



## **ELECTORAL PRINTED STATIONERY**

### **PART 1 – INTRODUCTION AND CONDITIONS OF TENDERING**

**Ref: ESP2017**

Broxtowe Borough Council  
Council Offices  
Foster Avenue  
Beeston  
Nottingham  
NG9 1AB

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## **A – INTRODUCTION & BACKGROUND**

### **A1 INTRODUCTION**

A1.1 The purpose of this Invitation to Tender (“**ITT**”) is to enable Broxtowe Borough Council and its partners (“**the Councils**”) as the lead authority to identify which contractor (the **Contractor** or **Tenderer**) to award the contract to carry out Electoral Printed Stationery (“**the Goods**”) by reference to their suitability and the cost and quality of their bid.

A1.2 The contract will be on the Council’s Terms and Conditions, which form part of this ITT pack.

### **A2 BACKGROUND**

A2.1 A Consortium of eight local Councils within Nottinghamshire is undertaking a joint procurement exercise. This is on behalf of and under the direction of their individual Returning Officers and Electoral Registration Officers for the procurement of electoral printed stationery with a view of achieving administrative and financial benefits by working together and in partnership with the successful Contractor.

A2.2 The Councils are seeking an experienced and established provider of electoral printed stationery. Broxtowe Borough Council is acting as lead buyer for the Consortium, which includes Ashfield District Council, Bassetlaw District Council, Broxtowe Borough Council, Gedling Borough Council, Mansfield District Council, Newark and Sherwood District Council, Nottingham City Council, and Rushcliffe Borough Council.

A2.3 Each of the participating Councils will award contracts separately and day-to-day transactions under the framework agreement will be conducted between the appointed Contractor and the particular Council concerned. In any event, any formal contracts which emerge from this process will be entered into separately with the supplier by each authority, with no relationship of joint or several liability between them. Some Council’s may choose not to access all parts of this framework. The framework will start in June 2016 and end on the 31<sup>st</sup> May 2021.

#### **Lots**

A2.4 The tender is split into two Lots. You may bid for all, few or just one Lot. There are no restrictions. Each Lot will be awarded independently of the others and there is no restrictions on the number of Lots that you can be awarded.

Lot 1) Requirements for Elections

Lot 2) Requirements for Canvassing / Electoral Registration and other day to day activities.

### **A3 ITT DOCUMENTS**

A3.1 The ITT pack is made up of the following documents:

Part 1 – Introduction and Conditions of Tendering

Part 2 – Specification

Part 3 – ITT Response

Part 4 – Price List

Part 5 – Contract Terms and Conditions

Part 6 – Intention to Tender

Annex A – Councils and Wards

Annex B – Data Processing Agreement

Annex C – Quantities and Requirements

**(Finish off Annexes)**

These documents make up the “**ITT Documents**”.

#### **Important notice**

The Council have issued this ITT to Contractors, to allow them and their professional advisers to prepare and submit a response this ITT for the procurement process for the Contract and for no other purpose.

This ITT is made available in good faith. The Council give no warranty as to the accuracy or completeness of the information contained in it. The Council also disclaim any liability for any inaccuracy or incompleteness.

The Council reserve the right to discontinue the procurement process at any point.

This ITT is issued on the basis that:

- nothing contained in this ITT constitutes an inducement or incentive in any way to persuade an interested person to pursue its interest, make a Tender or enter into the Contract or any other related agreement;
- this ITT is neither an offer capable of acceptance nor is it intended to create a binding contract nor is it capable of creating such a contract by any subsequent actions; and
- no implied contract is to arise between the Council and any Tenderer resulting from the issue of or any Tenderer's compliance with this ITT or any matters related to it.

## **B – CONDITIONS AND INSTRUCTIONS OF TENDERING**

### **B1 GENERAL INFORMATION**

B1.1 The ITT process consists of a mixture of

- **SUITABILITY** – Assessing the Contractors ability to meet the Council's minimum requirements (Part 3, Section A, B and C)
- **QUALITY** – Assessing the non-price aspect of the Contractors bid in relation to the contract requirements (Part 3, Section D)
- **PRICE/COST** - Assessing the price aspect of the Contractors bid in relation to the contract requirements (Part 3, Section E and Part 4)

B1.2 The Council reserves the right to disqualify or to terminate any contract awarded if any false material misrepresentation is made in this ITT or at any time in the process.

B1.3 The Contract will be awarded on a non-exclusive basis and there will be no guarantee of spend with the contractor under the Contract. The Contractor should be aware that Council's budgets and priorities are under constant review and there is no promise made by the Council to the Contractor/s with regards to the duration of contract, frequency of requirement and contract value.

B1.4 Contractors must comply with the terms of this ITT and should therefore read the entire document carefully and take any independent financial or legal advice as necessary.

