internet connection, system configuration and general web traffic that may impact on the time required to complete the transaction.

3.12 Tender response must remain valid for acceptance for a period of 90 days from return date.

**Procurement Timetable**

3.13 This procurement will follow a clear and transparent process, to ensure that all Applicants are treated equally. The key dates for this procurement are anticipated to be as follows:

Procurement Stage	Applicable to	Dates
Publication of advertisement (Contract Notice)	ITT	18/09/2024
Site Visit The time available for site visits will be 10am – 12 noon on, Friday 27 September, max 2 people per company only please. Please contact <a href="mailto:info@penleehouse.org.uk">info@penleehouse.org.uk</a> to register to attend.	ITT	27/09/2024
Latest date for Clarification questions to be submitted by	ITT	5/10/2024
Clarification responses to be issued by	ITT	9/10/2024
<b>Bid Deadline (noon)</b>	<b>ITT</b>	<b>16/10/2024</b>
Evaluation (completed)	ITT	4/11/2024
Notification of Contract award (Contract Award Notice)	ITT	5/11/2024
Contract start – Optimum Main Contract Period	ITT	11 Jan 2025 to 4 February 2025

3.14 The above is indicative and the Council reserves the right to change the timetable.

## **Evaluation Approach**

- 3.15 Bids will be evaluated in two parts, Selection and Award
- 3.16 The Council will first evaluate using the Standard Selection Questionnaire and Qualitative Selection (SQ) response (if applicable). Applicants deemed not to satisfy the elements of the SQ in line with the scored approach will be excluded from the remainder of the process and their bid shall not be considered further. Applicants who satisfy the SQ stage (if applicable) will have the remainder of their bid evaluated in accordance with the Award Criteria.

## **Standard Selection Questionnaire and Qualitative Selection**

- 3.17 Selection is the process by which the Council is able to assess the suitability of the Applicant to undertake work on behalf of the Council. The questions asked within Selection Questionnaire are compliant with Regulation 57 of the Regulations and Procurement Policy Note: Standard Selection Questionnaire (SQ) Action Note 03/23 February 2023.
- 3.18 The Council requires all Applicants to complete all sections of the Selection Questionnaire included within Volume Two (2) Applicant's Offer in full. Any Applicants who do not fully meet the requirements of or misrepresent any information or evidence provided in relation to Regulation 57 may be excluded from further consideration.
- 3.19 The Applicant's responses to the Selection questions should be succinct, concise and self-contained not referring to additional documents or other supporting statements other than the European Single Procurement Document (ESPD).
- 3.20 Where Applicants choose to submit all or any part of the ESPD in place of an element required in the Selection questions this must be clearly identified and referenced by the Applicant. Any ESPD responses will be assessed in the same way as any other response.

## **Potential Supplier Information and Exclusion Grounds: Part 1 and Part 2.**

- 3.21 This standard Selection Questionnaire is a self-declaration, made by the Applicant (the potential supplier), that they do not meet any of the grounds for exclusion. If there are grounds for exclusion, there is an opportunity to explain the background and any measures taken to rectify the situation (also referred to as self-cleaning).
- 3.22 A completed declaration of Part 1 and Part 2 provides a formal statement that the organisation making the declaration has not breached any of the exclusions grounds. Consequently, the Town Council will require all the organisations that the Applicant would rely on to meet the selection criteria to provide a completed Part 1 and Part 2.
- 3.23 For example, these could be parent companies, affiliates, associates, or essential sub-contractors, if they are relied upon to meet the selection criteria. This means that where the Applicant is joining in a group of organisations, including joint ventures and partnerships, each



organisation in that group must complete one of these self-declarations. Sub-contractors that are relied on to meet the selection criteria must also complete a self-declaration (although sub-contractors that are not relied upon do not need to complete the self-declaration).

### Supplier Selection Questions: Part 3

- 3.24 Where an Applicant is bidding on behalf of a group (consortium) or it is intending to use sub-contractors, the Applicant should complete all selection questions on behalf of the consortium and / or any sub-contractors.
- 3.25 If the relevant documentary evidence referred to in the Selection Questionnaire is not provided upon request and without delay the Town Council reserve the right to amend the contract award decision and award to the next compliant bidder.

