#

# MALDON DISTRICT COUNCIL

**REFRESHMENT KIOSKS 5 & 6 MALDON PROM PARK**

**MDC/2015/0016**

# Terms & Conditions

# DEFINITIONS

In these documents, the following definitions shall apply: Throughout these documents, words imparting the masculine include the feminine and vice versa, unless otherwise stated, and words in the singular include the plural and the plural include the singular.

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| **The Council**  | Means Maldon District Council (MDC), Princes Road, Maldon, Essex, CM9 5DL. |
| **Contract Documents** | Means these documents comprising (in no particular order), Document A, and all other documents submitted by Maldon District Council when Quotes are sent out. |
| **Quotation** | Means the fully completed Document A, and those items detailed on the invitation letter, from each Company. |
| **Company** | Means an organisation invited to Quote for the goods/ works/services as specified within these Contract Documents. |
| **Contractor(s)** | Means the successful Company. |
| **Contract Manager** | Means a competent employee nominated by the Contractor(s) to act on its behalf in administering the agreement. |
| **Contract Period** | Means timescale stated from the date of commencement i.e. date on acceptance letter(s). |
| **Requirements** | Means all the requirements, which under the Contract the Contractor(s) shall provide to the Council as specified or in individual orders from the Council. |
| **Specification** | The detail of the Services required as detailed, or as specified in individual orders from The Council. |
| **Supervising Officer** | Means the Council’s representative duly authorised to act in the administration of the Contract. |
| **Contract** | Means a binding agreement between the Council and a Contractor(s) for the provision of works under the Contract. |

**NB - \* Requires an enclosure on return of Quotation**

# RETURN OF QUOTATIONS

You are invited to submit a Quote for the above in accordance with the terms and requirements of this invitation and any documents, Schedules and Specifications attached. One complete and unbroken copy of this Quotation shall be returned not later than **twelve noon on** **Tuesday 5th April 2016** to Mr Ben Brown, Group Manager – Leisure, Countryside and Tourism, Maldon District Council, Princes Road, Maldon, Essex, CM9 5DL, England in an appropriately sized envelope using the Quotation label provided. The envelope shall be sealed and bear no name or mark indicating the identity of the sender. Companies should ensure that their postal franking machine does not contravene this requirement. Also, Companies should ensure that their courier service complies with this requirement.

Qoutes delivered by hand should be brought by the specified deadline to the above address between the hours of 9.00am and 4.00pm Monday to Friday and a receipt obtained as proof of delivery.

Quotations received after the due deadline or which are returned incomplete or which infringe these Quotation instructions may be rejected by the Council and returned to the Company without consideration of offer. Companies are therefore requested to make every effort to meet the requirements of this Quotation invitation.

A label to be stuck to your enveloped return is supplied as part of the document pack

Please email any clarification requests to paula.jarvis@braintree.gov.uk closing date for receipt of clarifications is Tuesday 29th March 2016

# NOTICE TO COMPANIES

This Quotation process is being managed by The Essex Procurement Hub on behalf of the Council. All requests for additional information or clarification should be directed by email to: paula.jarvis@braintree.gov.uk

A Quote shall be subject to the general and Special Conditions (if any) set out herein but in the event of inconsistency the Special Conditions shall prevail. Any other terms or Conditions of Contract or general reservations which may be printed on any correspondence emanating from the Company in connection with this Quote or with any Contract resulting from this Quotation shall not be applicable to this Quotation or to the Contract. Unless otherwise stated by the Council, all information supplied (whether in these documents or otherwise) is for general guidance in the preparation of Quotes and shall not be binding on the Council.

The Company must initial any alterations or corrections on the returned Quotation.

The specifications enclosed are to be complied with in every respect.

**The successful Quotation**, together with the Council’s written acceptance thereof, will form a binding Contract between the Council and the successful Company.

**Price:** The Contractor acknowledges and agrees that the Council has entered into this Agreement on the basis of the pricing and method statements supplied to and accepted by the Council.

**Contract Management:** The Council may at any time require the Contractor(s) to attend a meeting at the Council’s premises to enable the Council to monitor and assess the Contractor(s) performance of the obligations under this contract. The Contractor(s) shall attend such a meeting when so required.

**3.1 Selection Criteria**

The Council does not bind itself to accept the highest or any Quotation received and may accept either all or any part of a Quote or more than one Quote.

Companies will need to meet the criteria within the Capability Assessment (Appendix A) in order to be evaluated on the criteria below. The contract, if awarded, will be awarded on the basis of the most economically advantageous offer, taking into consideration the following criteria:

|  |  |
| --- | --- |
| **QUOTATION EVALUATION / AWARD CRITERIA** | **Weighting (%)** |
| Price | 60% |
| Quality | 40% |

Quotations scoring less than 6 for any criteria will be rejected, please see below for further details on the scoring methodology. Quotes will be evaluated on a split between price and quality of 60% and 40% respectively.

Companies are requested to quote against the specifications. Companies who fully comply with the specification and exceed the pass mark against every criteria listed will be short-listed. Companies may then be further narrowed down by totalling the scores.

In addition Contractors submitting valid Quotations may be subject to Qualitative Selection which could take any or all of the following forms:-

1. A request for a certificate from the EU member state (where applicable) covering suitability on the grounds of tax and social obligations.
2. A request for an extract from the judicial record covering suitability in relation to solvency and professional conduct.
3. A request for statements from Bankers, balance sheets, etc. statements of three years turnover.
4. A request for details of:-

i) Management Qualifications

ii) Contracts over the last five years

iii) Tools, plant and technical equipment

iv) Manpower and management

v) Technicians

Subject to the Special Instructions and Conditions herewith the Quote shall be based on the cost of wages and materials ruling at the date of the Quotation. All prices quoted in the Quotation shall, unless otherwise stated, include profit, transport, labour, materials, fuel and plant charges, insurance and all other expenses of every kind which under the conditions of Contract are borne by the Company. Prices quoted in the Quote shall be in UK Sterling and exclusive of Value Added Tax. Value Added Tax shall be applied at the appropriate rate ruling at the date of any invoice.