B1.5 This is a competitive procurement conducted in accordance with the Open Procedure under the Public Contracts Regulations 2015.

B1.5 ITT's must be submitted in accordance with these instructions with all required Parts completed and without any information in addition to that specifically requested. Any ITTs not complying with these requirements may be rejected as ineligible and the Contractor submitting any such ITT excluded from those Contractors from whom the Council will make its selection of those to be awarded the contract.

#### **Contractor Conduct and Conflicts of Interest**

B1.6 Any attempt by Contractors or their advisors to influence the procurement process in any way may result in the Contractor being disqualified. Specifically, Contractors shall not directly or indirectly at any time:

- devise or amend the content of their ITT response in accordance with any agreement or arrangement with any other person/organisation, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance;

- enter into any agreement or arrangement with any other person/organisation as to the form or content of any other ITT response, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other ITT response;
- enter into any agreement or arrangement with any other person/organisation that has the effect of prohibiting or excluding that person/organisation from submitting a ITT response;
- canvass the Council or any employees or agents of the Council in relation to this procurement; and/or
- attempt to obtain information from any of the employees or agents of the Council or their advisors concerning another Contractor or ITT response

B1.7 Contractors are responsible for ensuring that no conflicts of interest exist between the Contractors and its advisers, and the Council and its advisers. Contractors should notify the Council promptly of any possible conflict and the proposed steps that the Contractor believes can be taken to avoid the conflict. Any Contractor who fails to comply with these requirements may be excluded from the procurement at the discretion of the Council.

### **Council Rights**

B1.8 Subject to its obligations to act in a transparent, proportionate and non-discriminatory manner, the Council reserves the right to:

- waive or change the requirements of this ITT from time to time;
- seek clarification or documents in respect of a Contractor's submission;
- disqualify any Contractor that does not submit a compliant ITT response in accordance with the instructions in this ITT;
- disqualify any Contractor that is guilty of serious misrepresentation in relation to its expression of interest, the ITT response or the procurement process;
- choose not to award any contract as a result of the current procurement process; and
- make whatever changes it sees fit to the timetable, structure or content of the procurement process.

### **Transparency**

B1.9 In accordance with the Public Contracts Regulations 2015 and the Government's policy on transparency, Contractors should be aware that the Council intends to make the ITT and details of any subsequent contract publicly available, by publication on the internet.

**Governing Law and Jurisdiction**

B1.10 This ITT and any disputes concerning it (including non-contractual disputes or claims) shall be governed by English law and subject to the jurisdiction of the English courts.

## **B2 POINTS OF CLARIFICATION**

B2.1 Any queries about the ITT process which may affect the preparation of your ITT should be raised without delay. These should be made in **writing only** and submitted by email only to:

**Steve Cotterill, Procurement & Technical Officer, E-mail:**  
**steve.cotterill@broxtowe.gov.uk**

B2.2 At this stage, the Council will consider all such requests received from Contractors. The Council will issue a written response to all queries that it receives which it considers is relevant to all Contractors not just the Contractor submitting the query. **The closing date for clarifications is 12 Noon on the 10<sup>th</sup> February 2017. The Council may not respond to clarifications/queries after this time and date.**

B2.3 The Council reserves the right not to respond to a request for clarification or to circulate such a request where it considers that the answer to that request would or would be likely to prejudice its own commercial interests or that of a Contractor.

B2.4 The Council will circulate responses to clarifications where it may affect the ITT response of other Contractors. The Council will not reveal the identity of the individual Contractor that asked a particular question. This will be done by emailing Tenderers who have expressed interest in the tender. **IT IS ESSENTIAL YOU PROVIDE AN EMAIL ADDRESS FOR THIS IF INTERESTED IN THE CONTRACT.**

B2.5 Other than the person or people identified above, no Council employee or member of the Council has the authority to give any information or make any representation (express or implied) about this ITT or any other matter about the Contract, unless the above people confirm otherwise.



### **B3 PREPARATION OF ITT BY THE CONTRACTOR**

B3.1 Contractors should note that they shall be responsible for all of their own costs and expenses in connection with or arising out of their response to this ITT and the preparation of the bid submissions and other requirements of this ITT. The Council shall not accept liability for any costs incurred by the ITT in preparation or submission of their bids.

B3.2 The Contractor shall have no claim whatsoever against the Council in respect of such matters and in particular (but without limitation) neither the Council shall not make any payments to the Contractor save as expressly provided for in the Contract and (save to the extent set out in the Contract). No compensation or remuneration shall otherwise be payable by the Council to the Contractor in respect of the scope of the Contract being different from that envisaged by the Contractor or otherwise. Information given in respect of current volumes and expenditure is given as a guide and the Council makes no warranty and accepts no liability as to the actual value or volume of requirement to be placed with the Contractor under the Contract.