### Selection Questionnaire Approach

- 3.26 The Council proposes to use the following criteria to assess Selection Questionnaire submissions:

Section	Title	Type of Question	Weighting (%)
Part 1	Potential supplier information	Information only	Not evaluated and scored
Part 2	Exclusion grounds (Mandatory and Grounds for discretionary exclusion)	Pass/Fail	In the event of a supplier being awarded a 'fail', the remainder of their submission will not be evaluated and they will be eliminated from the process.

**NOTE ON EVALUATION:** Ideally the Council would be seeking confirmation that the Contractor has not been or is not currently in breach of any of the Grounds for Exclusion. If Grounds for Exclusion have applied or currently apply, then the Town Council would be seeking clarity on what measures have been put in place to self-cleanse as set out by the Regulations. Where Grounds for Exclusion previously applied or currently apply and suitable evidence and measures to self-cleanse cannot be demonstrated, this will be deemed a "fail". Reference will be made to Crown Commercial Services Procurement Policy Note: Standard Selection Questionnaire (SQ) Action Note 03/23 February 2023. See: <https://www.gov.uk/government/publications/ppn-0323-standard-selection-questionnaire-sq>

If the Applicant is looking to work with and utilise others then the Council will be seeking clarity around how any consortia / sub-contract relationship would work. The Council would be looking to ensure that there is a clear legal relationship in relation to Consortia / sub-contractors (including roles and responsibilities for what parts of the work), those partners are reputable, and that any arrangement does not expose unnecessary risk to the Council. The Council would be seeking a clear understanding on how any formal contract with the Applicant would work to ensure that it is a legal entity. Where the legal status cannot be made clear, or in the case where it is deemed the consortia / sub-contract relationship presents unnecessary risks then it will be deemed a "fail".

<b>Part 3:</b> (Selection Question - Section 6)	Technical and Professional Ability	Scored section: Only scores of 3 (Acceptable) and above will be considered for taking forward to Tender stage.	In the event of a supplier being scoring a score of 2 (Minor Reservations) or less, the remainder of their submission will not be evaluated and they will be eliminated from the process.
<p><b>NOTE ON EVALUATION:</b> The Council will be looking for evidence the Applicant can demonstrate experience in the successful delivery of similar contracts to clients through formal contract arrangements.</p> <p>The Council will be looking for evidence to support that the Applicant (and importantly the proposed core disciplines to be allocated to this project) have proven experience of providing similar professional services at a scale, size and scope similar to the project under consideration through this tender process. The Applicant (and associated Team) will have suitable Professional accreditation and / or demonstrable equivalent industry experience to operate within the profession.</p> <p>The response should include demonstrating successful engagement with clients, key external stakeholders and interest groups, understanding and application of sound project/programme management principles, and the logistical knowledge to deliver projects/programmes on time, to budget and to the expectations of the client and key stakeholders.</p> <p>The response would be supported by credible references and referees. Response that does not evidence and provide such assurances will be scored lower.</p>			
<b>Part 3:</b> (Additional Questions including Project Specific Questions – Section 7.1)	Insurance	Pass/Fail	In the event of a supplier being awarded a 'fail', the remainder of their submission will not be evaluated and they will be eliminated from the process.
<p><b>NOTE ON EVALUATION:</b> The Council would be seeking confirmation that the required insurance and levels exist and that they would be maintained during any awarded contract, or in the case that they do not exist currently that the Contractor would firstly be able to obtain the required levels of insurance and would if successful in the Tender actually obtain that insurance. If this cannot be demonstrated, then this would be deemed a "fail"</p>			
<b>Part 3:</b> (Additional Questions including Project Specific Questions – Section 7.3)	Health and Safety	Pass/Fail	In the event of a supplier being awarded a 'fail', the remainder of their submission will not be evaluated and they will be eliminated from the process.
<p><b>NOTE ON EVALUATION:</b> The Council will be looking for evidence to support that the Applicant has robust processes to ensure Health and Safety arrangements are in place and as such the Applicant has a positive track record in ensuring Health and Safety in a suitable market sector.</p>			

For example this could include experience as acting as Principal Designer in relation to the Construction (Design and Management) Regulations, or suitable evidence may also include accreditation with one of the Safety Schemes in Procurement (SSIP) scheme.

