

1 December 2020

**STATION ROAD CAR PARK, BRUTON, IMPROVEMENTS TO LOWER  
INSTRUCTIONS TO TENDERERS**

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## A. General

- 1. Scope of Tender**
  - 1.1 Bruton Town Council (the Employer) issues this Tender Document for the procurement of Goods and related services or Works for improvement to the lower car park area at Station Road; the Employer's Requirements
  - 1.2 Unless otherwise stated, throughout this Tender Document definitions and interpretations shall be as prescribed in the JCT Design and Build Contract 2016.
  - 1.3 The Council is bound to comply with its Standing Orders and Financial Regulations, which govern contracts.
  - 1.4 A procurement exercise by a local council is subject to the requirements in S135 of the Local Government Act 1972 ("the 1972 Act") and the Public Contracts Regulations 2015 ("the 2015 Regulations"). The Tender will be advertised on the Government's Contracts Finder website as well as locally.  
<https://www.gov.uk/contracts-finder>
  
- 2. Source of Funds**
  - 2.1 Bruton Town Council intends to pay for works. Funding for the scheme may be derived from the South Somerset District Council (SSDC), Market Towns Investment Group (MTIG) or other funding sources.
  - 2.2 Payment contributions by SSDC will be made only at the request of the Town Council and upon approval by SSDC in accordance with the terms and conditions of any agreement between the Town Council and SSDC. It is expected that SSDC funding if any will be predicated upon the works having been completed.

### **3. Prohibited Practices**

- 3.1 The Town Council requires that Contractors as well as tenderers, suppliers, contractors, subcontractors, concessionaires and consultants operate for the Contractor observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Council:
- (a) defines, for the purposes of this provision, the terms set forth below as Prohibited Practices:
    - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
    - (ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
    - (iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; and
    - (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
  - (b) will reject a proposal for award if it determines that the supplier, contractor, concessionaire or consultant recommended for award has engaged in prohibited practices in competing for the contract in question;

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- (c) will cancel the portion of the Council's financing allocated to a contract for goods, works, services or concessions if it at any time determines that prohibited practices were engaged in by representatives of the Contractor or of a beneficiary of the financing during the procurement or the execution of that contract, without the Contractor having taken timely and appropriate action satisfactory to the Bank to remedy the situation;
  - (d) may declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Council financed contract if it at any time determines that the firm has engaged in prohibited practices in competing for, or in executing, the contract;
  - (e) reserves the right, where a Contractor or a firm has been found by a judicial process or by the enforcement mechanism of another international organisation to have engaged in prohibited practices
    - (i) to cancel all or part of the Council financing for such Contract; and
    - (ii) to declare that such a firm is ineligible, either indefinitely or for a stated period of time, to be awarded a Council financed contract; and
  - f) will have the right to require that, in contracts financed by the Council, a provision be included requiring suppliers, contractors, concessionaires and consultants to permit the Council to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Council.

3.2 Furthermore, tenderers shall be aware of the provisions stated in Sections VII and III, General and Particular Conditions of Contract the case may be.

#### **4. Eligible Tenderers**

- 4.1 A tenderer may be a natural person, private entity, government-owned entity—subject to Instructions to Tenderers—or any combination of such entities in the form of a joint venture, consortium, or association joint venture, consortium, or association (JVCA). In the case of a JVCA:
  - (a) If a partnership, all partners shall be jointly and severally liable; and
  - (b) the JVCA shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the partners of the JVCA during the Tender process and, in the event the JVCA is awarded the Contract, during contract execution.
- 4.2 A tenderer shall not have a conflict of interest. All tenderers found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest with one or more parties in

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this Tendering process, if:

