



FALMOUTH
TOWN COUNCIL

Volume One (1)

Contract for: Skate Park, Dracaena Playing Field, Falmouth, Cornwall

INVITATION TO TENDER (ITT)

Background Information, Instructions and Conditions of Tender

Applicants should read this Volume first

**If you would like this information in another format please email
Ruth Thomas - RuthThomas@falmouthtowncouncil.com**

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Information and Instructions

Section 1 – About the Council

1.1. The Client for this Project and in effect Contracting Authority is Falmouth Town Council (The Town Council). The Town Council was formed on local government reorganisation in 1974 from the former Falmouth Borough Council. The town received Royal Charter in 1661.

1.2. Falmouth is formally twinned with Douarnenez in Brittany and Rotenburg (Wümme) in Germany and is encouraging informal cultural links with Villagarcia in Spain.

Total electorate 17,625.

Total population 21,385.

Area 776 hectares. See also: <https://www.falmouthtowncouncil.co.uk/>

1.3. There has been a consistent demand for a modern concrete Skatepark in the town for many years; Falmouth Town Council took possession of the freehold of the Dracaena Avenue Community Sports area, Dracaena Avenue, Falmouth, TR11 2EJ in 2016 and have been working towards the new facility since that time (See Appendix 2 for Location / Site Plan).

1.4. The Town Council have place a high priority rating on the provision of the Skatepark in Falmouth's Neighbourhood Plan (<http://planforfalmouth.info/>).

1.5. The Town Council has secured appropriate land for the development of the park and additional car parking (See Appendix 2 Site Plan / location map). The available land for the Skatepark and additional car parking is approximately 2500m². The site intended for the Skatepark is an area of former landfill which is currently used as a sports pitch. The encapsulated landfill limits the ability to excavate, so the design and construction methods need to account for this. The site has excellent accessibility.

1.6. As part of the work to date, the Town Council engaged the services of Maverick Industries to undertake the following:

- Site visit accompanied by Council to determine best positioning for the new skatepark
- Site risk assessment
- Topographical survey & CAT scan by Maverick's appointed engineer
- Utilities searches
- Creation of e-flyer to publicise consultation events
- Design consultation meetings with local user group
- Creation of suite of 3D concept design visuals and Design Rationale Statement
- Presentation of concept design visuals to Council & user group
- Revision of concept designs to meet user/Council requirements as necessary
- Support with creating documentation for Outline Planning Permission as required (to include Design Access Statement)
- Creation of CAD drawings required to support Planning Application
- Liaison with Planning as required

- 1.7. consultation work with the local community to understand whether this is a shared vision, and to assess the following:
- Key design criteria on what features and characteristics would be sought from a Skatepark (Appendix 1 – Community Consultation Outcomes);
 - A survey showing the location of identified services, however it is the responsibility of the tenderer to conduct their own searches and verify the information is correct.
- 1.8. As part of the overall project governance the Town Council has established a Skatepark Working Party made up of Councillors and supported by Officers of the Town Council.
- 1.9. The Town Council currently has established a budget and allocated funds of £212k but considers a total budget of £825k with £500k specifically for skatepark delivery this would be necessary to fund the further work. The remaining project will consist of Car Parking, road and disabled access improvements and enhancement to the natural environment – this will form part of the fund application(s) but likely to be delivered by other. This would include money to cover securing supporting funding, detailed design work and securing formal detailed Planning Permission as well as the required construction work to build the Skatepark. It is noted that outline Planning Permission has been granted - PA18/08393 | Proposed replacement skate park (outline with all matters reserved) | The Playing Field Dracaena Avenue Falmouth Cornwall TR11 2ES. More details around the Planning Application can be found here:

<http://planning.cornwall.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=PEU181FG06Q00>

Appendix 3 provides details of the Grant of Outline Planning Permission.

Section 2 – About the Tender

2.1 The Town Council is seeking to engage a suitable Contractor to work with for the creation of a high profile Skatepark at Dracaena Playing Fields Falmouth.

