

TORBAY COUNCIL

Part 1 Information

Contract Reference

TCS1320

Contract Title

**Zero to Five (0-5) Years Childcare /
Nursery Provision 2021**

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The Tender Documents can be made available in other formats. For further information please submit your request through the messaging facility on the Supplying the South West e-Tendering Portal

1 Availability of the Tender Documents

In order to give potential Applicants unrestricted, full, direct and free of charge access to the Tender Documents (*the Documents*) Torbay Council is providing the Documents in PDF format in the Opportunities Area of the Supplying the South West e-Tendering portal (*ProContract*).

In order to access amendable versions of the Documents and to submit a response Applicants must be registered on ProContract. Applicants should then register an interest to access the opportunity, download the Documents for completion and submit a response.

For details on how to register, access an opportunity and submit a response refer to Appendix A ProContract User Guide.

2 Procurement Information

2.1 Background Information

This Tender opportunity is for a Contract for the provision of day care at Thistledown Nursery (at St Margaret's Academy), Barewell Road, Torquay, TQ1 4PA. The Contractor should have a proven track record of delivering quality childcare and education to children and be able to deliver integrated and inclusive day care for a minimum of ten (10) hours per day, five (5) days per week, forty-eight (48) weeks per year.

The successful Applicant will support the Council in working towards achieving the following aims and outcomes whilst the Contract is in operation:

- 2.1.1 Improve the life chances for children and young people;
- 2.1.2 Promote and improve the health and wellbeing of people in Torbay;
- 2.1.3 Empower local people to have a greater voice and influence over decision making and the delivery of Services;
- 2.1.4 Work with local families and partner agencies to develop mutually beneficial services;
- 2.1.5 Increase families access to services they may benefit from;
- 2.1.6 Improve school readiness of attending children;
- 2.1.7 Narrow the gap between those most disadvantaged children and the rest;
- 2.1.8 Contribute to the Authority's strategy to reduce child poverty.

2.2 Minimum Requirements

Applicants must be able to demonstrate they will meet any Minimum Requirements set out in Part 3 Specification for the whole term of this Contract.

2.3 Contract Period

It is anticipated that the Contract will commence on 07 June 2021 or at date to be agreed for a period of four (4) years and may be extended for a period of up to two (2) further years, plus a further option to extend for a final period of up to two (2) further years, giving a maximum total contract period of eight (8) years, or until the end of the allocated budget, subject to termination clauses within Terms and Conditions of Contract and as provided for in *72 Modification of contracts during their term* of the Public Contracts Regulations 2015.

2.4 Division of Contract into Lots

This Contract is not being divided into Lots. This is because it is not practical due to the nature of the Contract.

2.5 Contract Price

2.5.1 Financial Model

The Authority expects the Applicant to provide a completed Financial Model (within Part 5) which outlines their 4 year business plan. The Authority expects the Applicant to have a comprehensive plan in place to ensure that the setting is financially viable and remains stable for the entirety of the Contract. The successful Applicant's financial position will be monitored throughout the Contract period.

2.5.2 Price Review

The Financial Model outlined by the Applicant in Part 5 must be firm and fixed for the duration of the Contract. The schedule in Part 5 has been structured to enable financial modelling to be provided for the whole life of the Contract. Therefore no further price reviews will be available.

Any financial variations will not take effect until they have been mutually agreed by both parties in accordance with the *Change Control Procedure* at Schedule 9 of the Contract.

2.6 Variant Bids

Torbay Council will consider variant bids.

Applicants are encouraged to be innovative in their thinking when preparing bids and to provide any suggestions and solutions that provide a more cost efficient and value for money solution.

Torbay Council may, at its sole discretion, consider variant bids in line with *Regulation 45 Variants* of the Public Contract Regulations 2015 where these are based on a demonstrable value for money rationale.

Torbay Council will only accept variant bids if they meet the minimum requirements as identified in section 2 of Part 2 Specification. Variant bids submitted which do not meet the minimum requirements will be deemed to be non-compliant and not capable of acceptance by Torbay Council.

Variant bids may only be submitted where a compliant bid is also submitted.