- (a) they have controlling partners in common; or
  - (b) they receive or have received any direct or indirect subsidy from any of them; or
  - (c) they have the same legal representative for purposes of this Tender; or
  - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the tender of another tenderer, or influence the decisions of the Employer regarding this tendering process; or
  - (e) a tenderer participates in more than one tender in this Tender process. Participation by a tenderer in more than one Tender will result in the disqualification of all Tenders in which it is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a tenderer, in more than one tender; or
  - (f) a tenderer, its affiliates or parent organisation has participated in the feasibility or design stages of a project, that tenderer, its affiliates or parent organisation shall not be eligible to participate in a tender for contracts involving the supply of goods, works or services, including architectural or engineering services, for the project, unless it can be demonstrated that such participation would not constitute a conflict of interest. Such determination must be made prior to the submission of a tender or
  - (g) a tenderer participated as a consultant in the preparation of Section VI, Requirements that are the subject of the tender or
  - (h) a tenderer or any of its affiliates has been hired, or is proposed to be hired, by the Employer or the Borrower for the supervision of the contract.
- 4.4 A tenderer shall be disqualified if the tenderer, an affiliate of the tenderer, a party constituting the tenderer or an affiliate of a party constituting the tenderer, is under a declaration of ineligibility by the Council, at the date of the deadline for Tender submission or thereafter,.
- 4.5 No affiliate of the Employer shall be eligible to tender or participate in a tender in any capacity whatsoever unless it can be demonstrated that there is not a significant degree of common ownership, influence or control amongst the affiliate and the Council.
- 4.6 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Council, as the Employer shall reasonably request.

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4.7 In case a prequalification process has been conducted prior to the Tendering process, this Tender is open only to pre-qualified tenderers.

5. **Eligible Goods and Related Services** 5.1 For purposes of this paragraph, the term goods includes commodities, raw material, machinery, equipment, and industrial plants; and related services includes services such as insurance, transportation, installation, commissioning, training, and initial maintenance.

## **B. Contents of Tender Document**

6. **Sections of Tender Document** 6.1 The Tender Document consist of parts, which include all the sections indicated below, and should be read in conjunction with any Addenda issued.

### **Tendering Procedures**

- Instruction to Tenderers (ITT)
- Tender Data Sheet (TDS)
- Evaluation and Qualification Criteria
- Tender Forms, Requirements and Schedule of Additional Information

6.2 The Invitation for Tenders issued by the Employer is not part of the Tender Document.

6.3 The tenderer shall obtain the Tender Document from the source stated by the Employer in the Invitation for Tenders; otherwise the Employer is not responsible for the completeness of the Tender Document.

6.4 The tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document. Failure to furnish all information or documentation required by the Tender Document may result in the rejection of the Tender.

7. **Clarification of Tender Document, Site** 7.1 A prospective tenderer requiring any clarification of the Tender Document shall contact the Employer in writing at the Employer address or raise his enquiries during the pre-

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**Visit, Pre-Tender Meeting**

Tender meeting if provided for. The Employer will respond to any request for clarification, provided that such request is received prior to the deadline for submission of Tenders, within 14 days. The Employer's response shall be in writing with copies to all tenderers who have acquired the Tender Document, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Tender Document as a result of a request for clarification, it shall do so following the procedure.

7.2 Where applicable, the tenderer is advised to visit and examine the project site and obtain for itself on its own responsibility all information that may be necessary for preparing the Tender and entering into a contract for the provision of the Requirements. The costs of visiting the site shall be at the tenderer's own expense.

7.3 Where the tenderer and any of its personnel or agents have been granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, the tenderer, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the visit.

7.4 The tenderer's designated representative is invited to attend a pre-Tender meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. If so required, the Employer will organise a site visit.

7.5 The tenderer is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than one week before the meeting.

7.6 Minutes of the pre-Tender meeting, including the text of the questions raised without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all tenderers who have acquired the Tender Document. Any modification to the Tender Document that may become necessary as a result of the pre-Tender meeting shall be made by the Employer exclusively through the issue of an Addendum and not through the minutes of the pre-Tender meeting.

7.7 Non-attendance at the pre-Tender meeting will not be a cause for disqualification of a tenderer.

**8. Amendment of Tender Document**

8.1 At any time prior to the deadline for submission of Tenders, the Employer may amend the Tender Document by issuing addenda.