2.2 The key elements required from any successful Tenderer will be:

- Undertaking detailed design work around the Skatepark and associated elements to support the Council to secure detailed Planning Permission thereby enabling the structure and associated elements to be built. This will include the supply to the Council of all the plans / supporting documents necessary to submit for the detailed Planning Application;
- Taking responsible for identifying, sourcing, accessing, obtaining and securing supporting elements of funding to enable the development to progress;
- To undertake the construction of the Skatepark. It is noted that this will be subject to successful outcomes around obtaining detailed Planning Permission and securing of suitable funding to support the construction of the Skatepark itself.

2.3 Key objectives of the tender are:

- The outcome of this Tender will be to identify and select a single Contractor to take the Project forward from final design in formalising the detailed Planning matters to a completed installed concrete Skatepark onsite that suit the needs of the local young people whilst considering a range of ages, abilities and wheels, e.g. scooters, skateboards and BMX, and takes account of the site constraints;
- This Tender aims to select a Contractor based upon examples of previous work and experience (especially in the field of skate park design and construction), financial viability, Health & Safety procedures, required skills, experience of working with Councils and Community Groups, and expertise to utilise this experience in delivering a fully funded project from start to finish within budget.

2.4 Full details around the Tender can be found in the accompanying documentation, including:

- Specification
- Schedule 1 – Price Schedule
- Terms and Conditions (JCT Minor Works Building Contract with contractor's design – 2016)
- Appendix 1 – Community Consultation Outcomes
- Appendix 2 – Location / Site plan
- Appendix 3 – Grant of Outline Planning Permission
- Appendix 4 – Topographical Survey
- Appendix 5, 5.1 & 5.2 – CDM Pre-Construction Information

Contract / Contract Period

- 2.5 The form of Contract is to be **JCT Minor Works Building Contract with contractor's design – 2016** and it is intended that any resultant Contract shall commence as soon after receipt of formal letter of award as may be agreed. Again, it is highlighted that that the construction phase is subject to securing detailed Planning consent and funding being in place, and if this is not possible to obtain then the Construction phase would not be carried out.

Insurance Levels

- 2.6 Employer's Liability Insurance - The Council's minimum requirement for Employer's Liability Insurance is **£10m**.
- 2.7 Professional Indemnity Insurance - The Council's minimum requirement for Professional Indemnity Insurance is **£2m**.
- 2.8 Public Liability Insurance - The Council's minimum requirement for Public Liability Insurance is **£10m**.

Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) (as amended)

- 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. It is the view of the Council that TUPE is **does not** to apply to this tender.
- 2.10 A 'Relevant transfer' can apply when a business, undertaking or part of one is transferred from one employer to another as a going concern or where a service previously undertaken by the Council is awarded to a Contractor or a contract is awarded to a new Contractor on subsequent re-tendering.
- 2.11 The Town Council shall comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to this agreement and the Applicant shall comply and shall ensure that each of its sub-contractors shall comply with its obligations in respect of each Relevant Transfer pursuant to this agreement. The Town Council and the Applicant shall indemnify the other against any direct losses sustained as a result of any breach of the TUPE Regulations by the party in default.
- 2.12 As stated above the Town Council believes that TUPE **does not** applies to this contract. For more information please use the websites listed below:

www.gov.uk/transfers-takeovers

<http://www.opsi.gov.uk>

Section 3 - About the Procurement Process

Procurement Procedure

- 3.1 The Tender is below Works OJEU level and the Town Council is issuing this Invitation to Tender (ITT) and is inviting bids from Applicants in response to the published Contract Notice.
- 3.2 The procurement process that the Council has selected is the Open Procedure in line with the Public Contracts Regulations 2015, which means that all Applicants that submit a Bid shall be evaluated in accordance with the Selection / Award criteria and process outlined within this document and the information provided by the Applicant in Volume 2, Price Schedule and Applicants Response shall be used by the Council as the means to make a Contract award decision.

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 Document.
- 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 Town Council.
- 3.5 The following documents must be completed, signed and returned with the tender:
 - Certificates and Declarations
 - Selection Questionnaire
 - Specification Response / Method Statements
 - Pricing Schedule
- 3.6 Any information relating to the Town Council and supplied by the Council shall be kept by the Applicant in strictest confidence.
- 3.7 Applicants are advised that the Town Council is not bound to accept the lowest tender submitted, nor to reimburse any expense incurred during the process.