**3.2 Scoring Methodology**

**Quality**

The quality criteria above will be evaluated on the basis of the content in the Method Statements submitted with each Tender. Details of these Method Statements can be found within clause 34 of this Invitation to Tender.

Each individual question will be scored out of 10, before the weighting is applied.

Please ensure that you cover fully each point raised in the sections to enable ease of scoring.

Tenderers are to ensure that information provided within the tender is clear and concise as the information provided will form part of the Contract.

It is important that the supporting documentation supplied with the submitted responses to the questions in the Quality Criteria be fully referenced and will be marked 0 to 10 based on the following.

|  |  |
| --- | --- |
| **Score** | **Interpretation** |
| 0 - 1 | Either no answer is given or the answer provides no evidence that the Tenderer meets any of MDC’s requirements. |
| 2 -3 | The answer provides some evidence that the Tenderer meets some of MDC’s requirements but only in a minimal way. |
| 4 -5 | The answer provides satisfactory (or better) evidence that the Tenderer partially meets MDC’s requirements. |
| 6 - 7 | The answer provides good (or better) evidence that the Tenderer meets a majority of MDC’s requirements. |
| 8 -9 | The answer provides good (or better) evidence that the Tenderer meets nearly all of MDC’s requirements. |
| 10 | The answer provides excellent evidence that the Tenderer fully meets all/exceeds MDC’s requirements. |

**Price**

Scoring will be evaluated using the ratio calculation below;

Highest price Scores a full 10 marks.

Prices after this are calculated by; next Highest Price x 10 = Mark

 Highest Price

For example only; highest price = £90,000

Next highest price = £85,000

85000 x 10 = 9.44

90000

Therefore the Quote for £90,000 scores 9.44 out of 10 for price.

# SPECIAL CONDITIONS

All the following conditions are included within the Quoted sum.

# BRIBERY, CORRUPTION AND GRATUITIES

The Council will be entitled to terminate this Contract immediately and to recover from the Contractor(s) the amount of any loss resulting from such termination if:-

The Contractor(s) or any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor(s) offers or gives or agrees to give any person (whether an employee of the Council or not) any gift or consideration of any kind as inducement or regard for doing or forbearing to do or for having done or forborne to do anything in relation to the Contract or any other Contract with the Council;

In relation to any Contract with the Council, the Contractor(s) or any person employed by it or acting on its behalf shall:

Have committed any offence under the Prevention of Corruption Acts 1889-1916 or any statutory modification or re-enactment of them, or

Have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

The Contractor(s) will not, whether by itself or by any person employed by it, solicit any gift for any of the Services other than bona fide charges approved by the Council.

The Contractor(s) will not collude with any other organisation or with subsidiaries or other organisation in relation to any element of this Contract or enter into any cartel or similar arrangement at any time.

# PROGRAMME OF WORK

It is a strict condition of this Quotation that the successful Contractor(s) be able to meet the Council’s programme of work as and when it becomes available, and so long as it is reasonable. It is likely that any such programme(s) will be negotiated with the successful Company at the interview.

# LIQUIDATED DAMAGES

Liquidated damages will apply to any Contract let under this Agreement and will be a genuine pre-estimate by the Council of its costs caused by the Contractor(s) late performance.

# INDEMNITY

The Contractor(s) will be liable for and hereby indemnifies the Council from and against all liabilities, damages, costs, losses, claims, expenses, demands and proceedings in respect of any injury (including fatal injury) or damage to any person or property due to or arising (whether directly or indirectly) from:-

* the carrying out of the Services;
* the provisions of the Contract Documents and the compliance or non-compliance with them by the Contractor(s) or its employees or any of its agents or their employees;
* any breach or non-observance by the Contractor(s) or its employees or agents or their employees of any conditions or in the carrying out of the Services;
* any act neglect or default of the Contractor(s) or its employees or agents or their employees.

The Council will not be liable for any damages or compensation in respect or in consequence of any accident or injury to any person employed by the Contractor(s) (except to the extent that such accident or injury results from or is contributed to by the negligence of the Council) and the Contractor(s) hereby indemnifies the Council against all such damages and compensation and against all claims, demands, proceedings, costs, charges and expenses in respect or in relation to such matters.

Subject to these Conditions, the Contractor(s) will be liable for any loss suffered by the Council as a result of the Contractor(s)’s act, negligence, fault or omission or breach of its obligations under this Contract.

# WAIVER

The failure of either party to insist upon strict performance of any provision of this Contract or the failure of either party to exercise any right or remedy to which it is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligation established by this Contract.

A waiver of any breach shall not constitute a waiver of any subsequent breach.

No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.

# SUPERVISING OFFICER

The functions and rights of the Council in this Contract may be exercised by the Supervising Officer or by any person authorised by the Supervising Officer or the Participant to act on his or its behalf. The Contractor(s) shall not question the authority of the Supervising Officer.

The Council will give notice in writing to the Contractor(s) of the post-holder who will be regarded as a Supervising Officer and will inform the Contractor(s) in writing of any amendments or additions to the potholder’s who act as Supervising Officer.

At all times during the Contract Period the Supervising Officer may conduct inspections and investigations to ensure that the Contractor(s) is complying with its obligations under the Contract.

The Supervising Officer may appoint as many people to help him as he considers necessary.

# INSURANCE

**Employers’ / Public Liability**

The Contractor(s) will at all times keep insured and indemnified the Contractor(s), its employees, its agents, the general public and the Council with an insurance office approved by the Council in respect of the matters set out below for an amount not less than indemnity limits specified below which will apply with this Condition or otherwise fails to meet the Council’s requirements.