B3.3 The Contractor will be deemed for all purposes connected with the Tender and the Contract to have carried out all researches, investigations and enquiries which can reasonably be carried out and to have satisfied itself as to the nature, extent, and character of the requirements of the Contract (in the context of and as it is described in the Specification), the extent of the materials and equipment which may be required and any other matter which may affect its Tender.

B3.4 Contractors should take such professional advice as they deem necessary (including an assessment of the proposed terms of the Contract) to determine whether they wish to Tender and the terms on which they do so.

B3.5 The Council is committed to the highest possible standards of openness and probity and accountability when conducting its affairs. In line with this commitment, it is expected that employees of the Council, elected members, Contractors (potential or existing) of the Council will come forward and voice any serious concerns they may have about any aspect of the Councils work. The Council's Whistleblowing Policy can be found here:

<http://www.broxtowe.gov.uk/CHttpHandler.ashx?id=15456&p=0>

B3.6 ITTs and supporting documents shall be in English and any contract subsequently entered into and its formation, interpretation and performance shall be subject to and in accordance with the law of England and Wales.

B3.7 The Council reserve the right to issue amendments or modifications to this ITT or extra documentation at any time during the ITT process to clarify any issue or amend any aspect of the ITT. Any amended, modified or extra documentation that the Council may issue will form part of the ITT. Also, it will add to and/or supersede any part of the ITT to the extent indicated.

B3.8 Where the Council regards an amendment to the original ITT documents is appropriate and significant, any such amendment will be notified to all prospective Contractors and an extension of the closing date may, at the discretion of the Council, may be given to all Contractors.

B3.9 The Council reserves the right, at its sole discretion, to extend the deadline for submission whatever reason.

B3.10 Any unauthorised alteration to or insertion into any part of this ITT by a Contractor may result in the Council rejecting that Contractor's ITT submission.

The Tender shall be submitted by the organisation which it is proposed will enter into a formal contract with the Council if awarded the Contract. It shall be signed by persons authorised to submit Tenders and make contracts for the Contractor normally:

3.10.1 where the Contractor is a partnership, by two (2) duly authorised partners;

3.10.2 where the Contractor is a company, by two (2) directors or by a director and the secretary of the company, such persons being duly authorised for that purpose.

### **Confidentiality**

B3.11 When providing details of contracts the Contractor agrees to waive any contractual or other confidentiality rights and obligations associated with these contracts.

B3.12 The Council reserves the right to contact the named customer contact. The named customer contact does not owe the Council any duty of care or have any legal liability, except for any deceitful or maliciously false statements of fact.

B3.13 The Council confirms that it will keep confidential and will not disclose to any third parties, any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the Public Contracts Regulations 2015 or as otherwise legally required.

## **B4 SUBMISSION OF ITT**

B4.1 The following Parts must be completed and returned:

Part 3 – Tender Submission (Sections A to H)

Part 4 – Price List

B4.2 Please ensure that your submission is

- fully paginated, annotated and **cross-referenced and each section is clearly referenced and identifiable** (where appropriate);
- printed on A4 paper, except for drawings, or other documents for which this is impractical or inappropriate;
- include a complete index (which includes all drawings); and
- have all drawings, plans etc. numbered and no larger than A1 size which are folded and inserted into pockets, which in the case of the fully bound ITT is bound within the appropriate sections of the ITT.

B4.3 Failure to deliver all or part of a ITT in the format required may lead to the submission being rejected as non-compliant.

B4.4 For avoidance of doubt there is no requirement to return any other parts of this ITT and if you do so the Council may dispose of any such documents received without reviewing them.

B4.5 All completed submissions must be submitted in hard copy form.

### **Hard Copy**

Submit one hard copy in loose-leaf format (appropriately bound so not to lose any pages).

Part 4 is to be provided back in Excel format.

Also submit an exact copy of the tender submission on memory stick. Please contact the Council if this causes a problem.

The ITT submission must be sent to:

Democratic Services Officer  
Broxtowe Borough Council  
Council Offices  
Foster Avenue  
Beeston, Nottingham, NG9 1AB

by no later than **12 Noon on 20<sup>th</sup> February 2017**

B4.6 The envelope or package should bear the following words in the top left hand corner:

“ITT – Electoral Printed Stationery”

B4.7 When returning the tender please ensure that:

- the envelope **does not** bear any name or mark indicating the identity of the sender (this includes for example, franked mail, Post Office labels detailing the sender, courier service labels or a signature across the seal of the envelope)
- the envelope is not accompanied by other documentation which identifies the contractor
- all documentation is properly completed and enclosed with your tender
- If returning tenders personally please allow time to cope with traffic, accidents, parking problems, lift unavailability, busy reception areas or any other delays.
- if returning tenders by post, that the chosen method will guarantee delivery before the specified deadline

B4.8 Hard copy ITTs returned other than in the normal course of post will only be accepted during normal office hours i.e. Monday – Thursday 8.30a.m. – 5.00p.m. and Friday 8.30a.m. – 4.30p.m. (Excluding bank holidays).