Clarification Process

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

Council Representatives

3.10 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 Town Council.

Council Authorised Representative contact details:

Ruth Thomas – Finance Officer

Email: RuthThomas@falmouthtowncouncil.com

Format of Response / Submission

- 3.11 The response must be delivered by no later than the time and date stated on Volume 2 – Applicants Offer, and submitted by email to RuthThomas@falmouthtowncouncil.com
- 3.12 When submitting your response, please be aware of the speed of your Internet connection, your system configuration and general web traffic that may impact on the time required to complete the transaction. Loading and submitting of the tender must be completed by the final submission time.

Validity Period

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

Procurement Timetable

3.14 This procurement will follow a clear, structured 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)	SQ/ ITT	08/02/2019
Latest date for Clarification questions to be submitted by	SQ/ITT	04/03/2019
Clarification responses to be issued by	SQ/ITT	08/03/2019
Bid Deadline	SQ/ITT	18/03/2019
Evaluation	SQ/ITT	12/04/2019
Notification of Contract award (Contract Award Notice)	ITT	12/04/2019
Standstill period	ITT	22/04/2019
Contract start	ITT	01/05/2019

3.15 The Town Council reserves the right to change the above timetable and Applicants will be notified accordingly if there is a change.

Eligible Users

3.16 The Town Council is not procuring on behalf of any other users, and therefore this section is “Not Applicable”.

Evaluation Approach

3.17 Bids will be evaluated in two parts:

- Selection
- Award

3.18 The Town Council will first evaluate is the Selection Questionnaire (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.

Selection Questionnaire

- 3.19 Selection is the process by which the Town Council is able to assess the suitability of the Applicant to undertake work on behalf of the Town Council. The questions asked within Selection Questionnaire are compliant with Regulation 57 of the Public Contracts Regulations 2015.
- 3.20 The Town Council requires all Applicants to complete all sections of the Selection Questionnaire included within Volume Two (2) Applicant's Offer in full and submit in accordance with the submission requirements outlined within this Volume One (1). Any Applicants that 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.
- 3.21 The Applicant's responses to the Selection questions should be succinct, concise and as brief as possible and self-contained not referring to additional documents or other supporting statements other than the European Single Procurement Document (ESPD). The Town Council will accept submission of the following parts/sections of the ESPD as part of any submission:
- i. ESPD Part II (A,B,C,D)
 - ii. ESPD Part III (A,B,C,D)
- 3.22 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.

- 3.23 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).
- 3.24 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.
- 3.25 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).
- 3.26 Alternatively the Applicant can submit the completed Exclusion Grounds of the [EU ESPD \(Part III\)](#) as a downloaded XML file as an appendix to the Submission.

Supplier Selection Questions: Part 3

- 3.27 Where an Applicant is bidding on behalf of a group (consortium) or it is intending to use sub-contractors, the Applicant should complete all of the selection questions on behalf of the consortium and / or any sub-contractors.
- 3.28 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

- 3.29 The Town 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.
<p>NOTE ON EVALUATION: Ideally the Town 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 8/16, 9 September 2016 – Appendix C.</p> <p>See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/558531/PPN_8_16_StandardSQ_Template_v3.pdf</p>			
Part 3 Section 4	Economic and financial standing	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>NOTE ON EVALUATION: The Town Council will carry out a financial check on the Applicant. The financial check may occur as part of the procurement process or at contract award. The Town Council reserves the right to use the services of an independent third party to assess the financial standing / appraisal.</p>			

If undertaking a credit check it shall yield a position of risk for the organisation. The Town Council will obtain Experian credit rating report of each organisation that submits a compliant Selection Questionnaire.

The credit rating scores (referred to as “Experian Scores”) will be evaluated as set out below and is a “Pass / Fail” question.

PASS / FAIL (demonstrated by Experian Score)	Description
FAIL	Very poor solvency, financial strength and economic standing of between 0 to 20 very high risk which is unacceptable to the Council
	Poor solvency, financial strength and economic standing demonstrated of between 21 to 40 above average risk which is unacceptable to the Council
PASS	Acceptable solvency, financial strength and economic standing of between 41 to 60 average risk which is acceptable to the Council
	Good solvency, financial strength and economic standing demonstrated between 61 to 80 below average risk which is acceptable to the Council
	Excellent solvency, financial strength and economic standing of between 81 to 100 minimum risk which is acceptable to the Council

If Experian Score is returned with a score of 41 or above, then the Applicant shall be deemed to have passed this element of the evaluation process.