Where this happens, the Contractor(s) will affect such insurance as does comply. If the Contractor(s) fails to do this, the Council may affect the insurance itself and the Contractor(s) will pay to the Council all costs (including administrative costs) which the Council incurs in so doing to any one occurrence or series of occurrences arising from one cause:-

Employers’ Liability – £10,000,000.00

Public Liability - £10,000,000.00.

\*Please enclose copies of the above with your Quotation, and copies of each Annual Renewal Notice for the life of the Contract.

The Contractor(s) will, where instructed by the Council and at its own expense, deal with any claims received in relation to the provision of the services by the Contractor(s).

**Insurance Policies – General**

The Contractor(s) will give the Supervising Officer copies of any insurance policies, cover notes, premium receipts and other documents necessary to comply with these conditions, on request by the Supervising Officer or the Council’s Insurance Officer.

The Supervising Officer will notify the Contractor(s) in writing if any insurance policy does not provide enough cover to comply

# PERFORMANCE AND PROVISION OF GOODS/WORKS/SERVICES

During the Contract Period the Contractor(s) will comply with its obligations under the Contract and will perform the Services strictly in accordance with the provisions of the Contract Documents and to the entire satisfaction of the Supervising Officer and also in such a manner as shall promote and enhance the image and reputation of the Council and its administrative District.

The Contractor(s) will provide the Goods/Works/Services safely and in a manner that is not or is not likely to be injurious to the health or safety of any person.

The Contractor(s) will be required to maintain a communication system acceptable to the Supervising Officer to provide contact for the period Monday to Friday between the hours of 8 a.m. to 6 p.m. In the event of emergencies associated with the Contract the Contractor(s) or its authorised representative will be required to be on site as soon as is reasonably possible regardless of the time of year or day. No extra charges will be payable by the Council as a result of any type of emergency call-out. Should the Contractor(s) for any reason fail to respond to call out within the stipulated time the Council may arrange for itself or another Contractor(s) to undertake any necessary works. IN THE EVENT OF SUCH AN OCCURRENCE ANY COSTS INCURRED INCLUDING ADMINISTRATIVE CHARGES BY THE COUNCIL AND/OR PARTICIPANT WILL BE CHARGED TO THE CONTRACTOR(S).

The Contractor(s) must at its own expense throughout the Contract Period obtain all licences required for the full and proper performance of the Services and give all necessary notices to the local and other authorities.

The Contractor(s) shall not permit any activity to take place which the Supervising Officer acting reasonably has forbidden as being of an objectionable or dangerous nature.

# QUALITY ASSURANCE, POLICY AND CONTROL

*It is the policy of The Council to provide a quality service for its Customers. The Contractor(s) will comply with this policy which will be achieved by:*

* The recruitment and training of staff who are customer orientated.
* The establishment of an action orientated and well organised management structure.
* The employment of appropriately qualified staff who are capable of providing a quality service in a customer responsive manner.

*The Contractor(s) shall throughout the Contract Period institute and maintain to the satisfaction of the Council and/or Participant a properly documented system of quality assurance and control in accordance with the requirements set down by the British Standards Institute ISO 9000 or an alternative quality assurance standard.*

*The Contractor(s) acknowledges that the Council has achieved and will be maintaining Company Wide Certification under ISO 9000 for many of its functions. In this respect the Contractor(s) acknowledges that audits by the British Standards Institute and the Council’s own in-house quality audit team will be carried out on a regular basis throughout the Council’s offices and that such audits may result in enquiries being made of the Contractor(s) regarding procedural and/or quality issues. Such audits may result in action being required to be taken by the Contractor(s) and/or the Council in order to comply with any specifications or recommendations set down by the British Standards Institute and/or the Councils quality audit team. The Contractor(s) will carry out any such actions or works or put in place any systems which may be needed in order to comply with those requirements and any such actions or works shall be considered to be a Variation.*

*Where an appropriate Quality Standard or Standard Code of Practice issued by the European Union or British Standards Institution is current in connection with any of the Services or Equipment and/or any other equipment used by Contractor(s) in the provision of the Services, all goods used or supplied by and all workmanship performed by the Contractor(s) or its employees shall be in accordance with that Standard.*

# VARIATION

The Contractor(s) shall carry out any Variation to the Specification which the Supervising Officer may require and the value of any such Variation will be agreed by the parties. The Council reserves the right to omit any portion or portions of any Contract at the full amounts with profit without any extra charges by way of increased profit or otherwise on the remaining portions of the Contract.

# FINANCIAL ARRANGEMENTS

**Method and Time of Payment**

The annual rent to be paid to the Council each year in four equal three monthly payments in advance, without any deduction, the first of such payments to be made on completion of the Lease. Normal payments terms are 30 days net.

Due to the new Public Contract Regulations 2015, any sub-Contract awarded by the successful Contractor must contain the same 30 day payment terms from the Contractor to the sub-Contractor. This requirement applies to every Contract in the supply chain no matter how far removed from the Contracting authority.

# ASSIGNMENT AND SUB-CONTRACTING

The Council may assign the benefit of this Contract or any part thereof to any statutory or other public body and shall give written notice of any such assignment to the Contractor(s).

The Contractor(s) shall in no circumstances assign or purport to assign the whole or part of this Contract and/or the Services or any part thereof to any person or party whatsoever.

The Contractor(s) shall not sub-contract any of the Services without obtaining the prior written consent of the Council. If any of the Services are sub-contracted without permission, the Council may reject the sub-Contractor(s) and order the work to be carried out by any party that it so elects and the additional costs incurred by the Council in arranging for the Services to be carried out by another party shall be borne by the Contractor(s).

