

## **Section 8**

### **Draft Contract Terms and Conditions**

Blandford Forum Town Council (“The Council”) invites quotations for the execution and supply and delivery and installation of the materials or goods scheduled in accordance with these draft Conditions of Contract.

#### **1. Definitions**

The Contract will be made by the acceptance of a Quotation in whole or in part and comprise the Quotation as so accepted, Contract Conditions, Specification, Drawings and the Schedule(s). “The Contractor” means the person, firm or Company whose Quotation is accepted either in whole or in part by The Council.

#### **2. Submission of Quotations**

Quotations must be submitted: -

- On the prescribed quotation documents
- Within the timescale detailed

The Council will not consider any quotation not complying with the above.

#### **3. Submission of Applications**

The Council does not bind itself to accept the lowest or any application. Neither will it be responsible for, or pay for any expenses or losses, which may be incurred by any bidder in the preparation of their application. All recipients of quotation documents, whether they submit a quotation or not, shall treat the details of the quotation documents as private and confidential.

#### **4. Quantities**

- Any quantities stated in the tender documents are those, which are estimated as the probable requirements of the Council for the Contract Period. The Council has the option of requiring the supply and delivery of any item in the Schedule(s) in any greater or lesser quantity and could vary in line with changes in Government Legislation.
- Where unit of supply differs from that specified, pro rata prices must be submitted along with the unit price of supply. Failure to this will result in the offer being disqualified.

In such instances, the Contractor will have the right to withdraw from the Contract by giving the Council three calendar months notice, in writing, of their intention to terminate the contract.

#### **5. Quality**

- The goods or materials to be supplied under the Contract are to be of the quality or type and weight or measure (exclusive of packaging) detailed in the Specification and/or Schedule(s) and shall comply with the Council’s Specification. Any samples submitted by the bidder shall on the acceptance of the Quotation by the Council become the standard samples for the Contract.
- The Council shall at all times have power to inspect the goods or materials at all stages of manufacture and shall be at liberty at all times to reject any goods or materials which do not comply. If the Council fails to reject goods or materials this shall not constitute an acceptance thereof or prejudice the Council’s right to reject goods or materials after delivery.

- Rejected goods or materials are to be removed by and at the expense of the Contractor immediately after notice and the Contractor shall, if so required, supply and deliver other goods or materials in lieu thereof to the approval of the Council.
- Any goods or materials, which are rejected, remain on the Council's premises at the Contractors risk.
- The Council shall be entitled to order the Contractor to carry out at the Contractor's expense such tests as it considers necessary to ascertain the quality of the goods or materials and to certify that the goods or materials have been tested and comply with the Drawings, the Specification and the Conditions of this Contract.
- Goods or materials supplied shall be in accordance with applicable International Standard Specification, European National, or British Standard Code of Practice.

## **6. The Contract Price**

- Prices quoted shall remain fixed for a period of 12 months duration from the contract start date.
- All prices quoted must be in Pounds Sterling. Failure to do this will render your quotation invalid.
- The prices quoted must be in net prices, except in those cases where discounts off trade lists are quoted.
- Prices must be quoted net of Value Added Tax to the extent that the supply of items under the Contract is chargeable with Value Added Tax. The gross amount of the tax chargeable thereon will be added to the Contract price.
- All prices quoted for the goods shall include the cost of all necessary works and processes required to ensure that the goods or materials comply with the terms of this Contract.
- The prices quoted by the contractor shall remain fixed for all orders placed during the contract period unless the contractor stipulates that the prices are subject to variation due to costs of the service, wages, transport etc., varying after the date of the commencement of the contract.
- Where a settlement discount is to be allowed to the Council by the Contractor the settlement discount period shall commence from the date of receipt of the goods or materials or the invoice whichever is the later.
- Any proposed variations ("the variation") in price of the materials or service during the period of this contract shall be notified to the Town Clerk, including relevant documented evidence supported by detailed evidence of the contractor attempting to obtain better value, together with details of the dates of variations in the cost of the contract referred to above. The Council requires a minimum of one calendar month before the date of the application of such variations unless otherwise agreed. No such variation in price shall be operative unless it is agreed by the Council.
- In the event that the Council is not prepared to accept the variations so proposed the Council shall have the right to terminate this Contract or any part thereof on giving prior written notice of one calendar month to the Contractor.