If the Town Council is unable to obtain a credit score or the credit score returned is 40 or below the Town Council shall form a review of the Applicant’s accounts available from Companies House. If company accounts are not available then the Town Council shall request the Applicant to submit the financial information as indicated by the Applicant’s response in Question 4.1 to verify the Applicant’s economic and financial standing. Using this evidence, the Town Council will determine an Applicant’s suitability, taking all of the available facts into account including the subject matter of the Contract and the risk factors inherent to it.

Where the Town Council rules that an Applicant is suitable to progress with the procurement process the Applicant shall be judged to have passed this element of the evaluation process.

Where the Town Council rules that an Applicant is not suitable to progress with the procurement process the Applicant shall be judged to have “failed” this element of the evaluation process. The Town Council’s professional judgement is final. In the event of the Applicant being awarded a ‘fail’ the Applicant will be eliminated from the procurement process.

Part 3 Section 5	Consortia / sub-contractors	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.
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NOTE ON EVALUATION: In the event that the Applicant is looking to work with and utilise others then the Town Council will be seeking clarity around how any consortia / sub-contract relationship would work. In particular the Council would wherever possible be looking for the

Applicant to be direct employing resources of suitable skills and experience to deliver the project, demonstrating the experience in delivery of similar projects. Where there are sub-contracted relationships the Town 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, and within any such relationships they provide the necessary skills and experience required to deliver high quality outcomes. The Town 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”.

Part 3 Section 6	Technical and professional ability	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.
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NOTE ON EVALUATION: The Town Council will be looking for evidence of a Contractor who can demonstrate experience in the successful construction of a concrete high quality Skateparks.

Ideally this would be a minimum of 2 in-situ concrete Skateparks of a significant size, for example >1500 square metres in size. This experience should be timely and relevant, e.g. within and during the last 5 years.

This work would include interpreting and applying complex standards as in the case of Skateparks BS EN 14974 standards, coupled with evidence that the Applicant has suitably qualified and experienced staff and expertise in delivery of such projects.

The Town Council will be assessing confirmation that includes references for at least 2 in-situ concrete Skateparks constructed within at least the last 5 years confirming high quality of final finishes

In addition to construction work, the Town Council will also be looking for demonstrated experience in designing Skateparks, applying and translating knowledge of user group through a consultation and working group process into the design and outcomes, ensuring budgets are adhered to, and project management remains on target.

Part 3 Section 7	Modern Slavery Act 2015	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.
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NOTE ON EVALUATION: If a relevant organisation, then the Town Council would be seeking evidence that the Contractor is compliant with the Modern Slavery Act. If the organisation is a relevant organisation and not compliant then this would be deemed a “fail”.

Part 3 Section 8 8.1	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
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			eliminated from the process.
<p>NOTE ON EVALUATION: The Town Council would be seeking confirmation that the required insurance and levels of insurance exist, and that they would be maintained during any contract that would be awarded, 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 would actually obtain that insurance. If this cannot be demonstrated, then this would be deemed a “fail”</p>			
8.2	Environmental Management	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>NOTE ON EVALUATION: The Town Council will be looking for confirmation / evidence to support that the Applicant has not been convicted of breach environmental legislation in the last 3 years as a minimum. The Authority will not select bidder(s) that have been prosecuted or served notice under environmental legislation in the last 3 years, unless the Authority is satisfied that appropriate remedial action has been taken to prevent future occurrences/breaches.</p>			
8.3	Health & Safety Management	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>NOTE ON EVALUATION: The Town Council will be looking for evidence to support that the Applicant has robust processes are in place 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 Construction based industry – this would include experience as acting as Principal Contractor in relation to the Construction (Design and Management) Regulations.</p> <p>Where the Applicant has had previous situations of failings and remedial matters around Health and Safety, the Town Council will want to understand the severity of these failings, what lessons have been learned and what remedial measures 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”. Successfully demonstrating accreditation of PAS 91 / SSIP would support a “pass” assessment</p>			
8.4 PROJECT SPECIFIC QUESTION: Project and Programme Delivery ability		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: In addition to the Technical and Professional ability the Town Council will be looking for evidence to support that the Applicant is to provide details on experience in project and programme management in the delivery of complex projects and programmes in the Construction related situations (e.g. Stakeparks).