Failure or neglect by a sub-Contractor(s) to comply with any of the Conditions shall be deemed to be the failure or neglect of the Contractor(s) and the rights, powers and remedies reserved to the Council under this Contract in the event of such failure or neglect shall apply accordingly.

The Council reserves the exclusive right to refuse consent to the sub-contracting of any of the Services by the Contractor(s) for any reason whatsoever. Where consent is given however the Contractor(s) will supply the approved sub-Contractor(s) with a copy of the Contract Documents and will impose the provisions of them onto the sub-Contractor(s).

Due to the new Public Contract Regulations 2015, any sub-Contract awarded by the successful Contractor must contain the same 30 day payment terms from the Contractor to the sub-Contractor. This requirement applies to every Contract in the supply chain no matter how far removed from the Contracting authority.

# STAFF

**Employment / Dismissal**

The Contractor(s) shall at all times during the Contract Period employ at least the minimum number of persons with sufficient skills and abilities for the proper and continuous performance supervision and administration of the Services and for the hours of work on the Contract.

The Contractor(s) shall be solely responsible for the employment and dismissal of all staff employed by it in connection with the provision of the Services including all payments which may arise under the provisions of the Employment Protection (Consolidation) Act 1978 and any amendments or re-enactments thereof and any orders byelaws or regulations made thereunder.

Notwithstanding Condition 12 the Supervising Officer shall upon showing reasonable cause be entitled to object to and/or require the Contractor(s) (by notice in writing) to discipline or remove from the contract of employment any person employed by the Contractor(s) in connection with the Services who in the opinion of the Supervising Officer misconducts himself or is incompetent or negligent in the performance of his duties or fails to conform with any particular provision with regard to health and safety or persists in any conduct which is prejudicial to health and/or safety. Such person if removed shall not be again employed by the Contractor(s) in connection with the supply of the Services without the prior written permission of the Supervising Officer. The Council shall not in any circumstances be liable either to the Contractor(s) or to any employee in respect of any liability loss or damage occasioned by such removal or disciplinary action and the Contractor(s) hereby fully and properly indemnifies the Council against any claim made by such an employee.

The Contractor(s) shall use its best endeavours to ensure that members of the Contractor(s)’s staff give all reasonable assistance to the Council in the investigation of complaints disciplinary matters claims for damages and similar matters in connection with the Services.

The Contractor(s) shall at all times be fully responsible for the payment of all wages salaries emoluments income and other taxes National Insurance contributions or levies of any kind relating to or arising out of the employment of any person employed by the Contractor(s) and hereby fully indemnifies the Council in respect of any liability in respect thereof.

The Contractor(s) shall recognise the right of and allow his employees to join a Trade Union of their choice.

If owing to the nature of the Services employees of the Contractor(s) are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 then the Contractor(s) shall ensure that all employees engaged in the provision of the Services shall provide information about convictions which would otherwise be spent under the provisions of the said Act. The Contractor(s) shall disclose to the Supervising Officer the names and addresses and sufficient information to enable proper checks to be made and as appropriate all convictions of its employees engaged in the provision of the Services and the Council may require such employees to be removed from the provision of the Services.

The Contractor(s) shall keep its employees informed of relevant statutory requirements and Codes of Practice which they are to observe.

The Contractor(s) shall, if and when required by the Council, provide the Council with such details as the Council may require relating to all or any of the employees employed by the Contractor(s) in connection with this Contract or any part thereof.

**Management / Supervision**

The Contractor(s) shall ensure that a Contract Manager or a competent employee of the Contractor(s) duly authorised to act on its behalf is available to the Council at all times when the Services are being provided. The Contractor(s) shall give to the Supervising Officer written details of the Contract Manager including his name address and telephone number and the name address and telephone number of any person authorised to act on his behalf. The Contract Manager shall be responsible for all the actions, duties and record keeping as required in these Quotation documents and will keep detailed records of all site visits. These and all other records shall be available for inspection by the Council at all times.

Any notice information instruction or other communication given to the Contract Manager or any person authorised to act on his behalf shall be deemed to have been given to the Contractor(s).

**Customer Care**

All staff employed by the Contractor(s) shall show attitudes of good Customer care.

The Contractor(s) shall ensure that its staff carry out their duties in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them. The Contractor(s) will be provided by the Supervising Officer with a copy of the Council’s customer care policy which MUST be adhered to at all times.

# DRESS CODE AND IDENTIFICATION

The Contractor(s) shall ensure that all persons employed in the performance of the Services shall at all times be properly attired and presentable.

All persons employed by or in the agency of the Contractor(s) in the performance or supervision of the Services shall at all times during working hours carry identity badges on their persons in a form approved by the Supervising Officer. Such identity badges must be made available for inspection as required by any officer of the Council who shall similarly disclose his or her own identity.

The badges shall have on them:-

* a recent colour photograph of the employee or representative;
* the printed forename and surname name of the employee or representative;
* the date of issue of the identity badge, and
* the designation of the employee or representative.

When requested to do so or when communicating with other persons as a representative or employee of the Contractor(s), all persons employed by the Contractor(s) in the performance of the Services shall disclose their identity and shall not attempt to avoid so doing when evidence of identity is requested.

Badges shall be contained in clear vinyl and permanently sealed.

# HEALTH AND SAFETY COMPLIANCE

**Health and Safety General**

The Contractor(s) shall at all times be responsible for and shall take all such precautions as are necessary to protect the health and safety of all persons employed by it or to whom a duty of care is owed and will comply with the requirements of the Health and Safety at Work etc. Act 1974 (and any amendments or re-enactments thereof and any regulations acts and codes of practice made thereunder) and of any other Acts Regulations or Orders pertaining to the health and safety of employed persons or to others.