Where the Applicant has had previous situations of failings and remedial matters around Health and Safety, the Council will want to understand the severity of these failings, what lessons have been learned and what remedial measures / lessons have been put in place. Where the failings are deemed significant and / or the Applicant cannot provide assurances to future practices then this shall be deemed a “fail”.

### Information Only Questions

3.27 These must be completed but will be used for information purposes only and not scored. However, failure to provide sufficient information as requested may still lead to disqualification for non-compliance. It is important that where a question does not apply this is recorded as ‘Not applicable’ or ‘None’ in the spaces provided.

3.28 Where sections are scored as being ‘**Pass / Fail**’ the following definitions will apply:

Definition	Criteria
Pass	Demonstration of a clear response given with good level of detail and evidence to support the response from the Applicant in line with and applicable to the Selection Questionnaire question.
Fail	A limited, or non-complete response from the Applicant and / or not relevant or demonstrating the expectations as set out and applicable to the Selection Questionnaire question.

3.29 Where an Applicant is awarded a “fail” (inc. evaluation of the Tender response), the remainder of their submission will not be evaluated and they will be eliminated from the process.

3.30 Scored Standard questions will be evaluated in accordance with the rationale below:

Scoring Matrix for Standard Selection Questionnaire Qualitative Selection		
SCORE	JUDGEMENT	INTERPRETATION
5	Excellent	Response is completely relevant and excellent overall. The response is comprehensive, unambiguous and demonstrates a broad depth of relevant experience and excellent level of expertise with all areas covered to a very high standard.
4	Good	Response is relevant and good. The response is sufficiently detailed to demonstrate a good amount of experience and expertise covering all aspects.
3	Acceptable	Response is relevant and acceptable. Demonstrates a reasonable amount of experience and adequate level of expertise but lacks some detail in certain areas or with some aspects missing.
2	Minor Reservations	Response is partially relevant and poor. Provides little or limited evidence of experience and competence in the required field.
1	Serious Reservations	Considerable reservations in the response, with little or no evidence to support the response.
0	Unacceptable	An unacceptable or irrelevant response provided.

### Consequences of misrepresentation

- 3.31 If the Applicant seriously misrepresent any factual information in filling in the Selection Questionnaire and so induce an Town Council to enter into a contract, there may be significant consequences. They may include be excluded from the procurement procedure, and from bidding for other contracts for three years. If a contract has been entered into the Applicant may be sued for damages and the contract may be rescinded.
- 3.32 If fraud, or fraudulent intent, can be proved, the Applicant or your responsible officers may be prosecuted and convicted of the offence of fraud by false representation, and you must be excluded from further procurements for five years.

## Award Criteria

3.33 Award is the process that considers the extent to which the Applicant's Bid delivers the Most Advantageous Tender to the Council requirements and as such Applicants responses to the questions asked should give a clear indication of what the organisation is offering for the price.

3.34 The Council has not provided a word limit for responses to the Award questions however, the Council would like to inform Applicants that responses should be relevant to the question and be proportionate in length. Supporting information may be submitted, provided it is clearly referenced in the question to which it relates and appended to the main bid.

3.35 The following Award Criteria / weightings will be used in evaluation of the Applicants response:

4 The following will be pass fail questions, and in the event that there is an answer of "no" to any of the questions then bids will not be evaluated further.

Ref	<b>PASS / FAIL QUESTIONS – Confirmation that Tender is submitted on the following understanding:</b>
1	You will be appointed as Principal Contractor as defined under the Construction Design Management (CDM) Regulations and appoint the nominated Contractors acting as coordinator to deliver the total project.
2	You will contract with the Council under the JCT Minor Works Contract
3	You will have (and will maintain for the duration of the Contract) a suitable organisational trade body accreditation, for example, BUILDING ENGINEERING SERVICES ASSOCIATION <a href="https://www.thebesa.com/">https://www.thebesa.com/</a> or equivalent.  Please state below which apply:

For Quality response these will be scored against the Method Statement responses of the bidders.