This 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.

The Applicant would be expected to demonstrate clear communications, good methodology around logistics, planning and delivery of construction projects, dealing in an engaged way with a range of stakeholders including sound communication. Understanding of project management approach and the commercial relationship to formalise this will also be of importance to demonstrate.

Where the Applicant is deemed not to have sufficiently demonstrated this then this shall be deemed a “fail”.

Information Only Questions

3.30 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.

3.31 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.

3.32 In the event of a supplier being awarded a ‘fail’, the remainder of their submission (including evaluation of the actual tender response) will not be evaluated and they will be eliminated from the process.

Consequences of misrepresentation

3.33 If the Applicant seriously misrepresent any factual information in filling in the Selection Questionnaire, and so induce an authority 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. 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

- 3.34 Award is the process that considers the extent to which the Applicant's Bid delivers the Most Economically Advantageous solution to the Town Council requirements and as such Applicants responses to the questions asked should give a clear indication of what the organisation is offering for the quoted price.
- 3.35 The Town Council has not provided a word limit for responses to the Award questions however, the Town 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 that it is clearly referenced in the question to which it relates and appended to the main bid.
- 3.36 The following Award Criteria and weightings will be applied in the evaluation of the Applicants response:

Evaluation Criteria Breakdown	Means of Evaluation	
	Sub Criteria	Main Criteria
Criteria: Quality		80%
Phase 1: Design and feasibility work (including funding)	30%	
Phase 2: Construction and delivery	35%	
Phase 3: Overall Project Management	15%	
Criteria: Price		20%
This will be the sum of the submitted prices in the Price Schedule for elements Phase 1 (Design and Feasibility); Phase 2 (Construction elements) and Phase 3 (Overall Project Management). Assuming a maximum total budget cost of £500k for the skatepark element, the lower the Price elements for the Phase 1 and Phase 3 will result in more overall funds to support the key outcome of the Phase 2 Construction elements.		

Scoring Guidelines

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

Commercial / Price Evaluation

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

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

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 (e.g. 20% if that is the percentage chosen by the Town Council). The equation set out below explains this in a simpler way:

$$(\text{Lowest Price} \div \text{Tenderer's price}) \times \text{Weighting} = \text{Score}$$

3.40 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 20% of the overall marks (i.e. quality was awarded 80%):

	L	W	Tenderer 1		Tenderer 2		Tenderer 3	
Evaluation Elements	Lowest Submitted price (£)	Weighting %	Tendered Price	Score	Tendered Price	Score	Tendered Price	Score
Total Sum (Phase 1, Phase 2 and Phase 3 elements)	£465,000	20	£475,000	19.5	£465,000	20	£485,000	15.3
Total Score		20		19.5		20		19.1

Notification of Award

3.41 The Town Council will notify all Applicants of the Council's award decision and will apply a voluntary Standstill Period in line with the Public Contracts Regulations 2015 (Regulation 87).

Section 4 – Conditions of Tender

Council's Warranties and Disclaimers

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 Each Applicant to whom the document is sent must make its own independent assessment of the proposed terms after making such investigation and taking such professional advice as it deems necessary to determine its interest in the Contract.
- 4.5 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.

Bribery Act

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

Public Services (Social Value) Act

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

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

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

Transparency in Local Government

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

GDPR and Data Protection Act 2018

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

Counter Terrorism and Security Act 2015

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

Modern Slavery Act 2015

4.17 Regulation 19 of the Modern Slavery Act 2015 incorporates the offences under Section 1, 2 or 4 of the Modern Slavery Act 2015 into Regulation 57 of the Public Contract Regulations as grounds for mandatory exclusion at selection stage. Section 54 of the Act also requires businesses which meet certain criteria to prepare and publish a slavery and human trafficking statement.

4.18 As part of this responsibility all Applicants should make themselves aware of the obligations set out at <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.