B4.9 ITT must be submitted to the location/email address in B4.5, ITTs submitted to other locations that consequently arrive late to location as described in B4.5 may be disqualified.

B4.10 ITTs received after the deadline will be accepted but may be disqualified from the ITT process. .

B4.11 ITTs are not opened until after the deadline has expired; therefore there is no penalty for returning an ITT early.

B4.12 All Contractors shall keep their respective Tender valid and open for acceptance by the Council until the expiry of 90 days from the last date for the receipt of tenders.

## **B5 ACCEPTANCE & EVALUATION OF ITTs**

### **Overview**

B5.1 An initial examination will be made to establish the completeness of submitted ITTs. The Council reserves the right to disqualify any ITT submission which is incomplete or does not comply with the requirements, conditions and instructions of this ITT process.

B5.2 If a tender is ambiguous or unclear, the Council may deduct points when scoring it or may treat the tender as non-compliant and reject it.

B5.3 The Council will award the contract to the Tender that scores the highest marks, applying the methodology below. The evaluation will be carried out as follows but not necessarily in the order below:

B5.3.1 The Contractor must pass all 'suitability' questions in Part 3, Section A, B and C ("Suitability Questions").

B5.3.2 The Council will mark Part 3, Section D ("Quality - Scored Questions") for all Contractors that pass all the Suitability Questions.

B5.3.3 The Council will assess the Part 4, ("Price List") element of the Contractors bid in the 'Price List' response.

The Council reserves the right to evaluate Part 3, Section D and Part 4 before assessing Part 3, Section A, B and C, in accordance with Regulation 57 of the Public Contracts Regulations 2015.

### **Important**

B5.3a Where a Contractors Price List score means it has no chance of winning the tender even if it scores maximum points in the 'Quality – Scored Questions' section, then the 'suitability' and 'quality' element of the bid will not be assessed.

### **Criteria – Suitability Questions**

B5.4 The Council will score Suitability Questions on the following basis:

<b>Section / Question</b>	<b>Title</b>	<b>Scoring</b>
A1	Agency Details	Completion Required or fail
B1	Grounds for Mandatory Exclusion	Pass or Fail as described in the question
B2	Grounds for Discretionary Exclusion	Pass or Fail as described in the question
C1	Financial Information	Pass or Fail as described in the question

<b>Section / Question</b>	<b>Title</b>	<b>Scoring</b>
C2	Wider Group Relationships	Information Only
C3	Technical and Professional Ability	Pass or Fail as described in the question
C4	Modern Slavery	Pass or Fail as described in the question
C5	Insurance	Pass or Fail as described in the question
C5	Equalities	Pass or Fail as described in the question
C5	Environmental Management	Pass or Fail as described in the question
C5	Health and Safety	Pass or Fail as described in the question
C5	Compliance with Specification	Pass or Fail as described in the question
C6	Quality Assurance	Pass or Fail as described in the question
C7	Security of Data and Business Continuity	Pass or Fail as described in the question

The above will be used as basis but where specific requirements are detailed in the question and where there is any contradiction, the information in the question will prevail.

B5.5 Although “information only” questions are not scored, legally they are representations made by the Contractor in the tender process. A Contractor can be excluded from the tender process at any stage if any of those representations are found to be untrue.

B5.6 To score a "pass", the Tender must adequately address all key points and include adequate supporting evidence / examples / information where requested. It must give a reasonable degree of confidence that the Contractor has the capability, resource and experience to properly perform the contract.

B5.7 Where a Contractor scores a "fail" for any question, the Council will treat the Tender as non-compliant and the submission will be disqualified.

### **ITT Evaluation Criteria**

B5.8 The evaluation criteria is a mixture of quality and price, also know and ‘best price-quality ratio’. This is detailed below and applies to all Lots.

## EVALUATION CRITERIA

### Price – weighting of 40%

#### Cost to the Council

The lowest total price will receive full marks (40 marks) and other Tenders will have their score adjusted against the lowest cost, using the following formula:

$$((1 - (\text{Tendered Price} - \text{Lowest Price}) \text{ divided by lowest price})) \times 40 = \text{score}$$

**Example:** Three bids are received. The total cost for each is:

Bid A	£100,000
Bid B	£150,000
Bid C	£175,000

The cost score for each bid is:

Bid A = $1 - (100,000 - 100,000) / 100,000 =$	100.0	x 40%
Bid B = $1 - (150,000 - 100,000) / 100,000 =$	50.0	x 40%
Bid C = $1 - (175,000 - 100,000) / 100,000 =$	25.0	x 40%

If a bid is more than twice the amount of the lowest price the equation will produce a negative number, in this case the bids score 0 points. Note: the example figures above are purely illustrative to demonstrate scoring and are not a reflection of anticipated tender prices.

