

London Borough of Southwark

Residential Conveyancing Services

Tender

Section 2

Conditions of Tendering

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1. Invitation to Tender (ITT)

- 1.1. The London Borough of Southwark (hereinafter called “the Authority”) invites Tenders for the provision of Residential Conveyancing Services (hereinafter called “the Service”) which deals with matters relating to the Authority’s disposals under statutory and discretionary home ownership schemes, post-sales legal transactions arising from such disposals as well as providing advice on matters arising from these and related matters. This may range from assisting the Authority to draft new precedent leases to providing specific advice on individual cases
- 1.2. The Service is demand-led and charged according to an agreed schedule of rates for each Case Type as specified within the Specification and ITT Documents.
- 1.3. No guarantee of level of work is provided. The Authority reserves the right to retain cases to be dealt with by its in-house legal team and may instruct Counsel in any matter at any time as it deems appropriate.

2. Basis of Tenders

- 2.1. Tenders must be submitted for the whole of the Service. Tenders for part only of the Service will be rejected.
- 2.2. The Authority considers that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of employees currently engaged by the existing Provider in the provision of the Services, although the applicability of TUPE depends ultimately on a consideration of any proposals submitted by the Tenderer and the Authority will evaluate Tenders accordingly. More information is included in **Schedule One – TUPE and Pensions**. The Authority makes no assurances, warranties or assumptions about the effects of TUPE on the Contract or otherwise and Tenderers are recommended to take their own independent legal advice on the effect of TUPE (including any subsequent amendments to TUPE) on their Tenders and the Contract.

3. Award criteria

- 3.1. A Contract will be awarded to the most economically advantageous tender (MEAT) applying criteria set out in the Evaluation Information (Section 6).

4. Information, Costs and Expenses

- 4.1. These Conditions of Tendering are designed to ensure that all Tenderers are given equal and fair consideration. It is important therefore that you provide all the information asked for in the format and order specified.
- 4.2. Tenderers are responsible for obtaining all information necessary for preparing their Tender and shall bear all costs, expenses and liabilities incurred in connection with its preparation and delivery.
- 4.3. Tenderers should read these Conditions of Tendering carefully before completing the Tender documentation. Failure to comply with these requirements for completion and submission of the Tender may result in the rejection of the Tender. Tenderers are advised therefore to acquaint themselves fully with the extent and nature of the Authority’s requirements as stated in the Specification and elsewhere in the ITT Documents including, where relevant, the Authority’s Constitution (which may be inspected on the Authority’s website at www.southwark.gov.uk/YourAuthority/HowTheAuthorityWorks/Authorityconstitution.html and the Authority’s Policies (which may be inspected on the Authority’s website or requested from the Authority).
- 4.4. Tenderers may be required (at their own cost) to:-
 - attend meetings with the Authority to present, explain or amplify details of their Tender;
 - provide any other information reasonably required by the Authority to enable a detailed evaluation of their Tender.

- 4.5. Tenderers should, where possible, include whatever additional information they consider would help the Authority evaluate its proposals.

5. Research and Investigation

- 5.1. Tenderers are deemed for all purposes relating to their Tender to have read and understood the Tender documents, to have carried out all necessary researches, investigations and enquiries at their own expense and to have satisfied themselves as to the nature, extent and character of the Service, access to and use of any Location(s) (if applicable), the extent of the premises, employees, materials, equipment and machinery which may be required, and any other matter which may affect their Tender.
- 5.2. Tenderers shall have no claim against the Authority in respect of the matters mentioned in **paragraph 5.1 - Research and Investigation**. In particular (but without limitation) the Authority shall make no payments to any Tenderer except as expressly provided for in the Contract, and no compensation or remuneration shall be payable by the Authority because the nature, extent or character of the Service is different from that envisaged by the Tenderer.
- 5.3. There will be no guarantee, warranty or assurance given as to the total volume or value of the Service to be awarded under the Contract.

