

**Kingstown Works Limited**

**Document 4**

**Declarations**

**(to be completed and returned to KWL)**

**PROCESSING OF WASTE STREAM**

**2019 - 2022**

**CLOSING DATE AND TIME FOR RETURN OF THE TENDER**

**20TH DECEMBER 2018 - 14:00HH**

Tender Manager

Nicola Moger

Kingstown Works Ltd  
Connaught Road  
Kingswood  
Hull  
HU7 3AP

[**eu.tendering@kingstownworks.co.uk**](mailto:eu.tendering@kingstownworks.co.uk)

**Declarations**

Please complete and return the three declarations contained within this document with your tender submission.

|  |  |
| --- | --- |
| Item | Page number |
| Declaration of non-collusive bidding | 3 |
| Declaration of eligibility to respond to the ITT | 4 |
| Declaration of non-disclosure | 8 |
|  |  |

**Declaration of non-collusive bidding**

**In recognition of the principle that the essence of selective tendering is that the Company shall receive bona fide competitive Tenders from all those tendering**

I/We certify that:

1. The ITT response submitted herewith is a bona fide ITT response, intended to be competitive.
2. I/We have not fixed or adjusted any pricing or other commercial information in the ITT response under or in accordance with any agreement or arrangement with any other person.
3. I/We have not done, and undertake that we will not do at any time before the hour specified for the return of the ITT response, any of the following acts:
4. Communicating with a person other than the person calling for this ITT response the amount or approximate amount of the proposed Tender (except where the disclosure, in confidence, of the approximate amount of the Tender was essential to obtain insurance premium quotations required for the preparation of the Tender);
5. Entering into any agreement with any other person that he/she shall refrain from providing a ITT response or as to the amount of any pricing or other commercial information in the ITT response to be submitted; and
6. Offering, paying, giving or agreeing to give any sum of money or valuable consideration directly or indirectly to any person for doing, having done, causing or having caused to be done in relation to any other Tender or proposed Tender any act or thing of the sort described above.

**In this declaration:**

1. **‘*person*’ indicates any person, body, or association corporate or incorporate.**
2. **‘*any agreement or arrangements*’ includes any transaction of the sort described above, formal or informal and whether legally binding or not**

**Declaration of non-collusive bidding**

Signed

Date

Name

Position

On behalf of (Name of Company)

Address of potential supplier

Telephone number

Mobile number

Fax number

email address

**Declaration of Eligibility to Respond to the ITT**

**As set out in the Public Contract Regulations 2015, KWL shall comply with the following extract of requirements:**

**1.** Treat as ineligible and shall not select an economic operator in accordance with the Regulations if KWL has actual knowledge that the economic operator or its directors or any other person who has powers of representation, decision or control of the economic operator has been convicted of any of the following offences –

**(a)** conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977(a) or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order

1983(b) where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime(c);

**(b)** corruption as defined in article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European union)2) and Article 2(1) of Council Framework Decision 2003/568JHA (3) as well as corruption defined in the national law of the contracting authority or the economic operator.

**(c)** the common law offence of bribery;

**(d)** bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010(f), or section 113 of the Representation of the People Act 1983(g);

**(e)** where the offence relates to fraud affecting the European Communities’ financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities(h):—

1. the common law offence of cheating the Revenue;
2. the common law offence of conspiracy to defraud;
3. fraud or theft within the meaning of the Theft Act 1968(**i**), the Theft Act (Northern Ireland) 1969(j), the Theft Act 1978(k) or the Theft (Northern Ireland) Order 1978(l);
4. fraudulent trading within the meaning of section 458 of the Companies Act 1985(m), article 451 of the Companies (Northern Ireland) Order 1986(n) or section 993 of the Companies Act 2006(o);
5. fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979(p) or section 72 of the Value Added Tax Act 1994(q);
6. an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993(r);
7. destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968(s) or section 19 of the Theft Act (Northern Ireland) 1969(t);
8. fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006(u); or
9. the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act;

**(f)** any offence listed—

1. in section 41 of the Counter Terrorism Act 2008(a); or
2. in Schedule 2 to that Act where the court has determined that there is a terrorist connection;

**(g**) any offence under sections 44 to 46 of the Serious Crime Act 2007(b) which relates to an offence covered by subparagraph (f);

**(h)** money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002(c);

**(i)** an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988(d) or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996(e);

**(j)** an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(f);

**(k)** an offence under section 59A of the Sexual Offences Act 2003(g);

**(l)** an offence under section 71 of the Coroners and Justice Act 2009(h);

**(m)** an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994(**i**); or

**(n)** any other offence within the meaning of Article 57(1) of the Public Contracts Directive – as defined by the national law of any relevant State.

**2.** KWL may treat an economic operator as ineligible or decide not to select aneconomic operator in accordance with these regulations on one or more of the following grounds, namely that the economic operator –

**(a)** where the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;

**(b)** where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in regulation 56(2);

**(c)** where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;;

**(d)** the contracting authority is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions; and

**(e)** the breach has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of any of the jurisdictions of the United Kingdom.