## **7. Invoices and Payment Terms**

- A priced invoice must be sent to the Council following delivery of the goods or service and the order number and details must be stated thereon.
- The invoice settlement terms for this contract following the submission of an undisputed invoice will be 30 days and the Council will require the Contractor to also settle any invoices to sub-contractors within 30 days, in line with the Public Contract Regulations 2015.

## **8. English Law**

The Contract shall be construed in all respects in accordance with English Law. Nothing in these conditions shall prejudice any condition or warranty (expressed or implied) or right of remedy to which the Council are entitled in relation to the materials, goods or services ordered by virtue of statute or common law.

## **9. Royalties and Patent Rights**

The Contractor shall fully indemnify the Council for any claim or action that may be brought against it regarding infringement of copyright, patent or similar protected rights in respect of any items supplied under the Contract. All payments and royalties which may be payable shall be included by the Contractor in the prices named in his quotation and shall be paid by him to the relevant persons.

## **10. Equal Opportunities**

The Contractor shall comply with the requirements of the Equality Act 2010 (or as amended).

## **11. Rights of Third Parties**

No term of this contract is intended to be enforceable by a person who is not party to this Contract in accordance with the Contract Rights of Third Parties Act 1999 (or any later amendments of this legislation).

## **12. Breach**

If the Contractor shall fail to deliver the goods or materials or any proportion of them within the time or times specified in the Contract or shall supply goods or materials of unsatisfactory quality or shall otherwise be in breach of contract, the Council without prejudice to any other remedy it may have, shall be at liberty to determine the Contract either wholly or in part and to purchase other goods or materials as the case may be the same or similar description to make good: -

- Such default; and
- in the event of the Contract being wholly determined, the goods or materials remaining to be delivered.

The additional cost of purchasing the goods or materials together with any extra administrative/legal costs and expenses shall be recoverable from the Contractor either as a deduction from Monies due under this or any other Contract with the Council or as a simple debt.

## **13. Non-Exclusivity**

The Council shall be entitled to Contract with any person or persons other than the Contractor for supply and delivery of similar goods or materials during the Contract period.

## **14. Force Majeure**

Neither party shall be liable for any default due to act of God, inclement weather, civil emergencies or unforeseen events.

## **15. Delivery**

- Failure to meet any stipulated targets within the tender **will** result in liquidated damages being claimed.
- The goods or service are to be delivered free of charge, including off loading (unless otherwise agreed), at the risk of the Contractor, in such quantities, to such locations, and in such manner only as the Council may from time to time order upon the Official Purchase Order Form. An order issued verbally by the Council and subsequently confirmed by a Purchase Order Form in writing shall bind the Contractor. The Council will not be liable for services or goods ordered in any other manner.
- A delivery note, quoting the Official Purchase Order Number must accompany all services or goods supplied.
- No minimum order quantities or values should be included in your tender submission therefore tendered prices must reflect this stipulation.

## **16. Losses or Damage in Transit**

- Without prejudice to the rights of the Council, the Council shall advise the Contractor in writing or by a qualified signature on any Delivery Note of any loss or damage within a reasonable time from the date of delivery of the goods or materials.
- The Contractor shall make good, free of charge to the Council, any loss or damage to or defect in the goods or materials where notice is given by the Council in accordance with this Condition.

## **17. Liquidated Damages**

The Council is empowered to recover liquidated damages for the supply of the contracted goods to the cost of up to 25% of the total contract value. Any claim would represent actual costs incurred by the Council as a result of the failure by the supplier to supply the goods as specified in accordance with the agreed delivery schedule and agreed quality. Liquidated damages would be levied against the supplier on the following grounds.

- Late delivery of goods or services resulting in a service failure, levied at the number of days outside the quotation or subsequently agreed delivery lead time.
- Goods or services delivered that are below the specified and contracted quality, in accordance with the quotation specification that result in a service failure.
- Below specified contracted quality or service that has resulted in service failure and adverse publicity for the Council.
- General Service failure cause directly or indirectly by the contracted supplier.

Goods or services not delivered within the contracted lead time that have resulted in the Council procuring higher costs with an alternative supplier, in such instances, the Council will recover the price difference to the Contractor.