### Quality - weighting of 60%

Each response will be scored out of 5 and given a score between 0 and 5 using the scoring methodology in paragraph B5.19. These scores out of 5 will be multiplied by the individual weighting as detailed below to give the score out of the total number of marks available for that question (i.e. for D1 a score of 2 out of 5 will end up being 12 out of 30).

The highest quality response (points out of 100 points) will receive full marks and achieve the full weighting of 60 marks for the quality element of the Tender. The other Tenders will have their score adjusted pro-rata against this by applying the following formula:

Total quality score of tender being evaluated	
-----	x 60 = score
Total quality score of tender with the highest quality score	

Question		Scoring Scale	Weighting	Total Score Available
<b>D1</b>	<b>Contract Resource and Relationships</b>	0-5	1	25
<b>D2 – Lot 1</b>	<b>Project Plans – Lot 1</b>	0-5	2	10
<b>D2 – Lot 2</b>	<b>Project Plans – Lot 2</b>	0-5	2	10
<b>D3</b>	<b>Contingency Plans</b>	0-5	1	25
<b>D4</b>	<b>Data Security</b>	0-5	7	35
<b>D5</b>	<b>Staff Training</b>	0-5	3	15
<b>D6</b>	<b>Samples</b>	0-5	1	50

B5.9 Not Used.

#### **Criteria – Price (Part 3, Section E and Part 4)**

B5.10 Tender prices are scored on a comparative basis. Where whole-life costing and price control mechanisms are also referred to in the Price List 1 or 2 then this will also form part of the calculation of total price.

B5.11 Each Lot will be evaluated and awarded separately and scores for quality responses could be different for each Lot depending on the response for each specific Lot.

B5.12 If the Council considers that a cover price (i.e. a bid that is not intended to be considered seriously) has been submitted, the Council may reject the tender and may decide not to invite the Contractor to tender for future work.

B5.13 If there appears to be an arithmetical error in a Tender submission or supporting information, the Council will give detail of those errors to the Contractor and invite the Contractor to;

- to correct its Tender, in which case the corrected figures will be used in the evaluation,
- to withdraw its Tender

B5.14 Except in the case of arithmetical errors, if any other error is found the Contractor will be invited to either stand by the original uncorrected Tender or to withdraw.



B5.15 If the Council considers that a Tender price submitted by a Contractor is abnormally low the Council reserves the right to reject that Tender after following the process in Regulation 69 of the Public Contracts Regulations 2015

B5.16 If a Contractor fails to provide fully for the requirements of the Specification in the Tender it must either:

- (i) absorb the costs of meeting the full requirements of the Specification within its tendered price; or
- (ii) withdraw its Tender.

B5.17 Contractors should satisfy themselves of the accuracy of all fees, rates and prices quoted, since Contractors will be required to hold these or withdraw their Tender in the event of errors being identified after the submission of Tenders.

### **Criteria – Quality - Scored Questions (Part 3, Section D)**

B5.18 For the quality scored questions, a common marking system will be adopted as detailed in the table below. The table sets out the scoring system and identifies which type of responses will score higher marks. Where questions have a number of sub-questions (a, b, c etc.) those sub-questions will not be marked separately. Instead the answers to all these sub-questions will be considered together and a mark allocated for the question as a whole.

Where specific scoring requirements are detailed in each question and where there is any contradiction, the information in the question will prevail.

Score	Grade	Criteria for Awarding Score
0	Unacceptable	Either no response is provided or the response completely fails to demonstrate that any of the Council's requirements in the area being evaluated will be delivered in accordance with the Contract
1	Poor	Response is poor and provides only limited assurance that the Council's requirements in the area being evaluated will be delivered in accordance with the Contract, so as to result in a poor standard of delivery of the works/services/goods.
2	Fair	Response demonstrates how some of the Council's requirements in the area being evaluated will be delivered in accordance with the Contract so as to provide a reasonable standard of delivery of the works/services/goods.

3	Satisfactory	Response demonstrates how most of the Council's requirements in the area being evaluated will be delivered in accordance with the Contract so as to provide a satisfactory standard of delivery of the works/services/goods.
4	Good	Response demonstrates how nearly all the Council's requirements in the area being evaluated will be delivered in accordance with the Contract so as to provide a good standard delivery of the works/services/goods.
5	Excellent	Response demonstrates clearly and convincingly how all the Council's requirements in the area being evaluated will be delivered in accordance with the Contract so as to provide an excellent standard delivery of the works/services/goods.

