



## St Ives Town Council

StIves-ITT-0006-2022

St Ives Guildhall Renewal

Invitation to Tender

Project Cost Consultancy and QS Services

Conditions of Tender

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

The Council may require further information as appropriate and assess this as part of the evaluation process.

The Applicant shall have no claim whatsoever against the Council in respect of such matters and in particular (but without limitation) the Council shall not make any payments to the successful Applicant save as expressly provided for in the Contract and (save to the extent set out in the Contract) no compensation or remuneration shall otherwise be payable by the Council to the Applicant in respect of the services by reason of the specification being different from that envisaged by the Applicant or otherwise.

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 Council does not accept any liability or responsibility for the adequacy, accuracy or completeness of such information. The 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.

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.

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 Tender or enter into any other contractual agreement. Under no circumstances shall the 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.

## **2.0 The Bribery Act**

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>.

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

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

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

The 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 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.

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.

In respect of any completed Tender, where the 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 Tender is subject to any exemption, this shall be stated in the submitted tender documents, with an explanation setting out what exemption it considers applicable and the reasons for it. The Council may have regard to this explanation when considering its response to FOIA requests.

The attention of Applicants is drawn to Section 43 of the Freedom of Information Act Guidance

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/freedom\\_of\\_information\\_and\\_environmental\\_information.aspx](http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx)) which provides that information may be exempt information if it constitutes a trade secret, or if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the Council). Applicants are further advised that, if the Council considers this exemption applies, it will then be necessary for the Council to determine whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

#### **5.0 Transparency in Local Government**

As part of the transparency agenda, the Government has made the following commitments for procurement and contracting. 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. The 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.

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

The Applicant and 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.

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

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 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>.

## **8.0 Modern Slavery Act 2015**

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.

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>.

## **9.0 Late Payment Directive 2015**

The 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

5.9.2 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.

## **10.0 Study of the Document**

Documents issued by the Council to a prospective Applicant must not be passed on to a third party without the express permission of the Council.

- Applicants are expected to read, understand and agree to the documents as set out (including the terms and conditions) of the document as they will in their entirety form part of the resultant Contract.

- The Applicant is required to obtain all information as it may require them to make a Tender. The Applicant shall be deemed to have satisfied itself as to the correctness and sufficiency of its Tender. 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.
- The Applicant's price shall (except in so far as it is otherwise provided in the Contract) cover all obligations under the 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 Tender.
- The Applicant is responsible for all costs, expenses and liabilities incurred by the Applicant in connection with preparing its Tender.

### **11.0 Consortia and Sub-contracting**

Where an Applicant wishes to make its application as a Consortium or utilising subcontractors the Council advises the group of organisations to select a Lead Applicant in whose name the Tender is to be submitted. The Lead Applicant is advised to confirm precisely what the arrangements are within its Tender including providing the names of all of the organisations to be involved, the nature and extent of their involvement and proposals regarding the structure and management of the Consortium or arrangements. Such details should be provided within the Quality Submission where appropriate and should enable the 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 Quality Submission.

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 to be sub-contracted. Applicants that wish to Tender 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.

The 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 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 Council's evaluation of the new information results in an outcome that is different from the original, it 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.

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.

Please note that the 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. Where an Applicant requires additional time in the procurement process to establish relationships with suitable consortia partners it is advised to notify the Council at the earliest convenience and request an extension to the procurement timescales. Applicants may do this through the messaging facility described at the clarification section.

#### **12.0 Discrepancies, Omissions and Errors**

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

#### **13.0 Terms and Conditions**

- 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.
- 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 Council requests that Applicants' comments, queries and/or suggestions are clear and precise, otherwise they may be rejected.
- Where the Council is in agreement with any changes to the terms and conditions proposed during that period, it will update the relevant documentation and all Applicants will be notified accordingly. The 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 Council is not in agreement with any changes those proposals shall have been judged to have been rejected and the Council shall provide an explanation to the Applicants as to the reason/s why it has been judged so.
- 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.

- Applicants are required to agree to the terms and conditions associated with this procurement opportunity as part of the submission process and the Council reserves its right to class any Tender submitted to the contrary as noncompliant. All such Applicants shall be judged to have failed with their submitted Tenders, shall be evaluated no further and notified accordingly.
- 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 Council reserves the right to withdraw the Contract award and class the submission as non-compliant.

#### **14.0 Requests for Clarification**

Upon commencement of the procurement process the Applicant shall not approach any elected member of the Council in relation to the opportunity, other than by using the agreed contact email.