	<b>Sub Criteria</b>	<b>Main Criteria</b>
<b>Criteria: Quality</b>		<b>60%</b>
How you would deliver the Specification - Past experience and how you would utilise this	40%	
Methods and approach to be applied	30%	
Resourcing Requirements - Knowledge and Skills of the proposed team	30%	
<b>Criteria: Price</b>		<b>40%</b>
Sub-Criteria – See Schedule 1 (will be based on Total price).	100%	
<b>TOTAL Quality / Price</b>		<b>100%</b>

4.1 Technical Evaluation element to be carried out independently of the Pricing aspects of the Evaluation, with the intention that the information on the Pricing element only be disclosed to the Evaluators post the completion of the Technical Evaluation. Specifically:

- i. Score objectively in line with set questions and score methodology as set out in the Tender pack;
- ii. Scores to be recorded and comments recorded on the reasons to justify the score;
- iii. Scores to form part of overall scores around the Award decision.

## Scoring Guidelines

4.2 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 Council's requirements to ensure that they meet. All scored question shall be evaluated in accordance with the guidelines below:

Scoring Matrix for Quality Criteria		
SCORE	ASSESSMENT	DEFINITION
5	Excellent	An excellent response submitted in terms of detail and relevance which clearly fully meets the requirements with no negative implications and evidence in their ability / proposed methodology to deliver a solution
4	Good	A good response submitted in terms of detail and relevance that meets the requirements without significant negative (indications / implications) or inconsistencies. The Tenderer demonstrates the understanding of the requirement and evidence of their ability / proposed methodology to deliver a solution. The requirements would be met to a good standard without intervention or significant ongoing issues
3	Satisfactory	A satisfactory response submitted in terms of the level of detail, accuracy, relevance and evidence in their ability / proposed methodology to deliver a solution. Aspects of the response may be good but there are some omissions of important factors or negative indications that reduce the extent to which the requirements will be met.
2	Minor Reservations	Satisfies the requirement but there are clearly minor reservations of the response provided, either in understanding the requirement, and / or details around proposed methodology, and / or limited evidence to support the response. There would be concerns that requirements would require intervention or ongoing issues

<b>1</b>	<b>Serious reservations</b>	Limited response provided, or a response that is inadequate, inaccurate and / or only partially addresses the question. Serious reservations of the response provided, either in understanding the requirement, and / or details around proposed methodology, and / or little / no evidence to support the response.
<b>0</b>	<b>Unacceptable</b>	Does not meet the requirement. Does not comply and / or insufficient information provided to demonstrate that either in understanding the requirement, and / or details around proposed methodology, with little / no evidence to support the response. Alternatively, no response to the question or a response that is significantly irrelevant or inaccurate

## Commercial / Price Evaluation

- 4.3 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.
- 4.4 Price shall be evaluated using the following scoring methodology, with the Tenderer's prices being scored on a comparative basis. For example:
- 4.5 This will be done by recording the lowest price submitted by any of the Tenderers, then for each Tenderer, dividing this lowest price by the Tenderers' price and then multiplying it by the allocated weighting. The equation set out below explains this in a simpler way:
- 4.6  $(\text{Lowest Price} \div \text{Tenderer's price}) \times \text{Weighting} = \text{Score}$
- 4.7 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 60% of the overall marks (i.e. quality 40%). Figures shown are purely illustrative:

	<b>L</b>	<b>W</b>	<b>Tenderer 1</b>		<b>Tenderer 2</b>		<b>Tenderer 3</b>	
Evaluation Elements	Lowest Submitted price (£)	Sub Weighting %	Tendered Price	Score (%)	Tendered Price	Score (%)	Tendered Price	Score (%)
Total Contract Sum	£65,000	60	£75,000	52.00	£65,000	60.00	£85,000	45.88
<b>Price Score (%)</b>		<b>60</b>		<b>52.00</b>		<b>60.00</b>		<b>45.88</b>

3.1.1 These scores would be added to the quality scores for the individual suppliers in this example Tenderer 1 being the preferred supplier to be awarded the contract.