B5.19 The scored questions will be assessed by a panel (or a single officer) established by the Council. This may involve members of staff, board members and/or residents. Professional advice may be taken on specific questions but the professionals will not form part of the selection panel. Please do not assume that the panel members will see the complete ITT submission. Each response to a question needs to be self-contained and not refer to a response to a previous question.

B5.20 The panel will agree a single score for the responses from each Contractor to the part of the ITT they are marking. However, where a single score cannot be agreed, panel members may score individually, with these scores for each Contractor for each question then being averaged to give an overall score for that Contractor for that question. Individual scoring will be used only as a last resort and the selection panel will be encouraged to achieve a consensus as far as possible.

B5.21 The Council's decisions will be final on:

- whether or not where a single score is agreed by panel members or whether an average score is used;
- the scores allocated to each Contractor

B5.22 The Council reserves the right in exceptional circumstances and after the opening of Tenders to enter into discussion with any Contractor.

### **Word / Page limits**

B5.23 If any word or page limit is specified in the ITT Part 3 and the Tender Response exceeds this, the Council will evaluate the submitted information up to the specified word or page limit but any information beyond this limit will be disregarded.

## **Summary of Evaluation Process**

B5.24 The Council will check completeness of tender submission including required signatures and documentation – failure to submit a complete and compliant bid could lead to disqualification.

B5.25 The Council will assess the 'Suitability' element of the tender submission which is the pass / fail stage. Failure to pass this part will lead to disqualification.

B5.26 The Council will assess the price and quality elements of the bid and score and rank Contractors as appropriate.

## **Variant Bids**

B5.27 Contractors are encouraged to be innovative and provide solutions and suggestions that may provide a more cost effective and better value solution for the contract requirements. Where a Contractor wishes to submit a variant bid this must be in addition to the original tender submission requirements and may or may not be considered by the evaluating officer/s. **Any variant bid must be clearly marked** and state all cost implications. Any deviations from the specification and all risks and contingencies must be identified. The Councils decision as to whether or not a variant tender will be considered is final.

## **Award Process**

B5.28 Contractors will be notified as soon as possible of any decision made by the Council during the procurement process, including Contract award. When the Council has evaluated the bids, it will notify all Contractors about the intended award of the Contract.

B5.29 Acceptance of the Tender by the Council shall be in writing and shall be communicated to the Contractor.

B5.30 Contractors must not undertake work without first having received a letter of intent. Contract documents will be prepared and issued for execution as soon as possible thereafter.

## **B6 CLARIFICATION AND VERIFICATION BY THE COUNCIL**

B6.1 The Council may require Contractors to respond to written questions in order to clarify any responses in or omissions from ITT submissions.

B6.2 In order to prepare for the evaluation process, Contractors are required to identify nominated key personnel (as identified in Part 3, Section A1.3) who may be contacted with all queries. Questions may arise on the interpretation of an ITT by the Council and its advisers. The Council and its advisers reserve the right to raise clarification questions and request additional information from Contractors if it considers, in its sole discretion, such information is required to enable the Council to clarify and understand the ITT submission for the purposes of the ITT process. During the course of the process Contractors shall be required to make available key personnel.

However, for the avoidance of doubt, the Council will not be obliged to seek clarification and reserves the right to reject a Tender Response which is incomplete, ambiguous or which is not capable of evaluation. Contractors should therefore take care to ensure that their Tender Response is complete, unambiguous and capable of evaluation without further clarification.

B6.3 Where the Council requires the number one ranked Contractor (or any Contractor) to attend a clarification meeting, the content of the meeting may affect their tender score. If after this process the Contractor is eliminated from the procurement process or have their ranking changed, the Council will not award the Contract to the Contractor and may undertake further final due diligence in respect of the Contractor ranked next following the clarification evaluation process.

Scores can only be reduced as this is not an opportunity for the Contractor to 'add' to their original bid. The Clarification meeting is to check their bid submission meets the requirements of the contract.

B6.3 Whilst reserving the right to request information at any time throughout the procurement process, the Council may enable the Contractor to self-certify that there are no mandatory / discretionary grounds for excluding their organisation. When requesting evidence that the Contractor can meet the specified requirements the Council may obtain such evidence after the final tender evaluation decision i.e. from the successful Contractor only.