6. Further Information and Queries

- 6.1. Prior to submission of a Tender, a Tenderer may submit clarification questions on the requirements of these Conditions of Tendering if it wishes to do so. Clarification questions should be sent by email to samantha.cheng@southwark.gov.uk.
- 6.2. All enquires must be in writing and sent to the email address specified above. **TELEPHONE ENQUIRIES WILL NOT BE ACCEPTED.**
- 6.3. Clarification questions should be submitted to the Authority as soon as is practicable following receipt of these Conditions of Tendering in order to allow sufficient time during the bidding process to take account of the Authority's response.
- 6.4. In submitting a clarification question, Tenderers should take note of the following:
- The title of the Tender should be entered in the subject box of the email (i.e. **ITT/RESCON/2016 – Query**):
 - One of the following headings should be added to the subject box:-
 - Technical
 - Legal
 - Financial
 - Commercial
 - Other (which includes clarifications covering more than one subject)
- 6.5. The Authority will provide responses to all clarifications via email. The Authority shall endeavour to reply to all reasonable requests and queries provided that they are received no later than **6 days** before the date for the return of Tenders.
- 6.6. Generally, the Authority will make its responses to clarification questions available to all Tenderers on an anonymised basis, save where a question is commercially sensitive to a particular Tenderer. Tenderers must clearly identify any questions which they believe to be commercially sensitive at the point of submission of the question. If the Authority does not agree that the question is of a commercially sensitive nature, it will offer the Tenderer the opportunity to withdraw the question and, if the question is not withdrawn within **2 working days**, provide the response to all Tenderers.
- 6.7. Except as set out above, no employee of the Authority shall have the authority to make any representations, or give explanations to any matters or documents relating to this Tender.
- 6.8. If a Tenderer has difficulty in complying with any specific provision of the Conditions of Contract or the Specification or wishes to propose any amendment to them, they should provide all information and evidence concerning the same as the Authority may require prior to the submission of the Tender. The Authority may, at its discretion, consider the matter and may waive or amend the relevant provision without prejudice to all or any other provisions of the Conditions of Contract or Specification or any rights or powers of the Authority. No such waiver or amendment shall bind the Authority unless it is in writing and signed by a Strategic

Director of the Authority, or their nominee. Every Tender received by the Authority shall be deemed to have been made subject to the terms of the Conditions of Contract. Any alternative terms or conditions offered on behalf of a Tenderer shall be deemed to have been rejected by the Authority unless expressly accepted by it in writing in accordance with this condition.

7. Tenders

- 7.1. As detailed in the OJEU Notice, the Authority will follow the Restricted Procedure in accordance with Regulation 28 of the Public Contracts Regulations 2015 [“the Regulations”] and hence the Authority will not enter into negotiations of any kind with the Tenderers either during the Tender period or prior to the Contract award. Services of the nature intended to be covered by the successful Provider are designated as ‘Schedule 3’ Services (the Social and Other Specific Services) under the Regulations and as such are not subject to the full requirements of the Regulations. The Authority is only bound by the application of the Regulations to the extent that they are applicable to ‘Schedule 3’ Services. The procurement is covered by Regulations 74 to 76 (the ‘light touch’ regime).
- 7.2. All entries in the Tender must be completed in full in black ink or type written and in English.
- 7.3. Where no percentage adjustment or sum is required in the Form of Tender, Tenderers should insert "NIL".
- 7.4. All sums in the Pricing Schedule shall be stated in pounds sterling.
- 7.5. Tenders for the Service must be made on the Form of Tender, signed and dated by the Tenderer and submitted in the manner and by the date and time stated in **paragraph 9 - Submission of Tender**, together with the completed Tender documents and Supporting documents listed below:

Tender Documents to be completed and returned		
7.5.1	Pricing schedule	Section 5
7.5.2	Method Statements in response to Quality Submission Schedule (included in the Evaluation Information)	Section 6
7.5.3	Form of tender	Section 8a
7.5.4	Certificate of non-collusion, non-canvassing certificate and conflict of interest certificate	Section 8b
7.5.5	Offences certificate	Section 8c
7.5.6	Parent company guarantee undertaking – duly executed and witnessed in accordance with the Articles of Association or other constitution of the Tenderer’s ultimate holding company	Section 8e
7.5.7	A Disaster Recovery Plan	
7.5.8	TUPE information and a Pensions statement	Schedule One – TUPE and Pensions