	Sub Weighting %	Tenderer 1	Tenderer 2	Tenderer 3
Price score	60	52.00	60.00	45.88
Quality	40	38.00	27.00	38.00
<b>TOTALS</b>	<b>100</b>	<b>90.00</b>	<b>87.00</b>	<b>83.00</b>



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

### **Council's Warranties and Disclaimers**

- 5.1 The fact that an Applicant has been invited to bid does not necessarily mean that the Applicant has completely satisfied all the Town Council's criteria and the Town Council may require further information as appropriate and assess this as part of the evaluation process.
- 5.2 The Applicant shall have no claim whatsoever against the Town Council in respect of such matters and in particular (but without limitation) the Town Council 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 Town Council to the Applicant in respect of the services by reason of the specification being different from that envisaged by the Applicant or otherwise.
- 5.3 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 Town Council does not accept any liability or responsibility for the adequacy, accuracy or completeness of such information. The Town Council 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.
- 5.4 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.
- 5.5 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 Town Council 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.

### **Ownership**

- 5.6 The procurement documentation and all copies thereof are and shall remain the property of the Town Council 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 Town Council upon demand.

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

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

### **Relevant and Associated Legislation, Directives and Codes**

- 5.10 This is a Tender being conducted under Public Sector procurement rules and Regulations. The Applicant shall ensure that they are aware of their obligations and comply with all relevant Legislation and Regulatory matters, plus the obligations placed on the Town Council, particular reference shall be taken to the following Legislation:

Public Contracts Regulations (2015);

**<https://www.legislation.gov.uk/uksi/2015/102/contents>**

The Bribery Act (2010); **<https://www.legislation.gov.uk/ukpga/2010/23/contents>**

Public Services (Social Value) Act 2012;

**<https://www.legislation.gov.uk/ukpga/2012/3/contents>**

Freedom of Information Act 2000;

**<https://www.legislation.gov.uk/ukpga/2000/36/contents>**

Environmental Information Regulations 2004;

**<https://www.legislation.gov.uk/uksi/2004/3391/contents>**

Data Protection Act 2018

**<https://www.legislation.gov.uk/ukpga/2018/12/contents>**

Transparency Code 2015

**<https://www.gov.uk/government/publications/local-government-transparency-code-2015>**

Counter Terrorism and Security Act 2015

**<https://www.legislation.gov.uk/ukpga/2015/6/contents>**

Modern Slavery Act 2015

**<https://www.legislation.gov.uk/ukpga/2015/30/contents>**

Late Payment Directive 2015

**<https://www.gov.uk/government/publications/late-payment-directive-user-guide-to-the-recast-directive>**

## **Study of the Document**

- 5.11 Documents issued by the Council to a prospective Applicant must not be passed on to a third party without the express permission of the Town Council.
- 5.12 Applicants are expected to read, understand and agree to the Volumes (including the terms and conditions) of the document as they will in their entirety form part of the resultant Contract.
- 5.13 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.
- 5.14 The Applicant's price shall (except in so far as it is otherwise provided in the Contract (or Framework Agreement) 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.
- 5.15 The Applicant is responsible for all costs, expenses and liabilities incurred by the Applicant in connection with preparing its Bid.

## **Consortia and Sub-contracting**

- 5.16 Where an Applicant wishes to make its application as a Consortium or utilising sub-contractors the Council advises the group of organisations to select a Lead Applicant in whose name the Bid is to be submitted.
- 5.17 The Lead Applicant is advised to confirm precisely what the arrangements are within its Bid including providing the names of all the organisations to be involved, the nature and extent of their involvement and proposals regarding the structure and management of the Consortium or arrangements.
- 5.18 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.
- 5.19 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.
- 5.20 The Town Council 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 Council 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.
- 5.21 The Town Council 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 Town Council's evaluation of the new information results in an outcome that is different from the original, the Town Council 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.
- 5.22 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.
- 5.23 Please note that the Town Council reserves the right to require a successful Consortium to form a single legal entity in accordance with Regulation 19 of the Regulations.
- 5.24 Where an Applicant requires additional time in the procurement process to establish relationships with suitable consortia partners it is advised to notify the Town Council at the earliest convenience and request an extension to the procurement timescales. Applicants may do this through the messaging facility described at section Clarification and Circular Advices of this Volume One (1) Instructions and Information.

## **Terms and Conditions**

- 5.25 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.