## **B7 DECLARATIONS AND REJECTION OF TENDER**

**B7.1** By submitting a tender response, the Contractor confirms:

- neither the Contractor nor any member of the Contractor's team has engaged in collusive tendering or canvassed any officer or adviser of the Council;
- no circumstances exist that would prevent the award of a contract to them under the Council's standing orders; and

**B7.2** The Council reserves the right to reject or disqualify a Contractor:

- the Contractor fails to comply fully with the requirements of this ITT;
- the Contractor 'qualifies' its Tender or tries to change the terms on which its Tender is submitted;
- where the Contractor is guilty of a material misrepresentation in relation to its Tender and/or any representation made during the Tender process;
- where there is a change in identity, control, financial standing or other factor impacting on the prequalification selection and/or evaluation process affecting the Contractor; and/or
- where the Contractor breaches or has found to have breached the terms of the non-collusion and non-canvassing certificate included in the Tender Certificate.

Such disqualification is without prejudice to any other civil remedy that may be available to the Council, or any criminal liability that may be incurred. Any Contractor that breaches the terms of their Form of Tender may also (subject to the terms of the Contract if they have been entered into) have to reimburse the Council for its costs of the procurement.

**B7.4** Any Tender submitted by a Contractor in respect of which the Contractor:

- fixes and adjusts prices and rates shown in its Tender by or in accordance with any agreement or arrangements with any other person or by reference to any other Tender or communicates to any person other than the person or people specified in Paragraph B2.1, the amount or approximate amount of the prices and rates shown in its Tender except where such disclosure is made in confidence, in order to obtain quotations necessary for the preparation of the Tender or for the purposes of financing or insurance; or
- enters into any agreement with any other person that such other person shall refrain from submitting a Tender or shall limit or restrict the prices to be shown by any other Contractor in its Tender; or

- offers or agrees to pay or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person or any other Contractor or contractor in respect of this tender process; or
- in connection with the award of the Contract commits an offence under the Prevention of Corruption Acts 1889-1916 or the Bribery Act 2010 or gives any fee or reward the receipt of which is an offence under Sub-Section (2) of Section 117 of the Local Government Act 1972;
- has directly or indirectly canvassed any member or official of the Council concerning the acceptance of any Form of Tender or who has directly or indirectly obtained or attempted to obtain information from any such member or official concerning any other Contractor or Tender submitted by any other Contractor

shall be rejected by the Council provided always that such non-acceptance or rejection shall be without prejudice to any other civil remedies available to the Council or any criminal liability which such conduct by a *Contractor* may attract.

## **B8 CONTRACTOR'S WARRANTIES**

In submitting a Tender the Contractor warrants and represents that:

B8.1 it has not done any of the acts or matters referred to in Paragraph B7 above and has complied and accepts in all respects with these conditions of tendering and Instructions of Tender;

B8.2 all information, representations and other matters of fact contained in its Tender communicated (whether in writing or otherwise) to the Council by the Contractor or its employees or agents in connection with or arising out of the Tender are true, complete and accurate in all respects at the time of submission of the Tender and the Contractor will notify the Council in writing of any changes to that information that occur before entry into the Contract;

B8.3 it has made its own investigations and research, and has satisfied itself in respect of all matters relating to the Tender, the Specification and the Contract including the accuracy and completeness of any information that may have been provided (orally, in writing or otherwise) by or on behalf of the Council;

B8.4 it has full power and authority to enter into the Contract and will if requested produce evidence of such to the Council;

B8.5 it is of sound financial standing and the Contractor and its partners, officers and employees are not aware of any circumstances (other than such circumstances as may be disclosed in the accounts or other financial statements of the Contractor) which may adversely affect such financial standing in the future;

B8.6 it has sufficient working capital, skilled staff, other equipment and other resources available to it to comply with the obligations it will undertake under the Contract;

B8.7 it will not at any time whilst the Contract are in force or at any time thereafter claim or seek to enforce any lien, charge or other encumbrances over property of any nature owned by either of the Council which is for the time being in the possession of the Contractor in connection with carrying out Works; and

B8.8 that it has not submitted the Tender and will not have entered into the Contract in reliance upon any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by or on behalf of the Council.

## **B9 CONTRACTOR STRUCTURE AND SUB-CONTRACTORS**

### **Parent Companies and Groups**

B9.1 Unless otherwise specified, companies, responses must relate to the bidding Contractor and not to any parent or associated companies of any group to which the Contractor belongs.

B9.2 If the Contractor is relying on the resources of other Group companies you should:

- make this clear in the Contractor's ITT and clearly identify which resources will be provided by the group organisation and which the Contractor will provide;
- confirm that a parent company guarantee will be provided from the group organisation whose resources the Contractor is relying on; and

provide an extra copy of the questions in Part 3 completed by the group organisation together with a signed declaration from the group company.

### **Consortia**

B9.3 If the Contractor completing this ITT is doing so as part of a proposed consortium, the following information must be provided;

- names of all consortium members;
- the lead member of the consortium who will be contractually responsible for delivery of the contract (if a separate legal entity is not being created); and
- if the consortium is not proposing to form a legal entity, full details of proposed arrangements within a separate Appendix.