8. Signature of Tender

- 8.1. The Tender must be signed:
- 8.1.1. where the Tenderer is an individual, by that individual;
- 8.1.2. where the Tenderer is a partnership, by two duly authorised partners;
- 8.1.3. where the Tenderer is a company within the meaning of the Companies Act 2006, by two directors or by a director and the secretary of the company, such persons duly authorised for that purpose;
- 8.2. Tenderers shall produce forthwith on the request of the Authority documentary evidence of any authorisation referred to above.

9. Submission of Tender

- 9.1. The Tender must be submitted no later than **1pm on Thursday, 17 December 2015**. It is the Tenderers’ responsibility to obtain a receipt for its Tender.
- 9.2. The Authority reserves its right not to consider any Tender submitted after that date.

Tenders should be submitted only to the address mentioned below and should not be handed to any other Authority Officer or Member.

- 9.3. Tenderers should ensure that their response is structured and numbered in the same way as the Tender documentation so that it is clear to which questions each part of the response relates. Tenderers should ensure that, in answering each question, the essential elements of their response are not obscured by excessive detail.
- 9.4. Any Tender not so made, completed, signed and accompanied by the information and/or documents required or which is not delivered in the manner and within the time specified herein may not be considered for acceptance.
- 9.5. No unauthorised alteration or addition should be made to the Form of Tender or to any other Tender Document. If any alteration without authorisation is made, or if the Conditions of Tendering are not fully complied with, the Authority shall be entitled to reject the Tender.
- 9.6. The completed Tender documents and all supporting documents must be sealed in an envelope or package bearing the return label provided by the Authority. If more than one envelope/package is used this should be marked 'Number [] of [] envelopes/packages'. The envelope(s) or package(s) must not bear any name or mark by which the Tenderer could be identified.
- 9.7. Tenders shall be delivered by hand or courier to:

**Director of Legal Services,
London Borough of Southwark,
160 Tooley Street,
London SE1 2QH Loading Bay to the side of building, Barnham St**
- 9.8. Tenderers are required to submit one (1) bound and one (1) unbound hard copy of their Tender, together with an electronic copy on a CD (compatible with Microsoft Word 2010 and Microsoft Excel 2010) in a pdf format or on a USB Memory Stick. Microsoft Excel spreadsheets should be capable of interrogation and review and without password protection. **Please bind the Pricing Schedule separately.**
- 9.9. In the event of any discrepancy between the hard copy Tender and the contents of the CD or USB Memory Stick, the hard copy shall prevail. The name of the Tenderer should be included on each page of the hard copy.
- 9.10. The Tenderer must keep its tender valid for acceptance for 120 days from the Tender return date set out in **paragraph 9.1 – Submission of Tender**, during which time it may be accepted by the Authority. If the Authority has not accepted a Tender within this period it shall remain in force without variation. The Tenderer may at any time after this 120 day period give notice in writing to the Authority to accept its Tender. Such notice must be delivered by hand to the Strategic Director of Housing and Community Services at 160 Tooley Street, London SE1 2QH or sent there by registered post or by recorded delivery. Following the service of such a notice, the Authority will have 14 days, not including the day of service, within which it may accept the Tender. If it does not do so within this time then the Tender will be deemed to be withdrawn. The Tenderer shall not withdraw its Tender except in the manner provided in this paragraph.
- 9.11. Tenderers may decline to tender, but should they do so, they should alert the Authority promptly, giving reasons and return to the Authority all copies of the Tender documents.
- 9.12. If at any time during the Tender period there are any material changes to the information provided by Tenderers in their responses to the PQQ, the Tenderer must advise the Authority promptly in writing.