\* When the Contractor(s) is providing works/services on Council’s premises, the Contractor(s) shall comply with the Council’s Health and Safety Policy (a copy of the Council’s Health and Safety Policy will be provided on request). The Contractor(s) shall in addition operate its own Health and Safety Policy. When the performance of the contract involves carrying out services on Council premises should there be any conflict between the Council’s policy and the Contractor(s)’s Policy, the Council’s policy shall prevail. The Contractor(s) shall nominate a person to be responsible for health and safety matters as required by the Health and Safety at Work Act. Whilst on Council premises the Contractor(s) shall require its employees to comply with the lawful requirements of Council’s employees having health and safety responsibilities at any particular time. In particular the Contractor(s)’s attention is drawn to the requirement for comprehensive risk assessments covering all aspects of the proposed services.

The Contractor(s) shall review its Health and Safety policy and safe working procedures as often as may be necessary and in the light of changing legislation of working practices or the introduction of new equipment. The Contractor(s) shall carry out a review and implement any revisions as a consequence thereof if required to do so at any time by the Supervising Officer.

The Contractor(s) shall ensure that their employees comply with all regulations regarding smoking at any Council’s premises. No Smoking will be permitted within Council Premises.

The Contractor(s) will maintain a Health and Safety Log which will be available for inspection by the Council for the duration of the Contract.

The Contractor(s) will be responsible for the correct use and wearing of all Personal Protection Equipment (P.P.E) by all its staff and sub-Contractor(s) in line with the Council’s Health and Safety Policy.

The Contractor(s) will be responsible for maintaining training records for all staff and sub-Contractor(s) including asbestos awareness and will be responsible for all training being adequate and up to date.

The Contractor(s) will also be responsible for holding details of all staff and sub-Contractor(s)’s individual Gas Safety registration and previous employer’s references, and for ensuring that this information complies with all appropriate legislation and is up to date. These records will be available for inspection by the Council at all times.

**Chemicals**

The Contractor(s) shall exercise particular care in relation to the storage of any chemicals and equipment which can be dangerous in the event of fire and shall ensure that they are used and kept in a safe condition at all times in accordance with all relevant regulations and codes of practice and operatives.

In order to comply with the requirements of the Control of Substances Hazardous to Health Regulations, 1988 the Contractor(s) shall submit to the Council and/or Participant with this Quotation a list of chemicals and products which will be used in the provision of the Services together with Control of Substances Hazardous to Health (COSHH) sheets.

**Accidents and Injuries**

The Contractor(s) shall ensure that all it’s staff report all accidents, however small, to the Supervising Officer who will arrange for an “Accident Report Form” to be completed. A copy of this must be forwarded to the Supervising Officer immediately.

The Contractor(s) must provide, in addition, a Staff Accident Book, form B1510 as required by the Social Security Act 1998 (or EU Equivalent) and record all staff accidents therein.

The Contractor(s) shall pay particular attention to its responsibility under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

**Fire and Other Safety Regulations**

The Contractor(s) shall comply with and enforce strictly all fire and other safety regulations applicable to any Council owned premises and shall comply at all times with the requirements of any Fire Officer.

# EQUIPMENT

The Contractor(s) will at its own expense provide all equipment, materials, cleaning agents and appliances whatsoever which it requires for the performance of the Services. All electrical power tools must be either 110 volt or cordless.

# SECURITY

The Contractor(s) shall ensure that all requirements of the Council regarding security arrangements are complied with in all respects

The Contractor(s) shall be responsible for the security of all Equipment used by the Contractor(s) in or about the provision of the Goods/Works/Services.

# CONFIDENTIALITY AND DATA PROTECTION

The Contractor(s) shall not without the written consent of the Supervising Officer and the Council during the Contract Period or at any time thereafter use for its own purposes, or disclose to any person (except as may be required by law) the Contract Documents or any information relating to the Contract all of which shall be deemed to be confidential.

The Contractor(s) shall not and shall ensure that its employees do not divulge to any third party any information which comes into its or their possession in the course of providing the Goods/Works/Services.

These terms shall prevail notwithstanding termination of the contract.

# COMPLAINTS

If the Supervising Officer receives any complaints from any person or party regarding the Goods/Works/Services they shall notify the Contractor(s) immediately of such complaint.

If the Council receives any complaints regarding the Services MDC shall notify the Contractor(s) immediately of such complaint.

The Contractor(s) shall record in writing any complaint which it receives directly from any person or party and shall notify the Council forthwith of any such complaint.

The Contractor(s) shall deal with any complaints received (whether orally or in writing) in a prompt, courteous and efficient manner to the satisfaction of the Council.

# TERMINATION AND OTHER REMEDIES

This Contract shall terminate upon issue of certificate of practical completion. The Agreement may be terminated earlier, and at any point, at the Council’s discretion, if any or all of the following actions or conditions prevail;

If the Contractor(s):

* Commits a substantial breach of any of its obligations under the Contract and in particular if the Contractor(s) is in breach of Condition 5 (Bribery Corruption and Gratuities);
* Fails to provide a substantial part of the Service;
* Becomes bankrupt, or makes a composition or arrangement with its creditors or has a proposal in respect of its company for voluntary arrangement for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986;
* Has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver;
* Has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
* Has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
* Has an administrative receiver, as defined in the Insolvency Act 1986, appointed;
* Has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;
* Is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the court to make a winding-up order;

Then in any such circumstances the Council may, without prejudice to any accrued rights or remedies under the Contract, and without prejudice to any default provisions contained in the Specification terminate the Contractor(s)’s employment under the Contract by notice in writing having immediate effect.

During any such period of notice the Contractor(s) shall continue to fulfil such orders that may be outstanding, or that he may receive in accordance with conditions of this Contract.