- 5.26 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.
- 5.27 Where the Town Council 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.
- 5.28 When the period for clarification has closed Applicants shall no longer be allowed to raise any further queries regarding the terms and conditions. Applicant shall not be permitted to reserve their right to comment or negotiate upon the terms and conditions at any point thereafter.
- 5.29 Applicants are required to agree to the terms and conditions associated with this procurement opportunity as part of the submission process and the Town Council 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.
- 5.30 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 Town Council reserves the right to withdraw the Contract award and class the submission as non-compliant.

### **Clarification and Circular Advices**

- 5.31 Upon commencement of the procurement process the Applicant shall not approach any member of the Council in relation to this tender, other than by using the agreed contact email.
- 5.32 Applicants should note that unless a question is innovation based, responses will be provided to all Applicants.
- 5.33 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.
- 5.34 The identity of Applicants raising any questions will remain confidential.
- 5.35 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.
- 5.36 When Applicants first access the procurement documentation, they should satisfy themselves that they have seen any further messages posted via Contracts Finder. It is in the Applicant's interest to visit the site regularly as clarifications may fundamentally affect requirements.
- 5.37 If during the period the Town Council, 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 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.

### **Completion of the Document**

- 5.38 For the avoidance of doubt all of the sections included within Volume Two (2) Applicant's Offer must be completed and submitted by the Applicant in order to be considered by the Council as a fully complete and official Bid.
- 5.39 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.

- 5.40 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, e.g. if the documents are issued in Microsoft Word, the Town Council requires them to be returned in the same format.
- 5.41 Applicants will answer all appropriate questions and sign (if possible) where specified. Applicants will clearly reference its replies and any supporting documentation.
- 5.42 Any pro-formas must be fully completed even if your organisation has previously submitted Bids to the Town Council. It is not sufficient to cross-refer to previous responses.
- 5.43 Where an Applicant requires assistance in completing the documents or meeting the submission requirements it is advised to notify the Council at the earliest convenience and request additional support, to include meeting with the Town Council Authorised Representative.

### **Applicant Site Visits**

- 5.44 The Applicant is strongly advised to make necessary visit(s) to the site prior to completing its offer to ensure that it is fully familiar with the site locations, relevant conditions and features, and ensure all necessary due diligence as would reasonably be expected in submitting such a tender of this scale. 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 locations / conditions will not be accepted by the Town Council.

### **Alternatives and Variations**

- 5.45 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.
- 5.46 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'.
- 5.47 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.
- 5.48 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.

### **Return of Document**

- 5.49 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.
- 5.50 Applicants will not send their Bids to the Town Council in a paper or other 'hard' format unless specifically requested to do so within the associated bid documentation.
- 5.51 Any submissions that do not accord with the guidelines set out above shall be considered as non-compliant and will be treated as such.
- 5.52 It is the Applicant's responsibility to ensure the Bid is submitted prior to the deadline date / time. 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.

5.53 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.

#### **5.54 Applicant's Warranties**

5.55 In submitting their Bid the Applicant warrants and represents and undertakes to the Town Council that it has not done any of the acts or matters referred to in Regulation 57 of the Regulations 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 will if requested produce evidence of such to the Town Council;
- it is of sound financial standing and the Applicant, 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 bid) which may adversely affect such financial standing in the future.

#### **Evaluation of Bids**

5.56 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 Advantageous Tender (MAT).

5.57 The evaluation process is a critical part of the procurement process and is the means by which the Town Council is able to assess which Applicant will progress to the next stage of this procurement process and / or award the Contract.

5.58 The information disclosed by Applicants in its Bid will be used for the purposes of evaluation and shall form part of the resultant Contract.

5.59 Any responses to any of the Selection or Award questions or any other part of the Bid that are later found to be incorrect may lead to the Contractor being exempted from this procurement process or any future procurement process lead by the Town Council and could cause the termination of any resultant Contract.

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

5.60 If the Town Council 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 Council before final acceptance of the Bid.

#### **Abnormally Low Bids**

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

#### **Demonstrations and Presentations**

5.62 The Town Council reserves the right to invite Applicants, to attend a presentation or demonstration at which stage it will be a requirement to reinforce your position by presenting your bid to the key stakeholders involved. Where this forms part of the evaluation this will be detailed in Volume Two (2) Applicant's Offer.