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The published evaluation criteria will be used to assess whether the variant bid represents the most economically advantageous tender or not, taking all factors into account.

Variant bids must be set out in writing, as a separate document to the tender and accompanied by Part 4 Submission and Part 5 Pricing. Whilst Part 5 Pricing does not need to follow the structure set the information provided must be capable of being assessed against the stated criteria. The full scope of the proposal, including costings and implementation details must be submitted in accordance with the terms set out in these tender documents.

2.7 Procurement Timetable

Torbay Council proposes the following timetable for the award of the Contract(s):

Procurement Stage	Dates
Sent Call for Competition	Wednesday 03 March 2021
Tender Documents Published	Thursday 04 March 2021
Site Visits	Monday 22 March 2021 (time to be confirmed)
Clarification Question Submission Deadline	Thursday 25 March 2021 by 5:00pm
Clarification Responses Deadline	Tuesday 30 March 2021
Tender Submission Date & Time	Tuesday 06 April 2021
Evaluation Period	Wednesday 07 to Tuesday 27 April 2021
Presentation	Thursday 22 April 2021
Contract Award Notification	Monday 26 April 2021
Standstill Period	Tuesday 27 April to Friday 07 May 2021
Contract Start	Monday 07 June 2021

Torbay Council reserves the right to change the above timetable and Applicants will be notified accordingly if there is a change.

2.8 Authority Representatives

Applicants are advised that Torbay Council Representatives will only respond to queries or questions in relation to this Tender opportunity through ProContract and are unable to respond to any questions raised verbally or by email.

Authority Authorised Representative:

Sheena Wright, Senior Early Years Advisory Teacher, Early Years and Childcare Advisory Service

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Sarah White, Finance & Business Officer, Children's Services - Early Years;

Procurement Representative:

Lawrence Brown, Procurement Officer

2.9 Site Visit

It is intended that site visits will take place during the period stated in the Procurement Timetable. Applicants should notify Torbay Council through ProContract, by no later than 5:00pm on Thursday 18 March 2021 that they wish to attend the site visit. Applicants should provide the name and a telephone number for the individual through whom arrangements for the site visit are to be made, under current Covid-19 social distancing. Torbay Council will then contact that individual to arrange a specific time. Applicants may be limited to a maximum of two representatives, (one of which should be from the operational side of the Applicant's organisation).

3 Procurement Process

3.1 Procurement Procedure

Torbay Council is inviting expressions of interest and Bids from Applicants in response to the FTS notice identification number 2021/S 000-004284 dated 03 March 2021. This Procurement is being undertaken in accordance with the Regulations 74, 75 and 76 of the Public Contracts Regulations 2015 (SI 2015/102) relating to the award of contracts for Social and Other Specific Services, the tender process will broadly follow the Open Procedure as outlined within the Public Contracts Regulations 2015 (SI 2015/102).

3.2 Stage One Selection

In completing Part 3 Selection Questionnaire, Applicants should not assume that Torbay Council has any prior knowledge of the Applicant, its practice, reputation or its involvement in existing services, projects or procurements. In evaluating Part 3 Selection Questionnaire, except as set out in 0 below, Torbay Council will only consider information provided in the response to the SQ.

Notwithstanding the above paragraph, Torbay Council may take account of any prior knowledge it has of the Applicant, its practice, reputation or its involvement in existing services, projects or procurements to the extent that such knowledge indicates that information contained in the Applicant's SQ submission is false, misleading or inaccurate.

3.2.1 Qualitative Selection

Torbay Council will use a Qualitative Selection process to test Applicants' previous experience, existing capacity, compliance with relevant legislation and their ability to demonstrate that there are no formal grounds for exclusion.

The Selection Questionnaire can be found in Part 3 Selection Questionnaire.

The Applicant's response will be evaluated in accordance with the scoring methodology set out in section 0 below.

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Applicants will need to satisfy the requirements of Stage One in order for their Stage Two response to be evaluated.

Please Note: Applicants are required to submit responses to Part 3 Selection Questionnaire, Part 4 Award Questionnaire, Part 5 Pricing AND Part 6 Certificates and Declarations.