Late Payment Directive 2015

4.19 The Town Council must maintain compliance with the following legislation:

- Late Payment of Commercial Debts (Interest) Act 1998
- Late Payment of Commercial Debts Regulations 2002
- Late Payment of Commercial Debts Regulations 2013

4.20 The latter set of Regulations implements an EU Directive on late payment (Directive 2011/7/EU). In line with this directive, the Council requires that all contracted suppliers pay their sub-contractors within 30 days.

Study of the Document

4.21 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.

4.22 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.

4.23 The Applicant is required to obtain all information as it may require them to make a Bid. The Applicant shall be deemed to have satisfied itself as to the correctness and sufficiency of its Bid. No claims whatsoever shall be entertained arising out of the Applicants failure to study the documents; the information provided will be relied upon as being true and accurate and

will form part of the Contract with the successful Applicant. If any of the information given by your organisation within the document is subsequently identified as being inaccurate, this may exclude your organisation from further consideration.

4.24 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.

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

Consortia and Sub-contracting

4.26 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. 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. Such details should be provided within the Selection Questionnaire where appropriate and should enable the Town Council to assess the overall Consortium or core supply base. All members of the consortium are required to provide the information required in all sections of the Selection Questionnaire.

4.27 The Lead Applicant should provide details of the actual or proposed percentage shareholding of the constituent members within the Consortium or the exact nature of and degree to which the Supplies / Services or Works will be sub-contracted.

4.28 Applicants that wish to bid as a Consortium or sub-contractor are discouraged from also making their own individual application or from participating in Consortia or providing sub-contracting arrangements for multiple Lead Applicants.

4.29 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. 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.

- 4.30 If a Consortium is not proposing to form a corporate entity, full details of alternative proposed arrangements should be provided. Where the proposed Lead Applicant is a special purpose vehicle or holding company, information should be provided regarding the extent to which it will call upon the resources and expertise of its members.
- 4.31 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 Public Contracts Regulations 2015.
- 4.32 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.

Ownership

- 4.33 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

- 4.34 Should the Applicant find discrepancies in, or omissions from, the procurement documents, the Town Council shall be immediately notified by the Applicant.
- 4.35 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.
- 4.36 The Town Council reserves the right to extend any date of submission accordingly.

Terms and Conditions

- 4.37 The applicable terms and conditions accompany this tender. Applicants will be required to declare that they have read and understood and will comply with said clauses as part of the submission process.
- 4.38 Any queries regarding the terms and conditions, including an Applicant's request to suggest alternative drafting on some or all of the clauses contained therein, may be raised during the clarification period and in accordance with the Clarification Process. The Town Council requests that Applicants' comments, queries and/or suggestions are clear and precise, otherwise they may be rejected.
- 4.39 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. The Town Council reserves the right to extend the submission deadline date in order to allow Applicants sufficient time to take these changes into account. Where the Town Council is not in agreement with any changes those proposals

shall have been judged to have been rejected and the Town Council shall provide an explanation to the Applicants as to the reason/s why it has been judged so.

- 4.40 When the period for clarification has closed Applicants shall no longer be allowed to raise any further queries regarding the terms and conditions and the Applicant shall not be permitted to reserve their right to comment or negotiate upon the terms and conditions at any point thereafter.
- 4.41 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.
- 4.42 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

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

Completion of the Document

- 4.48 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.

- 4.49 Any Bids made omitting any of the sections, or any of the requirements therein, will be considered as incomplete and may be disqualified from further evaluation and therefore exclusion from the procurement process.
- 4.50 Documents should only be completed and submitted in the format in which they currently appear. It is essential that Applicants do not re-format or re-brand any of the procurement documentation in accordance with their own standards on formatting. An example of this is if the documents are issued in Microsoft Word format, the Town Council requires them to be returned in the same format.
- 4.51 Applicants will answer all appropriate questions and sign (if possible) where specified. Applicants will clearly reference its replies and any supporting documentation.
- 4.52 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.
- 4.53 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. Applicants may do this through the messaging facility described at section Clarification and Circular Advices of this Volume One (1) Instructions and Information.