**(3)** KWL may exclude an economic operator from participation in a procurement procedure where the contracting authority can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.

KWL may exclude an economic operator from participation in a procurement procedure where the participant —

1. has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or
2. has withheld such information or is not able to submit supporting documents
3. required under regulation 59; or
4. where the economic operator has undertaken to—
5. unduly influence the decision-making process of the contracting authority, or
6. obtain confidential information that may confer upon it undue advantages in the procurement procedure; or
7. negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

**Note: This summary is intended as a guide only and potential suppliers should refer to the 2015-Public Contracts Regulations - Article 57 for further guidance on ineligibility.**

***All legislation is stated at the current date and time and any subsequent amendments or additions to the current legislation will apply.***

**KWL may request further information from the firm or from competent authorities if such information is required to decide on any exclusion referred to above.**

**I can confirm that we are eligible to tender under the Public Contract Regulations 2015, and that I have checked that all questions have been answered where applicable and any supporting documents are enclosed as requested.**

Signed

Date

Name

Position

On behalf of (Name of Company)

Address of potential supplier

Telephone number

Mobile number

Fax number

email address

**Declaration of Non-Disclosure**

**This one way non-disclosure agreement** is made with effect from the 28th November 2018 (the “Effective Date”) between:

|  |  |
| --- | --- |
| (1) | **Kingstown Works Ltd,** whose address for business is at Connaught Road, Kingswood, Kingston upon Hull, HU& 3AP (“KWL”); and |
| (2) | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\*name  whose registered office is at,  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\*\* address (“the Potential Supplier”)  **(Insert company name\* and address\*\* as appropriate)** |

**WHEREAS**

KWL and the potential Supplier wish to enter into discussions during which it will be necessary for KWL to disclose to the potential Supplier information of a confidential or proprietary nature (irrespective of the form of presentation or communication including, but not limited to computer software and data, physical objects and samples) (“Information”).

**IT IS AGREED** as follows:

|  |  |
| --- | --- |
| 1. | This Agreement will apply to any disclosure of Information by KWL to the potential Supplier during the 12 months period commencing on the effective Date. This Agreement may be terminated by KWL giving not less than 30 days prior written notice to the potential Supplier or immediately if KWL has reason to believe that the potential Supplier is in breach of any of its obligations contained herein. The provisions of Clauses 2 and 3 hereof shall continue to apply to all Information from the date of disclosure and for a period of five (5) years from the date of expiry or earlier termination of this Agreement. |
| 2. | The potential Supplier shall keep confidential the Information and, except as provided in this agreement, shall not disclose the Information to any other person or company and shall not itself make any use of such information for any purpose other than the purpose of providing consultancy services “the Authorised Purpose”). |
| 3. | The potential Supplier shall: (a) take the same care in protecting the information as it takes in protecting its own confidential information and in any event not less than that which a reasonable person or business would take in protecting its own confidential information; (b) only disclose information on a need-to-know basis to such of employees, agents, consultants and contractors as are under similar written obligations of confidentiality as contained in this agreement including, but not limited to, the use of the information for the authorised purpose only; and (c) forthwith upon receipt of request from KWL: (i) return all Information supplied by KWL as well as items and materials relating to or derived from the Information; (ii) deliver to KWL or at its request destroy immediately all items and materials made by the potential Supplier containing Information that are not returned pursuant to paragraph (i) above; (iii) not keep copies or duplicates of any items referred to in paragraphs (i) or (ii) above; and (iv) provide a certificate signed by a senior officer of KWL confirming that the provisions of this clause have been complied with. |
| 4. | This agreement shall not apply to any information which the potential Supplier: (a) can show is or becomes publicly available through no fault of the potential Supplier; (b) can show was in its possession prior to the date of disclosure; (c) may subsequently receive from any third party legally in possession of the Information and who was not restricted from disclosing it; (d) can show is independently acquired by the potential Supplier as a result of work carried out by an employee, consultant or contractor of the potential Supplier to whom no disclosure of information has been made; or (e) is required to disclose pursuant to a court order provided that the potential Supplier shall have given prior written notice to KWL. |
| 5. | This agreement shall not be deemed to confer or imply the grant or agreement to grant by KWL to the potential Supplier of any of KWL’s rights under copyright, patents, trademarks, design rights or other similar rights. All Information supplied hereunder is supplied on an “as is” basis and KWL gives no representation or warranty as to its accuracy, completeness or fitness for any purpose. KWL shall not be liable for any loss or damage suffered by the potential Supplier as a result of the Potential Suppliers use of the Information. |
| 6. | Notices shall be delivered personally, or by prepaid first class mail, or transmitted facsimile to the parties at such address or number as the parties shall specify from time to time. |
| 7. | The agreement is governed by and shall be construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English Courts. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. |

**Declaration of Non-Disclosure**

Signed

Date

Name

Position

On behalf of (Name of Company)

Address of potential supplier

Telephone number

Mobile number

Fax number

email address

**End page**