Torbay Council will then assess Part 3 Selection Questionnaire responses to ascertain that its minimum pass/fail requirements have been met. The pass/fail criteria is set out in 3.2.3 below.

3.2.2 European Single Procurement Document

In accordance with Regulation 59 of the UK Public Contract Regulations 2015 and EU Implementing Regulation 2016/7 Applicants may submit an XML version of the ESPD in place of Parts 1 and 2 of Part 3 Selection Questionnaire, but must complete and submit Part 3 of Part 3 Selection Questionnaire.

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3.2.3 Selection Criteria

Applicants are advised to ensure they have read and fully understand the criteria below, which will be used in the evaluation process:

Stage One Selection	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
Part 3 Selection Questionnaire		Pass		Pass
Part 1 Potential Supplier Information, comprising:	Torbay Council may exclude any Applicant who fails part or all of this section.			
Section 1 Potential Supplier Information	This will be assessed on the basis of pass or fail. In order for the response to be considered a pass it must be fully completed by the Applicant and the Applicant must demonstrate that they meet the requirements of this section.		Pass	Pass
Section 1 Bidding Model	This section will be assessed on the basis of pass or fail. The Applicant must demonstrate that the Bidding Model proposed meets the requirements of the tender to pass.		Pass	Pass
Section 1 Contact Details and Declaration	This section will be assessed on the basis of pass or fail. The Applicant must fully complete this section.		Pass	Pass
Part 2 Exclusion Grounds:	Torbay Council may exclude any Applicant who fails this section.			
Section 2 Grounds for Mandatory Exclusion	This will be assessed on the basis of pass or fail. Torbay Council may exclude any Applicant who answers 'Yes' in any of the situations set out in this section. Torbay Council reserves the right to use its discretion to exclude a potential supplier where it can demonstrate by any appropriate means that the potential supplier is in breach of its		Pass	Pass

Stage One Selection	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
	<p>obligations relating to the non-payment of taxes or social security contributions.</p> <p>The decision to exclude an Applicant in relation to the Exclusion Grounds will be subject to evidence of self-cleaning being provided by the Applicant demonstrating its reliability despite the existence of a relevant exclusion ground and Torbay Council considering such evidence to be sufficient.</p>			
Section 3 Grounds for Discretionary Exclusion	<p>This will be assessed on the basis of pass or fail. Torbay Council may exclude any Applicant who answers 'Yes' to any of the situations set out in this section.</p> <p>The decision to exclude an Applicant in relation to the Exclusion Grounds will be subject to evidence of self-cleaning being provided by the Applicant demonstrating its reliability despite the existence of a relevant exclusion ground and Torbay Council considering such evidence to be sufficient.</p>		Pass	Pass
Part 3 Selection Questions	Torbay Council may exclude any Applicant who fails part or all of this section.			
Section 4 Economic and Financial Standing	<p>This will be assessed on the basis of pass or fail. The Applicant must demonstrate that they meet the requirements of this section in order to pass it in its entirety.</p> <p>Assessment of Suitable Financial Standing</p> <p>Question 4.1 – where the Applicant has indicated that they will provide the requested documentation i.e. they have answered 'Yes', to one or more of the options listed and have provided the financial information indicated in their response, the response will be deemed a pass. Where the Applicant has</p>		Pass	Pass

Stage One Selection	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
	<p>responded 'No' or has not provided the financial information they have indicated they will provide, the response will be deemed a fail. Torbay Council may give the Applicant the opportunity to submit any missing financial information where it is considered this will not afford the Applicant any unfair advantage.</p> <p>Question 4.2(a) – the Applicant is required to indicate whether their annual turnover for the previous 2 financial years is a minimum of twice the Annual Contract Value of £185,700.00¹. A 'Yes' response will be considered to be a pass and a 'No' response a fail.</p> <p>Overall Assessment of Section 4</p> <p>Where an Applicant has failed question 4.1 and/or question 4.2(a) Torbay Council will consider the information provided at 4.2(b) before determining whether the Applicant has failed this section in its entirety. Where the Applicant has provided sufficient information or assurance at 4.2(b) they will pass this section. Where an Applicant fails this section they will be deemed to have failed this stage in its entirety, their submission will not be evaluated further and they will be notified accordingly.</p> <p>Due Diligence</p> <p>As part of the pre-award due diligence process, an appraisal</p>			

¹ The annual contract value is defined as £185,700.00 This is a valid estimation of the annual income generated through funding and private fees assuming 80% occupancy.