Applicant Site Visits

- 4.54 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

- 4.55 Innovative offers may be made in addition to making a full and complete Bid unless otherwise stated. The submission of an alternative or variant Bid will not be considered if the Applicant fails to make a compliant Bid in the prescribed format.
- 4.56 Should the Applicant wish to offer a variation or alternative Bid, including innovations to the Specification, please complete the Bid as described. This will constitute the 'compliant Bid'.
- 4.57 The Applicant's alternative or variant Bid should be prepared separately and submitted as such, giving clear details of your organisation's departure from the compliant Bid.
- 4.58 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

- 4.59 Documents must be returned in the correct and proper process for submitting the Applicant's Bid electronically. All Bids shall be submitted via the email address highlighted.
- 4.60 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.
- 4.61 It is the Applicant's responsibility to ensure that its Bid is submitted prior to the deadline date / time.
- 4.62 Any submissions that do not accord with the guidelines set out above shall be considered as non-compliant and will be treated as such.
- 4.63 Submissions must be received in advance of the deadline in order to qualify as timely offers. As such, Applicants are urged to make their submission well in advance of the stated deadline in order to avoid such issues as technical difficulties with the electronic system that may be due to the high volume of traffic attempting to submit offers, for example.
- 4.64 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.

Applicant's Warranties

- 4.65 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 Public Contracts Regulations 2015 and has complied in all respects with the requirements;
- it has full power and authority to enter into the Contract and provide the Supplies, Works or Services will if requested produce evidence of such to the Town Council;
 - it is of sound financial standing and the Applicant and its partners, directors, officers and employees are not aware of any circumstances (other than such circumstances as may be disclosed in the audited accounts or other financial statements of the Applicant submitted to the Town Council) which may adversely affect such financial standing in the future.

Evaluation of Bids

- 4.66 All Bids will be treated equally and assessed with transparency throughout the evaluation process. The successful offer(s) will be that which achieves the highest score within a best value framework (optimum combination of whole-life costs and quality) in line with the best value principles of Most Economically Advantageous Tender (MEAT).
- 4.67 The evaluation process is a critical part of the procurement process and is the means by which the Town Council is able to assess to whom the Town Council wishes to select to progress to the next stage of this procurement process and/ or award the Contract.

- 4.68 The information disclosed by Applicants in its Bid will be used for the purposes of evaluation and shall form part of the resultant Contract. The Town Council's evaluation will consist of two (2) distinct stages: Selection and Award.
- 4.69 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.

Applicant's Price

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

Errors and Omissions in the Applicant's Bid

- 4.73 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

- 4.74 In the event that the Town Council receives a Bid which is abnormally low, in accordance with Regulation 69 of the Public Contracts Regulations 2015, it shall require the Applicant to explain in writing the price or cost proposed in the submission. The 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.

Council Site Visits

- 4.75 The Town Council reserves the right to pay a site visit to short listed Applicant's premises and / or exemplar site/s at which it performs the service required under the Contract.
- 4.76 Applicants may or may not be contacted to be made aware that a site visit will take place. Any notification that is made will detail the date, time and details of those Members / Officers that are anticipated to attend.

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

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

Demonstrations and Presentations

4.79 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.

4.80 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.

4.81 Presentations / demonstrations 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

4.82 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.

4.83 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.

4.84 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.

4.85 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

4.86 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

4.87 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

4.88 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.

4.89 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.

4.90 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

4.91 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

Applicant	Shall mean the organisation responding to the procurement through the procurement process
Authority	Shall mean the organisation preparing the procurement documents and/or the organisation for whom the resultant Contract will be performed
Council Authorised Representative	Shall mean the main client Officer for the procurement process and/or resultant Contract
Award	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
Awarding Council	Shall mean the organisation for whom the resultant Contract will be performed; in this case it will be the Town Council
Bid	Shall mean the Applicant's offer to the Town Council, which shall be submitted as the completed procurement documents
Clarification	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
Commercially Sensitive information	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
Consortia / Consortium	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)
Contract	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
Contract Notice	Shall mean the publication in the Tender opportunity by the Town Council and its intention to procure a public supplies, services, or works Contract
Contracting Authority	Shall mean the Town Council
Contractor	Shall mean the Applicant awarded the Contract culminating from an offer to supply accepted by the Town Council
Town Council	Shall mean Falmouth Town Council
DPA 2018	Data Protection Act 2018
Data Protection Legislation	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
Disclosure and Barring Service (DBS) check	Shall mean the organisation formed on 01 December 2012 from the merger of the Criminal Records Bureau and Independent Safeguarding Authority. Further information can be found at the following: www.homeoffice.gov.uk/db
Employers' Liability (Compulsory Insurance)	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.