10. Non-consideration of Tender

- 10.1. The Authority may, in its absolute discretion, refrain from considering any Tender if:
 - 10.1.1. the whole of the Service is not tendered for or there are omissions in the Tender;
 - 10.1.2. it is not in accordance with these Conditions of Tendering;
 - 10.1.3. the Tenderer makes or attempts to make any variation or alteration to the Contract except in accordance with **paragraph 6 - Further Information and Queries** of these Conditions of Tendering.

11. Rejection of Tender

- 11.1. The Authority shall reject a Tender, without prejudice to any other civil remedies available to the Authority or any criminal liability the Tenderer may attract, if the Tenderer breaches the terms of:
- 11.1.1. the certificate of non-collusion, non-canvassing certificate and conflict of interest certificate;
 - 11.1.2. the offences certificate; and/or
 - 11.1.3. the confidentiality undertaking

12. Acceptance of Tender

- 12.1. The Authority is not bound to accept the lowest or any Tender and reserves to itself the right at its absolute discretion to accept or not accept any Tender.
- 12.2. An acceptance of a Tender by the Authority shall be in writing and posted to the successful Tenderer and the Contract shall then be made and become binding. In addition the Tenderer shall at the request of the Authority execute and deliver to the Authority a formal contract and Parent Company Guarantee before the start of the Contract term and no sums shall be paid under the Contract until those documents have been executed.
- 12.3. Nothing contained in these Conditions of Tendering or in any other communication between the Authority and the Tenderer shall be taken as constituting a Contract, agreement or representation between the Authority and the Tenderer.
- 12.4. The Authority reserves the right:
- to cancel or withdraw from this procurement process at any time prior to the award of Contract;
 - to amend the terms and conditions of this procurement process and to amend any of the documents issued with the ITT documents, including without limitation, these Conditions of Tendering.

13. Confidentiality

- 13.1. The Tender documents and any other documentation issued by the Authority relating to the Service and this procurement shall be treated by the Tenderer as private and confidential for use only in connection with the Tender and any resulting Contract and shall not be disclosed in whole or in part to any third party without the prior written consent of the Authority, save where those documents are already in the public domain.
- 13.2. The Contract and all copies are and shall remain the property of the Authority and must not be copied or reproduced in whole or in part, save for the Contractor's own purposes in performing the Service, and must be returned to the Authority on demand.
- 13.3. Tenderers may not make any public statements or promotional activity relating to the Tender process without the prior agreement of the Authority.
- 13.4. The Authority may publish the amounts of all Tenders and the name of the successful Tenderer and such other information regarding the Tenders as it may be required to publish in accordance with EU or other procurement rules or transparency requirements with which the Authority must comply.
- 13.5. The Authority may provide Tenderers with a list of the other Tenderers and the Tender figures. On this list, the Tenderers will not be associated with their respective Tender figure.

14. Warranties

- 14.1. In delivering a Tender, the Tenderer warrants and represents to the Authority (and the Authority relies on such warranties and representations) that:
- 14.1.1. it has not done any of the acts or matters referred to in **paragraph 11.1 – Rejection of Tender** and has complied in all respects with these Conditions of Tendering;
 - 14.1.2. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Authority by the Tenderer or its employees or officers in connection with or arising out of the Tender are true, complete and accurate in all respects;

- 14.1.3. it has made its own investigations, research and due diligence and has satisfied itself in respect of all matters relating to the Tender documents and has not delivered their Tender and will not have entered into the Contract in reliance on any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Authority;
- 14.1.4. it has full power and authority to enter into the contract and perform the Service and will if requested produce evidence of that to the Authority;
- 14.1.5. it is of sound financial standing and its officers and employees are not aware of any circumstances (other than as may be disclosed in the audited accounts or other financial statements) which may adversely affect its financial standing in the future;
- 14.1.6. it has and will have sufficient working capital, skilled employees, equipment, machinery and other resources available to it to perform the Service in accordance with the Contract and to the contract standard for the Contract Period; and
- 14.1.7. it has obtained all necessary consents, licences and permissions to enable it to perform the Service and will throughout the Contract Period obtain and maintain all further and other necessary consents, licences and permissions to enable it to perform the Service.