8.2 Any addendum issued shall be part of the Tender Document and shall be communicated in writing to all who have obtained the Tender Document from the Employer.

8.3 To give prospective tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Employer may, at its discretion, extend the deadline for the submission of Tenders.

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## **C. Preparation of Tenders**

- 9. Cost of Tendering** 9.1 The tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.
- 10. Language of Tender** 10.1 The Tender, as well as all correspondence and documents relating to the Tender exchanged by the tenderer and the Employer, shall be written in English. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages in that language, in which case, for purposes of interpretation of the Tender, such translation shall govern.
- 11. Documents Comprising the Tender** 11.1 The Tender shall comprise the following:
- (a) letter of Tender;
  - (b) completed Schedules as provided in Tender Forms;
  - (c) not used
  - (d) at the tenderer's option, alternative proposals, if permissible;
  - (e) not used
  - (f) documentary evidence establishing the eligibility of the Goods and Services offered by the tenderer;
  - (g) documentary evidence establishing the tenderer's qualifications in accordance with the requirements of Evaluation and Qualification Criteria, using the relevant forms furnished in Tender Forms;
  - (h) documentary evidence as specified in the TDS, establishing the conformity of the Technical Proposal offered by the tenderer with the Tender Document, using the relevant Tender Forms;
  - (i) in the case of a Tender submitted by a JVCA, JVCA agreement indicating at least the parts of the Requirements to be executed by the respective partners and
  - (j) any other document required.
- 12. Letter of Tender and Price Schedules** 12.1 The tenderer shall submit the Letter of Tender using the form furnished in Tender Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 13. Alternative Tenders** 13.1 Unless otherwise indicated in the TDS, alternative proposals shall not be considered. If alternative proposals are permitted, their method of evaluation shall be as stipulated in Section III, Evaluation and Qualification Criteria.

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13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included, as will the method of evaluating different times for completion.

13.3 Tenderers wishing to offer technical alternatives to the requirements of the Tender Document must first price the Employer's requirements as described in the Tender Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated tenderer conforming to the basic technical requirements shall be considered by the Employer.

13.4 Tenderers are permitted to submit alternative technical solutions for specified parts of the requirements, and such parts shall be identified, as will the method for their evaluation, and described in Section VI, Requirements.

#### **14. Tender Prices and Discounts**

14.1 The prices and discounts quoted by the tenderer in the Letter of Tender and in the Price Schedules shall conform to the requirements specified in ITT

14.2 Unless otherwise provided in the TDS and the Contract, the prices quoted by the tenderer shall be fixed in accordance with the JCT Design and Build Contract 2016

14.3 The price to be quoted in the Letter of Tender, in accordance with ITT, shall be the total price of the Tender, excluding any discounts offered.

14.4 The tenderer shall quote any unconditional discounts and the methodology for their application in the Letter of Tender, in accordance with ITT.

14.5 Unless otherwise provided in the TDS and the Contract, the rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the tenderer to justify its proposed indices and weightings.

14.6 If so indicated in ITT, Tenders are being invited for individual lots (contracts) or for any combination of lots (packages). Tenderers wishing to offer any price reduction for the award of more than one contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITT, provided the Tenders for all lots (contracts) are submitted and opened at the same time.

14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the tenderer.

#### **15. Currencies of Tender**

15.1 The currency(ies) of the Tender and the currency(ies) for payment shall be £ pounds, sterling.

#### **16. Documents Establishing the Qualifications of the Tenderer**

16.1 To establish its qualifications to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the tenderer shall provide the information requested in Section IV, Tender Forms.

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16.2 A tenderer shall submit the Manufacturer's Authorisation, using the form included in Section IV, Tender Forms where the tenderer does not manufacture or produce the Goods it offers to supply.

**17. Documents  
Establishing the  
Eligibility of  
Goods and  
Related Services**

17.1 To establish the eligibility of the Goods and Services tenderers shall complete the forms, included in Section IV, Tender Forms.