## **18. Prevention of Corruption**

The Council shall be entitled to cancel this Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if: -

- The Contractor has offered, given or agreed to give any gift, consideration or inducement of any kind to any person to influence the obtaining of this contract or the definition of any of its terms.
- The Contractor employs or engages any person who has offered, given or agreed to give any gift, consideration or inducement as defined in (a) above, whether or not such action is known to the Contractor.
- The Contractor or any person employed by it or acting on its behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916 (or as amended) or shall have given any fee or reward the receipt of which is an offence under Section 117(2) and 117(3) of the Local Government Act 1972 (or as amended).

## **19. Minimum Public Liability Insurance of £5 million**

The contractor shall hold a minimum of £5 million Public Liability insurance to cover for each and every claim against the liabilities referred to in Clauses 20 and 21. Successful bidders will be required to submit evidence of their insurance prior to commencing the contract.

## **20. Indemnity**

The Contractor shall: -

- Fully and promptly indemnify the Council against any liability to any person whosoever arising out of or connected with the supply of the goods or materials or any act or omission of any Contractor's employee howsoever such liability may arise.
- Fully and promptly indemnify the Council in respect of any damage caused to any land building chattel vehicle plant or equipment or any other chattel of any kind whatsoever whether or not in the ownership occupation or possession of the Council by a Contractor's employee (whether such damage is caused by negligence or in any other way whatsoever).
- Fully and promptly indemnify the Council and all persons concerned in respect of any personal injury caused to any employee of the Council by a Contractor's employee (whether such injury is caused by negligence or in any other way whatsoever).

## **21. Injury to Persons: Loss of Property**

- The Contractor accepts liability for death or personal injury arising from its negligence or the negligence of its employees.
- The Contractor shall be responsible for any physical damage to property caused in the supply of the goods or materials whether or not the same shall result from the negligence of the Contractor or any of its employees.

## **22. Insolvency**

The Council may terminate the contract by notice in writing having immediate effect if the Contractor:

- Becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its Company for voluntary arrangements for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 (or as amended).
- Has an application made under the Insolvency Act 1986 (or as amended) to the Court for the appointment of an Administrative Receiver.
- Has a winding-up order made (except for the purposes of amalgamation or reconstruction).
- Has a provisional liquidator receiver or manager of its business of undertaking duly appointed.
- Has an Administrative Receiver as defined in the Insolvency Act 1986 (or as amended) appointed.

## **23. Health and Safety**

All items delivered by the Contractor to the Council shall comply with the provisions of the Health and Safety at Work Act 1974 (or as amended) and any other relevant health and safety regulations and appropriate Codes of Practice in force.

- The successful Contractor must comply with Section 6 of the Health and Safety at Work Act 1974 (or as amended) and provide the Council with data sheets and relevant trade literature on any substances deemed to be hazardous to health.
- The Contractor must also ensure that he complies with the Chemicals (Hazard Information and Packaging) Regulations 2002 (or as amended) and that any substances supplied bear labels which itemise the chemical constituents, indicate whether these constituents are toxic, irritant, corrosive etc. and give instructions on the safe use of such substances.
- The Contractor is specifically required to adhere to the above regulations as to enable the Council to meet its obligations under the Control of Substances Hazardous to Health Regulations 2002 (or as amended). This condition of contract applies to any future changes to products supplied and/or to the supply of any products via this Contract. All bidders must indicate on their Quotation whether a product requires a COSHH data sheet. If their quotation is accepted, these data sheets must be provided to the Council without delay.
- The successful contractor(s) will be required to submit suitable and sufficient risk assessment(s) supported by appropriate method statements covering working practices for all labour work tendered for. Personnel carrying out such work must be competent for the purpose. Evidence of experience, qualifications & training for such personnel must therefore be submitted with the tender documentation. This must be provided for scrutiny by the Council's Grounds & Property Manager, who must approve the statement prior to award of the contract.

## **24. Contract Termination**

- Termination of the contract by the Council will be activated either on the grounds of; failure to perform against the specification, failure of the Council to meet the payment conditions if goods and services have been provided in accordance with the specification, or the circumstances on which the contract was award has changed for either the Council or the Contractor.
- The contract may be terminated by either party at any time during the contract period provided that at least 1 month notice of intention to terminate is given in writing stating the reason(s).

## **25. Drawings and Copyrights**

All drawings, specifications, patterns, tools, free issue materials, Contract documents and other documents or items supplied by the Council shall remain the property of the Council and shall be returned to the Council in good condition immediately on request.