If and when the Contractor(s)’s employment is terminated as provided in this Condition, Maldon District Council, the Council shall:

* Cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Contractor(s)’s employment shall have been calculated and provided such calculation shows a sum or sums due to the Contractor(s);
* Be entitled to employ and pay other persons to provide the Services or any part thereof and to use the Contractor(s)’s Equipment or other goods for those purposes;
* Be entitled to deduct the amount of any loss or damage resulting from the termination of the Contract from any sums which would have been due from the Council to the Contractor(s) under this Contract or be entitled to recover the same from the Contractor(s) as a debt. The amount of such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contractor(s)’s employment and in making alternative arrangements for the provision of the Goods/Works/Services or any part thereof;

When the total costs and amounts of loss and/or damage have been deducted from any sums which would have been due to the Contractor(s), any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Contractor(s) any balance shown as due to the Contractor(s).

The rights of the Council under this Condition are in addition to and without prejudice to any other rights the Council may have either against the Contractor(s) directly or pursuant to any guarantee, indemnity or bond.

The Conditions of this Contract relating to Insurance Indemnity Audit and Inspection and Arbitration shall remain legally effective and enforceable notwithstanding termination of the Contract howsoever affected.

# ARBITRATION

If any dispute or difference of any kind whatsoever concerning the Contract shall arise between the Council and the Contract or in connection with or arising out of the Contract or the carrying out of the Services/Goods/Works (whether during the progress of the Contract or after its completion and whether before or after the termination or breach of the Contract) it shall be referred to and settled by an Arbitrator to be agreed upon by the parties or in default of such agreement and upon application by either of the parties hereto to be nominated by the CEDR (Centre for Effective Dispute Resolution, London).

Any such reference to arbitration shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1950 to 1979 or any statutory re-enactment or amendment thereof for the time being in force.

The Arbitrator shall be entitled to make such decision or order as he thinks just and equitable having regard to the circumstances then existing, the cost of such arbitration to follow the event or in the event of neither party succeeding to be apportioned between the parties by the Arbitrator in such proportions as he in his absolute discretion thinks fit.

Any award or decision of such Arbitrator shall be final and binding on the parties hereto.

The Contractor(s) shall if required by the Council continue to provide the Goods/Works/Services in full conformity with the Contract Documents whilst the dispute in question is being arbitrated upon. Failure to continue providing the Goods/Works/Services will be regarded as a major breach of the Contract.

# AGENCY

Neither the Contractor(s) nor its employees or agents shall in any circumstances hold it or themselves out as being the servant or agents of the Council.

The Contractor(s) is not and shall in no circumstances hold itself out as being authorised to enter into any contract on behalf of the Council or in any other way to bind the Council as to the performance variation release or discharge of any obligation.

The Contractor(s) has not and shall in no circumstances hold itself out as having the power to make vary discharge or waive any bye-law or regulation of any kind.

The Contractor(s) shall not in any way whatsoever use the name of the Council or any of the Council’s employees or agents, as a means of promoting its business or as a reference for other contracts without the written authority of the Council’s Procurement Department.

All rights and duties which the Council has as a local authority/Public body and which the Council’s Officers have as local authority/Public body officers are expressly reserved.

# NOTICES

No notice or demand to be served upon the Council shall be valid or effective unless it is sent by pre-paid post or delivered by hand to the Supervising Officer at the Council address or to such other address as the Supervising Officer may notify to the Contractor(s) in writing.

Any notice or demand to be served on the Contractor(s) shall be valid and effective if it is sent by pre-paid post or delivered by hand to the registered office, principal place of business or to the last known address of the Contractor(s) or is delivered by hand to the Contract Manager.

# OBSERVANCE OF STATUTORY REQUIREMENTS

The Contractor(s) shall comply with and shall take all necessary steps to ensure that its employees comply with all statutory and other provisions to be observed and performed in connection with the Goods/Works/Services and shall indemnify the Council accordingly against any loss or damage caused by non-compliance with the same.

# LEGAL FEES

Each party shall bear their own legal and other fees in relation to the preparation and submission of this Contract and any other contract documents arising therefrom (other than any which may be required as a result of the default or negligence of the Contractor(s).

# AUDIT AND SUPPLY OF INFORMATION

The Contractor(s) will prepare keep and (upon request by the Supervising Officer) supply to the Supervising Officer such information (including financial information) which the Supervising Officer requires in connection with the Services/Goods/Works and the provision thereof by the Contractor(s) and which enables the Council to:

* Comply with any statutory or non-statutory requirements of any statutory or non-statutory body;
* Monitor the performance of the Contractor(s) against the Specification;
* Revise (if necessary) the Specification against the needs of the Customer and/or the end-user of the Services;
* Justify the cost of the Goods/Works/Services to the Council;
* Monitor the quality of Goods/Works/Services provision so that continual improvements can be made to Service delivery;

The Council reserves and the Contractor(s) accepts that the Council has the right to inspect and audit all information and records (whether financial or non-financial) kept by the Contractor(s) in connection with the Goods/Works/Services and the provision thereof by the Contractor(s) during the Contract period and for a reasonable time after any termination of the Contract.

# FREEDOM OF INFORMATION

The Council undertake to hold confidential any commercially sensitive information provided in the Quotation submitted, subject to the Council’s obligations under law, including the Freedom of Information Act 2000. If a Company considers that any of the information submitted in the Quotation should not be disclosed because of commercial sensitivity of confidentiality, then this should be stated with the reasons for considering the information confidential or likely to prejudice commercial interests if disclosed to the public. The Council will then consult with the Company in considering any request received under the Freedom of Information Act 2000 before replying to such a request.

# PUBLICATION OF INFORMATION

All articles, information or photographs for publication, or for use in publicising the Contractor(s)’s activities relating to this Contract, must be approved in writing by the Supervising Officer and the Council prior to release. The Council should be acknowledged in the publicity.

# CONSTRUCTION INDUSTRY (works only)

# PRICE INCREASES / DECREASES

The prices Quoted shall not increase for a minimum of one year from the commencement of the Contract. Price reductions may be applied by the Contractor(s) at any time giving one week’s written notice to the Council. Approximately one year and each year thereafter from commencement of the Contract the Council’s prices may be reviewed.