**18. Period of  
Validity of  
Tenders**

18.1 Tenders shall remain valid for the period ninety (90) days after the Tender submission deadline date prescribed by the Employer. A Tender valid for a shorter period shall be rejected by the Employer as non responsive.

18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Employer may request tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. A tenderer granting the request shall not be required or permitted to modify its Tender.

18.3 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Tender validity, the Contract price shall be adjusted as specified in the request for extension. Tender evaluation shall be based on the Tender Price without taking into consideration the above adjustment.

**19. Tender Security**

19.1 not used

**20. Format and  
Signing of  
Tender**

20.1 The tenderer shall prepare one (1) original of the documents comprising the Tender and clearly mark it "ORIGINAL." In addition, the tenderer shall submit one (1) copy of the Tender and clearly mark it "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorised to sign on behalf of the tenderer. The name and position held by each person signing the authorisation must be typed or printed below the signature.

20.3 A Tender submitted by a JVCA shall comply with the following requirements:

(a), be signed so as to be legally binding on all partners and

(b) Include the Representative's authorisation consisting of a power of attorney signed by those legally authorised to sign on behalf of the JVCA.

20.4 Any amendments, interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the Tender.

**D. Submission and Opening of Tenders**

**21. Submission,  
Sealing and  
Marking of  
Tenders**

21.1 Tenderers may always submit their Tenders by mail or by hand. Tenderers shall not have the option of submitting their Tenders electronically. Procedures for submission, sealing and marking are as follows:

(a) Tenderers submitting Tenders by mail or by hand shall enclose

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the original and copies of the Tender in separate sealed envelopes. Alternative proposals, and copies thereof, shall also be placed in separate envelopes. The envelopes shall be duly marked as "ORIGINAL," "ALTERNATIVE," "ORIGINAL COPY," and "ALTERNATIVE COPY" These envelopes shall then be enclosed in one single package.

(b) Tenders submitted electronically shall not be permitted.

21.2 The inner and outer envelopes shall:

- (a) bear the name and address of the tenderer;
- (b) be addressed to the Employer;
- (c) bear the specific identification of this Tendering; and
- (d) bear a warning not to open before the time and date for Tender opening

21.3 If envelopes and packages are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the Tender.

**22. Deadline for Submission of Tenders**

22.1 Tenders must be received by the Employer at the address and no later than 12 noon, Thursday 14 January 2021.

22.2 The Employer may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Document, in which case all rights and obligations of the Employer and tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

**23. Late Tenders**

23.1 The Employer shall not consider any Tender that arrives after the deadline for submission of Tenders. Any Tender received by the Employer after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the tenderer.

**24. Withdrawal, Substitution, and Modification of Tenders**

24.1 A tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorised representative, and shall include a copy of the authorisation, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- (a) prepared and submitted (except that withdrawals notices do not require copies), in addition, the respective envelopes shall be clearly marked "Withdrawal," "Substitution," "Modification;" and
- (b) received by the Employer prior to the deadline prescribed for submission of Tenders: 12 noon, Thursday 14 January 2021.

24.2 Tenders requested to be withdrawn shall be returned unopened to the tenderers.

24.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the tenderer on the Letter of

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Tender or any extension thereof.

## **25. Tender Opening**

25.1 The Employer shall conduct the Tender opening, in the presence of tenderers' designated representatives who choose to attend, and at the Community Office, 26 High Street, Bruton, Somerset, BA10 0AA.

25.2 First, envelopes marked "Withdrawal" shall be opened and read out and the envelope with the corresponding Tender shall not be opened but returned to the tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at Tender opening. Next, envelopes marked "Substitution" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorisation to request the substitution and is read out at Tender opening. Envelopes marked "Modification" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorisation to request the modification and is read out at Tender opening. Only Tenders that are opened and read out at Tender opening shall be considered further.

25.3 The Employer shall open all other envelopes one at a time and read out: the name of the tenderer, the Tender Price(s), any discounts and their application methodology, alternative Tenders, the presence or absence of a tender security; and any other details as the Employer may consider appropriate. Only discounts and alternative Tenders read out at Tender opening shall be considered for evaluation. No Tender shall be rejected at Tender opening except for late Tenders.