15. Information Requests

- 15.1. The Authority is obliged to comply with information legislation including the Freedom of Information Act 2000 and Code of Practice, Environmental Information Regulations 2004, Aarhus Convention and Audit Commission Act 1998.
- 15.2. The Authority is entitled to disclose information relating to this Tender process or the Contract to anyone who makes a request unless it believes that the information is exempt or excluded under the legislation or the legislation does not apply.
- 15.3. If a Tenderer considers that any information provided in their Tender is exempt or excluded from disclosure, that information should be clearly marked "**Not for disclosure to third parties**" and be accompanied by detailed reasons.
- 15.4. The Authority will decide, acting reasonably, whether information requested is to be disclosed or not and will endeavour to consult with Tenderers and have regard to submitted reasons for non-disclosure before information is disclosed. However, the Authority is entitled to determine in its absolute discretion whether or not to disclose any information.
- 15.5. The Authority shall not be liable for any loss or other detriment caused by the disclosure of any information.

16. London Living Wage

- 16.1. The Authority has committed to including the London Living Wage (LLW) in new contracts for the provision of services which are to be performed either on Authority premises or in the Greater London Area and where best value can be demonstrated on a case by case basis. Providers of this Service will be required to pay Relevant Staff as a minimum the LLW. Tenderers should refer to clause 14A of the Conditions of Contract for further detail.

17. Definitions

Words defined in the Conditions of Contract shall have the same meanings in these Conditions of Tendering.

Schedule One – TUPE and Pensions

TUPE

1. The successful Tenderer shall be deemed to have satisfied itself as to the applicability of TUPE and shall indemnify the Authority against any and all claims made by any employee in connection with TUPE or otherwise and shall not itself bring proceedings against the Authority in connection with TUPE.
2. If TUPE does apply to their Contract, the successful Tenderer will be expected to comply with its obligations set out in TUPE, the Pensions Act 2004 and the Pensions Act 2008, as amended and any regulations made thereunder.
3. Tenderers are asked to complete and submit their Tenders with reference to any impact of TUPE on their prices or submissions.
4. TUPE Information
 - 4.1. On receipt of the completed, signed Confidentiality Undertaking (section 8d) the Authority will provide anonymised information relating to the existing Provider's staff who are carrying out the Services and their terms and conditions "the TUPE Information" (section 7) to the Tenderer to assist in calculating their Tender.
 - 4.2. Tenderers should note that TUPE provides for the transfer of employees assigned to the Service or part of the Service so transferred at the point of transfer, and Tenderers should be aware that the the TUPE Information may have altered at the point of transfer. The Authority gives no assurances, guarantees or warranties as to the accuracy or completeness of the disclosed TUPE Information and cannot be held responsible for errors or omissions in it. It remains the Tenderers' responsibility to ensure that their Tender takes full account of all the relevant circumstances.
5. The Tenderer must submit with their tender:
 - 5.1. Proposals for consultation with staff affected by the transfer and their trade unions in accordance with the TUPE requirements and for provision of information to the Authority to assist with Authority's consultation of affected staff and an undertaking to comply with the consultation requirements required by TUPE;
 - 5.2. details of the measures the Tenderer proposes to take in respect of transferring staff, e.g. proposals for employment and the conditions of such employment, which information shall be sufficient to allow the Authority to comply with its duty to inform and consult with transferring staff and their representatives;
6. The successful Tenderer will be expected to provide all necessary information required by the Authority and its existing Provider to allow its existing Provider to meet their obligations under TUPE to consult with recognised trade unions and employees' representatives about any likely consequences for affected staff.

Pensions

1. The TUPE Information does not identify former employees of the Authority and therefore the requirements of the Best Value Authorities Staff Transfers (Pensions) Direction 2007 do not apply to this procurement
2. The Tenderer will be required to comply with its obligations under the Pensions Act 2004 and the Pensions Act 2008 as amended, and any regulations made thereunder in relation to transferring employees.

Tenderers are advised that their Tender should take into account all costs relating to TUPE and pensions.