A Contractor(s) wishing to increase a price will be required to give full documentary evidence to support the increase. Where the Council feels that the evidence produced doesn’t justify the increase and where agreement cannot be reached the entire contract / agreement will be deemed to be rescinded.

# \*METHOD STATEMENTS

If successful, the agreed method statements will form part of the contract. Please find details below;

Interested organisations are required to answer the following questions:

1. How will your organisation demonstrate social value, including but not limited to hiring of local staff and training opportunities?
2. Can you demonstrate your organisations experience of delivering similar services in the Maldon District or Essex
3. How will you differ from the existing kiosks in the Prom Park? Please include in your response any healthy eating choices you will provide, how you will be visually different (including signage, the look of the kiosk, staff uniform, name badges, etc) and how you will deal with the litter in and around the kiosk
4. Please detail your current levels of food preparation and hygiene training (including any you and your staff are working towards) along with copies of your certificates.
5. Please submit a sample health & safety risk assessment, COSHH assessment and method statement along with copies of your insurance certificates

Each individual question will be scored out of 10, before the weighting is applied.

Please ensure that you cover fully each point raised in the sections to enable ease of scoring.

Tenderers are to ensure that information provided within the tender is clear and concise as the information provided will form part of the Contract.

# CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS (C.D.M) (works only)

# DISABLED FACILITIES GRANT SCHEME WORK (works only)

# EMERGENCY AND VOID INSTALLATIONS (works only)

# WARRANTIES (works only)

# OUT OF HOURS / EMERGENCY BREAK-DOWN

The Council and/or Participant will be provided by the Contractor(s) with telephone numbers/contact names which will be available at all times.

# SURVEYING AND EVALUATION OF WORKS (works only)

# DISCLOSURE AND BARRING SERVICE (DBS)

Previously the CRB, this is a process by which a prescribed level of checks on an individual's history are undertaken by the Disclosure and Barring Service (DBS) to assist in identifying such individuals who may, by reasons of their history, be deemed unsuitable to be engaged for the provision of the Service.

The Contractor shall:

* ensure that all individuals engaged in Regulated Activity are subject to a valid disclosure check for regulated activity undertaken through the Disclosure and Barring Service (“DBS”); and
* monitor the level and validity of the checks under this clause for each member of staff.
* not employ or use the Service of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

The Council will require confirmation that DBS checks have been carried out, and are up to date.

The Contractor shall refer information about any person carrying out the Service to the DBS where it removes permission for such person to carry out the Service (or would have, if such person had not otherwise ceased to carry out the Service) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users.

# SAFEGUARDING

The Council expects any organisation wishing to provide Services where employees work directly or indirectly with children, young people or vulnerable adults, to be able to demonstrate standards of safeguarding, commensurate with those expected of statutory organisations.

The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Service is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

The Contractor shall at all times and for the purposes of this Contract have in place its own Safeguarding Policy, should there be no policy in place the Contractor shall agree to abide by Maldon District Council’s policy and procedures, and report any instances to Maldon District Council’s Authorised Officer. It shall be a condition of this Contract that any person who is or will be employed or engaged by the Contractor –

* is aware of and utilises the Safeguarding Policy in the provision of the Service.
* shall have received regular safeguarding training in line with the Children’s and Adults Training Strategy.

The Contractor shall:

* for the duration of this Contract create and maintain a file (physical or electronic) wherein all Safeguarding Concerns shall be stored having been raised by any person who is or will be employed or engaged by the Contractor in the provision of the Service, including any such Safeguarding Concern where, after review by the Contractor, no further action is taken; and
* provide an annual report of Safeguarding Concern to the Council’s Contract Lead upon request.

# COMPLIANCE WITH SPECIFICATION

Please enclose with this Quotation full details of how your Company proposes to comply with the enclosed specification.

# LEVEL OF TECHNICAL SUPPORT

Please enclose with this Quotation full details of how Technical support will be provided for this contract/agreement with a full description of its operation.

**SPECIFICATION**

Maldon District Council (MDC) own a number of refreshment kiosks within the Promenade Park, Kiosks 5 & 6 are due to be re-let and these are being offered as either single units to individual companies or for both kiosks to one company.

**Introduction**

The Promenade Park is a very popular public park set on the banks of the Blackwater River on the edge of the town of Maldon in Essex which has been a visitor attraction over 100 years. The park has benefitted from a major refurbishment in recent years and as a result has received various accolades for being one of the best family attractions in the east of England. It is also well known for being a very good value day out.

The Maldon District has a population of approximately 65,000 and is largely rural. However, a number of large towns and cities including Chelmsford, Southend, Basildon and Colchester are less than 30 minutes away and the park is within easy reach of large areas of north and east London. In recent years the park has received well over 400,000 visitors per year.

The park hosts a number of events throughout the year. Some of these events attract a few hundred people but events such as the Maldon Mud Race and the Fireworks Display normally attract between 6,000 and 8,000 people. A calendar of events from 2015 is included (Appendix A).

Within the Park are a number of refreshment kiosks which are let to individuals / businesses for the purposes of providing refreshment services to visitors and local residents. A plan showing the location of the park and Kiosks within it is included (Appendix B).

Maldon District Council is looking to let the licenses for a period until 31 March 2018. The licenses granted will be for the refreshment kiosk and the area directly around the kiosk. For clarity, the sale of alcohol **will not** be permitted from any Kiosk currently available.

**The District Valuer has valued each of the kiosks at a minimum of £12,500 per annum and therefore the Council will be look to secure at least that value through the tender process.**

**Provisions**

As a minimum hot and cold beverages, sandwiches, cakes, confectionary, snacks, ice creams are offered for sale, together with other items. MDC has the right to prevent certain items from being sold.