25.4 The Employer shall prepare a record of the Tender opening that shall include, as a minimum: the name of the tenderer and whether there is a withdrawal, substitution, or modification; the Tender Price, per lot if applicable, including any discounts and alternative proposals; and the presence or absence of a tender security. The tenderers' representatives who are present shall be requested to sign the record. The omission of a tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all tenderers who submitted Tenders in time, and posted online if electronic Tendering is permitted.

## **E. Examination of Tenders**

### **26. Confidentiality**

26.1 Information relating to the evaluation of Tenders shall not be disclosed to tenderers or any other persons not officially concerned with such process until information on Contract award is communicated to all tenderers.

26.2 Any attempt by a tenderer to influence improperly the Employer in the evaluation of the Tenders or Contract award decisions may result in the rejection of its Tender.

26.3 From the time of Tender opening to the time of Contract award, if any tenderer wishes to contact the Employer on any matter related to the tendering process, it should do so in writing.

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**27. Clarification of Tenders**

27.1 To assist in the examination, evaluation, and comparison of the Tenders and qualification of the tenderers, the Employer may, at its discretion, ask any tenderer for a clarification of its Tender, allowing a reasonable time for response. Any clarification submitted by a tenderer that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Tenders.

27.2 If a tenderer does not provide clarifications of its Tender by the date and time set in the Employer's request for clarification, its Tender may be rejected.

**28. Determination of Responsiveness**

28.1 The Employer's determination of a Tender's responsiveness is to be based on the contents of the Tender itself.

28.2 A substantially responsive Tender is one that meets the requirements of the Tender Document without material deviation, reservation, or omission.

(a) "Deviation" is a departure from the requirements specified in the Tender Document;

(b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document; and

(c) "Omission" is the failure to submit part or all of the information or documentation required in the Tender Document.

28.3 A material deviation, reservation, or omission is one that,

(a) if accepted, would:

(i) affect in any substantial way the scope, quality, or performance of the Requirements as specified in Section VI; or

(ii) limit in any substantial way, inconsistent with the Tender Document, the Employer's rights or the tenderer's obligations under the proposed Contract; or

(b) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive Tenders.

28.4 The Employer shall examine the technical aspects of the Tender in particular, to confirm that all requirements have been met without any material deviation, reservation, or omission.

28.5 If a Tender is not substantially responsive to the requirements of the Tender Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

28.6 Provided that a Tender is substantially responsive, the Employer may waive any quantifiable nonconformity in the Tender that do not constitute a material deviation, reservation or omission.

**F. Tender Evaluation and Comparison**

**29. Evaluation of Tenders and**

29.1 The Employer shall use the criteria and methodologies indicated in Evaluation and Qualification Criteria. No other evaluation