	<p>By law, an employer must have EL insurance and be insured for at least £5 million. Most insurers automatically provide cover of at least £10 million. The insurance must cover all the organisation's employees in England, Scotland, Wales and Northern Ireland.</p> <p>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.</p>
Evaluation	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
Evaluation Criteria	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
GDPR	the General Data Protection Regulation (<i>Regulation (EU) 2016/679</i>)
Supplies	Shall mean the items offered by an Applicant and / or the items requested by the Town Council
Invitation to Tender (ITT)	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
Lead Applicant	Shall mean the organisation leading the bidding process on behalf of its consortia or sub-contractor partners
Lowest Price	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
Mandatory Requirements: Pass / Fail	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
Mandatory Requirements: Scored	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
Most Economically Advantageous Tender (MEAT)	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
Officer	Shall mean the individual completing the procurement documents on behalf of the Town Council
Official Purchase Order	Shall mean the Town Council's Official Purchase Order, to which these conditions apply
OJEU	Shall mean the Official Journal of the European Union
Open	Shall mean the procurement process determined by the Public Contracts Regulations 2015 and which requires the publication of an OJEU Contract Notice plus an Invitation to Tender prior to the award of a Contract
Selection Qualification	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
Pricing	Shall mean the value placed on a Bid by the Applicant that will purchase their offer to facilitate the Town Council's requirements
Procurement	Shall mean the acquisition of Supplies, Services or Works from an external source
Procurement Representative	As Procurement Representative
Product Liability Insurance	In Product Liability Insurance terms, a product is any physical item that is sold or given away.

	<p>Products must be 'fit for purpose'. The organisation is legally responsible for any damage or injury that a product it supplies may cause (in some circumstances this also includes products that the organisation does not manufacture).</p> <p>Product Liability Insurance covers the organisation against damages awarded as a result of damage to property or personal injury caused by the product. If damages are paid for personal injury, the NHS can claim to recover the costs of hospital treatment (including ambulance costs). This applies to incidents that occur either on or after 29 January 2007.</p>
Professional Indemnity Insurance	<p>Shall mean a liability cover that provides protection for negligent advice or a service provided by the organisation, it also protects against damages the organisation becomes liable for in relation to mistakes made such as errors of judgement, basic administration errors, mislay of or damage to clients' documents. It is designed to safeguard it against claims made by clients for any resulting financial loss or damage to their reputation. This type of insurance should also cover legal fees and costs.</p> <p>Individuals and organisations that provide professional advice or consultancy services need Professional Indemnity cover.</p>
Project Brief	<p>This is a document which outlines to bidders the nature of the good / services or works against which you wish them to submit an expression of interest</p>
Public Contracts Regulations 2015	<p>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</p>
Public Liability Insurance	<p>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.</p>
Restricted	<p>Shall mean the procurement process determined by the Public Contracts Regulations 2015, which includes the publication of an OJEU Contract Notice plus a Supplier Questionnaire and Invitation to Tender prior to the award of a Contract</p>
Safeguarding	<p>The process of protecting children from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care that enables children to have optimum life chances and enter adulthood successfully</p>
Selection	<p>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</p>
Selection Questionnaire	<p>Shall mean the pro-forma that all Applicants will be required to complete and submit as part of their Bid, pursuant to Regulation 58 of the Public Contracts Regulations 2015</p>
Services	<p>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</p>
Specification	<p>Shall mean the detailed description of the Town Council's requirements</p>
Standstill	<p>Shall mean the period between the notification of the Council's intention to award a Contract and the award of the Contract, in accordance with Regulation 87 of the Public Contracts Regulations 2015</p>
TUPE	<p>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"</p>

Volume One (1) Instructions and Information	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
Volume Two (2) Applicant's Offer	Shall mean the document containing information specific to the opportunity, to include the specification
Works	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