**Kiosk 5**

This kiosk is 30m2 has access to the following -

* Mains water & drainage
* 240volt electricity

Any alterations require full permission from Maldon District Council

**Kiosk 6**

This kiosk is 32m2 has access to the following –

* Mains water & drainage
* 240volt electricity

Any alterations require full permission from Maldon District Council

**Working Hours**

The kiosk must not be opened before 7am and must close before 7pm on any day, unless agreed in advance.

The kiosk can be open 7 days a week all year round

**Delivery times**

There can be no deliveries made to site before 10am or after 7pm

**Vehicles**

Vehicles cannot remain on the access way or road, other than for the purposes of collection or delivery of goods, and cannot obstruct the free access or other right of way of other kiosk occupiers. Parking is restricted to the allocated parking area in the main car park

**Security**

Kiosk must be kept secure at all times when not in use. No money or valuables should be kept on site overnight

**Noise Levels**

The playing of music, having a television, musical instrument or any other similar noise producing apparatus cannot be at a volume that can be heard outside of the kiosk

**Rubbish**

No rubbish or litter is to be allowed to accumulate in the kiosk or on the ground in the immediate vicinity. Suitable and sufficient receptacles must be provided and the removal of the rubbish and litter must be arranged for.

**Completion of Contract**

Upon the end of the Contract (31st March 2018) the Kiosk must be returned to the Council in the same condition that it was originally let in. Any works required to return the kiosk to that condition will be charged to the company contracted

**Key Performance Indicators (KPI’s)**

The following KPIs are to be in place for the length of the Contract and will be monitored monthly. For any failure to meet to any 2 of the below in a 3 month period, MDC reserves the right to cancel the Contract, at no cost to MDC

* Kiosk to be opened on agreed days of the week for the agreed opening hours
* Kiosk to be kept secure at all times when not in use
* Vehicles to not block access to other occupiers or to remain on the access way or road for anything other than collections or deliveries
* No rubbish or litter to be allowed to accumulate

**Quality Evaluation**

Please submit responses to the questions below, these will add towards your total score. Please ensure that your response covers all the points below and any appendixes are well referenced

1. How will your organisation demonstrate social value, including but not limited to hiring of local staff and training opportunities?
2. Can you demonstrate your organisations experience of delivering similar services in the Maldon District or Essex
3. How will you differ from the existing kiosks in the Prom Park? Please include in your response any healthy eating choices you will provide, how you will be visually different (including signage, the look of the kiosk, staff uniform, name badges, etc) and how you will deal with the litter in and around the kiosk
4. Please detail your current levels of food preparation and hygiene training (including any you and your staff are working towards) along with copies of your certificates.
5. Please submit a sample health & safety risk assessment, COSHH assessment and method statement along with copies of your insurance certificates

**For a site visit please contact Ben Brown –** **ben.brown@maldon.gov.uk** **or 01621 876210**

**Pricing Schedule**

The Council does not bind itself to accept the highest or any quote received and may accept either all or any part of a quote or more than one quote.

**EXPENSES:** The Council accepts no responsibility for any expense the tenderer may incur in preparing their tender. The Council are not bound to accept the highest or any tender

submitted.

**VAT:** The tender figure is to be exclusive of VAT. **NB:** VAT will not be charged on the rent.

The annual sum is to be paid quarterly in advance in equal lump sums

**Kiosk 5**

Offered rent per annum £

**Kiosk 6**

Offered rent per annum £

**Kiosk 5 & 6**

Offered rent per annum £

MDC will analyse all returned values and the option that offers the highest annual rent will receive the highest score

**Quotation DOCUMENT – THIS FORM MUST BE USED FOR ALL QUOTES**

### **DECLARATION TO BE COMPLETED BY THE Company**

To: Maldon District Council

I / we……………………………………………….**DO HEREBY UNDERTAKE** on the acceptance by the Council of my/our Quotation either in whole or in part to supply goods or perform the service or works on such terms and conditions and in accordance with such specifications as are contained or incorporated in the Contract as defined in the Conditions of Contract (see attached). The prices Quoted will not be increased for a minimum of one year from ……………………… (See Special Conditions)

This Quotation remains valid for consideration for 13 weeks from the date fixed for return of Quotes.

Signature …………………………….

Name ……………………………. (CAPITALS)

I am authorised by the Company detailed below to act on its behalf in this matter and to bind it to this Quotation.

**Position Held ……………………………**

**Tick as appropriate**

Limited Company Unlimited Company Partner Individual

Name and Registered Office Address of Company:

Post Code:

Tel No:

Fax No:

E-Mail Address:

Date:

# Declaration Of Bona Fide Status

In recognition of the principle that the essence of select Quoting is that Maldon District Council shall receive bona fide competitive Quotations from all those Quoting

***WE CERTIFY THAT***

1. The Quotation submitted herewith is a bona fide quote, intended to be competitive
2. We have not fixed or adjusted the amount of the quote under or in accordance with any agreement or arrangement with any other person.
3. We have not done and we undertake that we will not do at any time before the hour specified for the return of the Quotation any of the following acts.
	1. communicate to a person other than the person calling for this Quotation the amount or approximate amount of the proposed Quote (except where the disclosure, in confidence, of the approximate amount of the Quotation was essential to obtain insurance premium quotations required for the preparation of the Quote)
	2. Enter into any agreement with any other person that he/she shall refrain from Quoting or as to the amount of any Quotation to be submitted.
	3. Offer to pay or give or agree to give any sum of money or valuable consideration either directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Quote or proposed Quotation any act or thing of the sort described above

In this certificate:

1. “person” includes any person and any 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.

##### DATED this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2015

## **SIGNED (as in Quotation) ………………………………………………**

## ***Duly authorised to sign***

**For and on behalf of ……...……………………………………….**