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<b>Correction of Arithmetical Errors</b>	<p>criteria or methodologies shall be permitted.</p> <p>29.2 Provided that the Tender is substantially responsive, the Employer shall correct arithmetical errors as indicated in Section III. Evaluation and Qualification Criteria.</p> <p>29.3 If a tenderer does not accept the correction of errors, its Tender shall be declared non-responsive and its tender security shall be forfeited.</p>
<b>30. Conversion to Single Currency</b>	<p>30.1 For evaluation and comparison purposes, the currency(ies) of the Tender shall be £ pounds sterling.</p>
<b>31. Tender Adjustments</b>	<p>31.1 For the evaluation and comparison purposes the Employer shall adjust the Tender prices using the criteria and methodology specified in Evaluation and Qualification Criteria.</p> <p>31.2 If in the opinion of the Employer the Tender which results in the lowest Evaluated Tender Price, is seriously unbalanced or front loaded or substantially below the Employer's estimates, the Employer may require the tenderer to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the tenderer to a level sufficient to protect the Employer against financial loss in the event of default of the successful tenderer under the Contract.</p>
<b>32. Qualification of the Tenderer</b>	<p>32.1 The Employer shall determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated and substantially responsive Tender meets the qualifying criteria specified in Evaluation and Qualification Criteria.</p> <p>32.2 The determination shall be based upon an examination of the documentary evidence of the tenderer's qualifications submitted by the tenderer.</p> <p>32.3 An affirmative determination shall be a prerequisite for award of the Contract to the tenderer. A negative determination shall result in disqualification of the Tender, in which event the Employer shall proceed to the next lowest evaluated Tender to make a similar determination of that tenderer's qualifications to perform satisfactorily.</p> <p>32.4 The capabilities of the manufacturers and subcontractors proposed in its Tender to be used by the lowest evaluated tenderer for identified major items of the Requirements will also be evaluated for acceptability in accordance with the criteria and methodologies defined in Evaluation and Qualification Criteria. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Tender will not be rejected, but the tenderer will be required to substitute an acceptable manufacturer or subcontractor without any change to the Tender price.</p>
<b>33. Employer's Right to Accept Any Tender, and to Reject Any or</b>	<p>33.1 The Employer reserves the right to accept or reject any tender, and to annul the Tendering process and reject all Tenders at any time prior to contract award, without thereby incurring any liability to tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities (if required), shall be promptly returned to the</p>

**All Tenders**

tenderers.

### **G. Award of Contract**

#### **34. Award Criteria**

- 34.1 The Employer shall award the Contract to the tenderer whose offer has been determined to be the lowest value Tender and is substantially responsive to the Tender Document, provided further that the tenderer is determined to be qualified to perform the Contract satisfactorily.
- 34.2 The Employer is not bound to award the Contract to any tenderer.
- 34.3 The Employer may not award the contract or break or end the Contract if at the time before or after award of Contract determines that it has insufficient funds or Consents for the project to be completed.
- 34.4 The Employer may take whatever actions it determines following the rejection of all tenders or not awarding the Contract.

#### **Award Criteria and Weighting:**

<b>Item</b>	<b>Weight</b>	<b>Scoring</b>	<b>Score</b>	<b>Notes</b>
Prices	25%	1-10		From Schedule of Prices; 10 is lowest price 1 is highest price
Historical Performance	25%	1-10		Qualification Criteria
Financial Resources	25%	1-10		Qualification Criteria
Experience and Personnel	25%	1-10		Qualification Criteria
<b>Total</b>				

#### **35. Notification of Award**

- 35.1 Prior to the expiration of the period of Tender validity, the Employer shall notify the successful tenderer, in writing, that its Tender has been accepted.
- 35.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

35.3 At the same time, the Employer shall also notify all other tenderers of the results of the Tendering, and shall publish in the Employer's website the results identifying the Tender and lot numbers and the following information: (i) name of each tenderer who submitted a Tender; (ii) Tender prices as read out at Tender opening; (iii) name and evaluated prices of each Tender that was evaluated; (iv) name of tenderers whose Tenders were rejected; and (v) name of the winning tenderer, and the price it offered, as well as the duration and summary scope of the contract awarded. After publication of the award, unsuccessful tenderers may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their Tenders were not selected. The Employer shall promptly respond in writing to any unsuccessful tenderer who, after Publication of contract award, requests a debriefing.

**36. Signing of Contract**

36.1 Promptly upon notification, the Employer shall send the successful tenderer the Contract Agreement.

36.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful tenderer shall sign, date, and return it to the Employer.

36.3 Upon the successful tenderer's furnishing of the signed Contract Agreement and Performance Security, the Employer will discharge its tender security.

**37. Performance Security**

37.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful tenderer shall furnish the performance security in accordance with the conditions of contract, using for that purpose the Performance Security Form included in Section IX, Annex to the Particular Conditions - Contract Forms, or another form acceptable to the Employer. If the performance security furnished by the successful tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful tenderer to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer's Country.

37.2 Failure of the successful tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security. In that event the Employer may award the Contract to the next lowest evaluated tenderer whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.