- 5.63 Applicants will be contacted to be invited to the presentation / demonstration. The invite will detail the date, time and location and the required content of the demonstration / presentation, which will include any specific questions / topics to be covered and the marking system.
- 5.64 Presentations / demonstrations will not be scored, but will be for the purpose of ensuring that shortlisted Applicants have full comprehension of all that is required under this Contract and that all information submitted is accurate.

## **Rejection of Offers**

- 5.65 The Town Council 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.
- 5.66 The Town Council 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.
- 5.67 The Town Council reserves the right to disqualify any or all Applicants who makes material changes to, or (in the Town Council'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 Town Council.
- 5.68 Any submission in respect of which the Applicant
- has directly or indirectly canvassed any Official, Member, Officer, Agent or Advisor of the Council or obtained information from any other person who has been contracted to supply Supplies or provide the Service or Works to the Town Council 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 Town Council the price or approximate price except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the bid 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
- 5.69 shall not be considered for acceptance and shall accordingly be rejected by the Town Council provided always that such non-acceptance or rejection shall be without prejudice to any other civil remedies available to the Town Council or any criminal liability which such conduct by an Applicant may attract.

## **Acceptance of Offers**

- 5.70 The Council does not bind itself to accept the lowest 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.

## **Award of Contract (or Framework Agreement)**

- 5.71 Submitted documents shall constitute an irrevocable offer to provide the Supplies / Works or Services. Any acceptance of it by the Town Council shall be communicated in writing to the Applicant. Upon such acceptance the Contract shall become binding on all parties.
- 5.72 The successful Applicant shall conclude a formal Contract with the Council, 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 Town Council and co-signed by the Applicant's Authorised Officer.
- 5.73 The offer shall remain open for acceptance for a period of six (6) months from the closing date for the receipt of submission.

## **Intellectual Property Rights**

- 5.74 Intellectual property rights (IPR) to any original ideas, designs, concepts or plans contained in any document, plan, specification, drawing or design submitted in response to this process will vest with the Town Council unless copyright is claimed prior to the lodgement of such materials with the Town Council.



## Definitions

<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>Council 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 Town Council 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 Council</b>	Shall mean the organisation for whom the resultant Contract will be performed; in this case it will be the Town Council
<b>Bid</b>	Shall mean the Applicant's offer to the Town Council, which shall be submitted as the completed procurement documents
<b>Clarification</b>	Shall mean the process by which queries on the Town Council's procurement document are raised by the Applicants and the process by which queries on the Applicant's Bid are raised by the Town Council
<b>Commercially Sensitive information</b>	Shall mean the information listed by an Applicant within its Bid at Volume Two (2) Applicant's Offer 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 Town Council that, if disclosed by the Town Council, would cause the Contractor significant commercial disadvantage or material financial loss
<b>Consortia Consortium</b>	/ Shall mean two (2) or more companies or organisations, at least one of whom is an economic operator, acting jointly for the purpose of being awarded a public contract (pursuant to Regulation 19 Public Contracts Regulations 2015)
<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 Tender opportunity by the Town Council and its intention to procure a public supplies, services, or works Contract
<b>Contractor</b>	Shall mean the Applicant awarded the Contract culminating from an offer to supply accepted by the Town Council
<b>Town Council</b>	Shall mean Penzance Town Council
<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. 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 Town Council 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>Invitation to Tender (ITT)</b>	Shall mean the written request by the Town Council for an interested Applicant to submit a written Bid to facilitate the Town Council's requirements
<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 Town Council'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 Town Council'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 Town Council
<b>Open</b>	Shall mean the procurement process determined by the Public Contracts Regulations 2015
<b>Pricing</b>	Shall mean the value placed on a Bid by the Applicant that will purchase their offer to facilitate the Town Council's requirements
<b>Procurement</b>	Shall mean the acquisition of Supplies, Services or Works from an external source
<b>Public Contracts Regulations 2015 (the Regulations)</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>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>Specification</b>	Shall mean the detailed description of the Town Council's requirements
<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>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