The Copyright in any form produced in connection with this Contract shall vest in the Author in accordance with the Copyright Designs and Patents Act 1988 (or as amended).

## **26. Contract Variations**

Contract variations may be accepted under the following circumstances:

- The existing products or services are no longer available under the contracted terms
- The existing products or services are discontinued or obsolete
- The existing products or services are superseded by new alternatives

Any proposed variations in the price or quality of the goods or service during the period of this Contract shall be notified to the Project Manager, including relevant documented evidence supported by detailed evidence of the contractor attempting to obtain better value together with details of the dates of variations in the cost of the Contract referred to above.

The Council requires a minimum of one calendar month before the date of the application of such variations unless otherwise agreed. No such variation in price or service shall be operative unless it is agreed by the Council.

The Council reserves the right to terminate the contract and re-quotation in the event of a variation to the agreed contract.

## **27. Assignments and Sub-Letting**

The Contractor shall not assign or sub-let the whole or any part of the Contract including sub-letting to a sub-contractor, without the written consent of the Council and such consent if given shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults or neglects of any sub-contractor his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor.

## **28. Expenditure Details**

Not applicable to this contract.

## **29. Benchmarking**

Not applicable to this contract.

## **30. Severance**

Any provision of these Conditions of Contract, which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of the Contract.

### **31. Confidentiality**

The Contractor, its employees and agents at all times shall keep confidential and secret and shall not disclose to any person, all information and other matters acquired by the Contractor in connection with the Contract.

### **32. Precedence**

These Conditions of Contract shall have precedence over any printed condition appearing on any acceptance form, delivery form or other documents or letter emanating from the Contractor.

### **33. Anti-Collusion Clause**

In submitting a quotation, the bidder warrants that he / she has not breached competition law and has not made their quotation in collusion or collaboration with any third party.

### **34. Sampling Exercise**

Samples may be required as part of the quotation evaluation process. If required these samples shall be supplied and delivered free of charge.

### **35. Awarding of Contract**

The Council reserves the right to award the contract to more than one bidder. The contractor will be informed in writing should the contract be awarded to more than one organisation. The contractor should indicate if their quotation prices would alter in the event of the contract being split between more than one contractor.

### **36. Electronic Quoting**

When electronic quoting is permitted in the instructions to bidders, in the event of this document being scanned or copied onto electronic media, alterations will not be accepted unless agreed first in writing with The Council. Therefore, the original quotation document will be deemed as the valid contract unless there is written agreement on alterations.

### **37. Inspection of Suppliers Premises or other reference site**

As part of the quotation evaluation process the Council reserves the right to potentially visit a bidders premises or an agreed reference site indicative of the contractor's work. The purpose of the visit would be to assess the bidders operation with particular attention being made towards workforce matters and Health and Safety. This visit would form part of the quality assessment of the quotation.

### **38. Protection of Children Act 1999 / Care Standards Act 2001(or as amended)**

It is not anticipated that the contractor or anyone sub-contracted to them is to have direct contact with children during any part of the service. It is the responsibility of the Contractor to whom a contract is awarded to ensure that those engaged in undertaking duties under that contract, employees, agents (and others) are of suitable standing and good character.

### **39. Freedom of Information**

The bidder must be aware that the Council is now subject to the requirements of the Freedom of Information Act (2000 or as amended) ("the Act"). Further details of the Councils' policy can be sought from the Town Clerk.



The bidder must be aware and support that as part of our duties under the act, we may disclose information, forming part of the quotation submission or future contract with the Council to anyone who makes a request. The Council may also publish some of the information submitted in the Council's publication scheme as required under the Act.

Bidders who wish for any information to be excluded from potential future publication must state in advance and the reasons under the Act for non-publication.

The Council cannot accept that trivial information or information which by its very nature cannot be regarded as confidential should be subject to any obligation of confidence.

#### **40. Staff Identification**

All staff who carry out duties under this contract will be required to have visible personal and company identification badges or have available for inspection identification details. The Council reserves to right to refuse entry to any Council premises where identification is not provided at no cost to the Council.

#### **41. Reinstatements**

Any area of the open space outside of the project area, council or private property damaged by the Contractor during installation works shall be reinstated to its original state at the Contractors cost. The public art installation is to be contained within appropriate temporary security fencing supplied by the contractor, whilst work is in process and shall remain in position until the RoSPA Safety Installation report is received by the Council.