Applicants should note that 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.

Relevant questions together with the answers will be posted on **Contracts Finder** and on the relevant page of the Council's website [www.stivestowncouncil-cornwall.gov.uk](http://www.stivestowncouncil-cornwall.gov.uk) and it will be the requirement for the Applicant to check any updates.

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.

If during the period, the Council as awarding issues any circular letters to Applicants in order to clarify or alter part of the documents then such circular letters shall form part of the Contract and Applicants shall be deemed to have taken account of them in preparing their Tender. Applicants shall promptly acknowledge any circular letters that they receive.

#### **15.0 Completion of the Tender Documents**

For the avoidance of doubt all of the sections of the Form of Tender and the Quality Evaluation Questions, must be completed and submitted by the Applicant in order to be considered by the Council as a fully complete and compliant Tender.

Any Tenders 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.

Documents should only be completed and submitted in the format in which they currently appear. It is essential that Applicants do not reformat or re-brand any of the procurement documentation in accordance with their own standards on formatting.

Applicants will answer all appropriate questions and sign (if possible) where specified. Applicants will clearly reference its replies and any supporting documentation.

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 Council's Authorised Officer.

### **16.0 Applicant Site Visits**

The Applicant may visit the site prior to completing its offer to ensure that it is fully familiar with the site location. 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.

### **17.0 Alternatives and Variations**

Should the Applicant wish to offer a variation or alternative Tender, including innovations to the Specification, please complete the Tender as described. This will constitute the 'compliant Tender'. The Applicant's alternative or variant Tender should be prepared separately and submitted as such, giving clear details of your organisation's departure from the compliant Tender. Applicants may submit alternative or variant Tenders 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 Tender as non-compliant.

### **18.0 Return of Document**

- Documents must be returned in the correct and proper process for submitting the Applicant's Tender electronically. All Tenders shall be submitted via the email address highlighted [tenders@stives-tc.gov.uk](mailto:tenders@stives-tc.gov.uk) quoting the ITT reference in the subject line.
- Applicants will not email their Tenders directly to any named person(s) within the Council.
- Applicants will not send their Tenders to the Council in a paper or other 'hard' format unless specifically requested to do so within the associated Tender documentation.
- It is the Applicant's responsibility to ensure that its Tender is submitted prior to the deadline date/time.
- Any submissions that do not accord with the guidelines set out above shall be considered as non-compliant and will be treated as such.
- 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.

- 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.

## **19.0 Applicant's Warranties**

In submitting their Tender the Applicant warrants and represents and undertakes to the 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 to enter into the Contract and provide the Services and will be requested produce evidence of such to the 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 Council) which may adversely affect such financial standing in the future.

## **20.0 Evaluation of Tenders**

All Tenders 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).

The evaluation process is a critical part of the procurement process and is the means by which the Council is able to assess to whom it wishes to award the Contract.

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

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

## **21.0 Applicant's Price**

The price offered by the Applicant shall be firm and fixed for the duration of the Contract. Any percentage discounts that may be applied must be detailed by the Applicant in its Tender. Price variation during the Contract term will be by negotiation only via formal performance

review meetings. Any price variations will not take effect until they have been mutually agreed by both the Council and Applicant and the former receives confirmation in writing from the latter.

All prices submitted shall be in pounds sterling and shall be exclusive of Value Added Tax (VAT).

The Applicant's price will be evaluated in accordance with the scoring methodology and weightings as set by the Council and declared within the ITT Cost Consultancy Brief document.

## **22.0 Errors and Omissions in the Applicant's Tender**

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

## **23.0 Abnormally Low Tenders**

In the event that the Council receives a Tender 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 Council shall assess the information provided by the Applicant and may reject the Tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.

## **24.0 Interview**

The Council may invite up to three applicants, to attend an interview at which stage it will be a requirement to reinforce your position. This will be used to finalise the quality assessment of the Tender.

In the event of this, the invitation 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. Tenderers are free to request a remote interview.

## **25.0 Rejection of Offers**

The Council may at its absolute discretion refrain from considering or reject a Tender if:

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

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

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

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

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

## **26.0 Acceptance of Offers**

The Council does not bind itself to accept the lowest or any quotation, and reserves the right to accept a quotation 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 Tender for separately, or to make no award at all.

## **27.0 Award of Contract**

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

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 Council and co-signed by the Applicant's Authorised Officer.

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