B9.4 Please note that the Council may require the consortium to assume a specific legal form if awarded the contract, to the extent that a specific legal form is deemed by the Council as being necessary for the satisfactory performance of the contract.

B9.5 All members of the consortium will be required to provide the information required in all sections of the ITT as part of a single composite response to the Council i.e. each member of the consortium is required to complete the form.

B9.6 Where you are proposing to create a separate legal entity, such as a Special Purpose Vehicle (SPV), you should provide details of the actual or proposed percentage shareholding of the constituent members within the new legal entity in a separate Appendix.

B9.7 The Council recognises that arrangements in relation to a consortium bid may be subject to future change. Contractors should therefore respond on the basis of the arrangements as currently envisaged. Contractors are reminded that the Council



must be immediately notified of any changes, or proposed changes, in relation to the bidding model so that a further assessment can be carried out by applying the ITT criteria to the new information provided. The Council reserves the right to deselect the Contractor prior to any award of contract, based on an assessment of the updated information.

### **Sub-contracting**

B9.8 Where the Contractor proposes to use one or more sub-contractors to deliver some or all of the contract requirements, Section A1.2 in Part 3 should be used to provide details of the proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.

B9.9 The Council recognises that arrangements in relation to sub-contracting may be subject to future change, and may not be finalised until a later date. However, Contractors should be aware that where information provided to the Council indicates that sub-contractors are to play a significant role in delivering key contract requirements, any changes to those sub-contracting arrangements may affect the ability of the Contractor to proceed with the procurement process or to provide the supplies and/or services required. Contractors should therefore notify the Council immediately of any change in the proposed sub-contractor arrangements. The Council reserves the right to deselect the Contractor prior to any award of contract, based on an assessment of the updated information.

## **B10 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION STATEMENT**

B10.1 The Council are subject to The Freedom of Information Act 2000 (Act) and The Environmental Information Regulations 2004 (EIR).

B10.2 Under the Act or EIR, the Council may be required to disclose information about the procurement process or the Contract or information a Contractor provides to the Council unless the Council can establish that it is both commercially sensitive and the public interest in maintaining its confidentiality is greater than the public interest in disclosing it.

B10.3 If Contractors think that any of the information given in their ITT is commercially sensitive (meaning it could reasonably cause prejudice to the Contractor if disclosed to a third party); then Contractors should clearly mark this as **'Not for disclosure to third parties' and complete Section I in Part 3**. Contractors should also give valid reasons in support of the information being exempt from disclosure under the Act and the EIR.

B10.4 The Council will aim to consult with Contractors and consider comments and any objections before the Council release any information to a third party under the Act and/or the EIR. However the Council will be entitled to decide in our absolute discretion whether any information is:

- exempt from the Act or the EIR; or
- to be disclosed in response to a request of information.
- The Council must make our decision on disclosure in line with the provisions of the Act or the EIR and can only withhold information if it is covered by an exemption from disclosure under either. Contractors should note that:
- even where they have indicated that information is commercially sensitive, the Authority might be required to disclose it under the Act or the EIR if a request is received; and
- the receipt by the Council of any material marked 'Not for disclosure to third parties' or equivalent should not be taken to mean that the Council accepts any duty of confidence by virtue of that marking.

B10.5 The Council will not be held liable for any loss or prejudice caused by the disclosure of information that:

B10.5.1 has not been clearly marked as 'Not for disclosure to third parties' with supporting reasons (referring to the relevant category of exemption under the Act or EIR where possible);

B10.5.2 does not fall into a category of information that is exempt from disclosure under the Act or EIR (for example, a trade secret or would be likely to prejudice the commercial interests of any person); or

B10.5.3 where it is in the public interest to disclose this and there is no legal duty to withhold it.

B10.6 Payments, Contract and Tender details relating to this Contract will be published in accordance with the requirements of the Department of Communities and Local Government and any Transparency Code applicable to the Council.

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## **B11 PROCUREMENT TIMETABLE**

B11.1 The procurement will follow a clear, structured and transparent process to ensure a fair and level playing field so that all Contractors are treated equally.

B11.2 The key dates for this procurement are currently anticipated to be as follows:

Deadline for return of ITTs	12 Noon on 20 <sup>th</sup> February 2017
Assessment of ITT by	3 <sup>rd</sup> March 2018
Committee Meeting	27th March 2017
Announcement of Contract Award	28th March 2017
Award Contract	10 <sup>th</sup> April 2017
Start of contract	1 <sup>st</sup> June 2017

B11.3 Whilst the Council does not intend to depart from the timetable, it reserves the right to do so at any stage.