Stage One Selection	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
	<p>will also be undertaken on the winning Applicant's submission. Torbay Council will undertake an assessment of the circumstances of the Contract and the Applicant, which may include the following approach:</p> <ul style="list-style-type: none"> • A broad financial appraisal of the Applicant will be undertaken to determine financial capacity, health and dependency. This appraisal will be used to inform an assessment of risk. In making this assessment, Torbay Council will appraise a range of financial information applying a broad commercial perspective, including an appraisal of the financial statements submitted by the Applicant and an appraisal of other relevant sources of financial information, including but not limited to Dun and Bradstreet's Credit Reporter system. Torbay Council will use the outcomes of this appraisal to determine the Applicant's financial standing and in its opinion the level of risk to Torbay Council and as such whether a guarantor will be required. Where the appraisal indicates to Torbay Council that the Applicant is a clearly unrealistic bidder with inadequate resources and without, in its opinion, adequate financial support guarantees, Torbay Council reserves the right to reject the Applicant's bid. 			
Section 5 Further Details in Relation to Applicants who are Part of a Wider Group	This section is for information purposes and will not be assessed, other than for checking that it has been completed where applicable.		N/A	N/A

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Stage One Selection	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
Section 6 Technical and Professional Ability – Relevant Experience and Contract Examples	This section will be assessed on the basis of pass or fail. The Applicant must demonstrate they have relevant experience in delivering similar requirements, or are able to explain why they are unable to provide a minimum of one example.		Pass	Pass
Section 7 Requirements under the Modern Slavery Act 2015	This section will be assessed on the basis of pass or fail. The Applicant must demonstrate they meet the requirements, if applicable.		Pass	Pass
Section 8 Insurance	This section will be assessed on the basis of pass or fail. The Applicant must demonstrate they meet all the requirements.		Pass	Pass
Section 8 Project Specific Questions to Assess Technical and Professional Ability – Mandatory Pass / Fail Requirements	This section will be assessed on the basis of pass or fail. The Applicant must demonstrate they meet all the requirements.		Pass	Pass

Please Note: The Applicant must submit a completed SQ Part 1 and 2 Declaration for each organisation that it relies on to meet the selection criteria (including parent companies, affiliates, associates, or essential subcontractors). SQ Part 1 and Part 2 Declarations will be assessed in accordance with the criteria above.

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3.3 Stage Two Award

Torbay Council will only evaluate the Stage Two submissions of those Applicants who have satisfied the requirements of Stage One Selection and meet any mandatory requirements for Stage Two.

Applicants are required to complete and submit Part 3 Selection Questionnaire, Part 4 Award Questionnaire, Part 5 Pricing and Part 6 Certificates and Declarations.

The Applicant's response will be evaluated in accordance with the scoring methodology set out in section 0 below.

3.3.1 Award Evaluation

The Award criteria have been designed to assess the Most Economically Advantageous Tender (MEAT), taking into account a combination of Quality, Social Value and Price. The top scoring Applicant will be considered to have been successful.

Please Note: All percentage scores will be calculated to two decimal places.

Where the scoring for two or more Tender submissions is tied, the top scoring Applicant will be the Applicant who has achieved the higher score on Quality.

Applicants are advised to ensure they have read and fully understand the criteria below, which will be used in the evaluation process:

Stage Two Award	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
Part 4 Award Questionnaire and Part 5 Pricing Submission				
Mandatory Criteria	The questions within this section will be assessed on the basis of pass or fail. Torbay Council may exclude any Applicant who fails this section.	Pass		Pass
Pricing	Part 5 Financial Model (and Affordability) completed and submitted.	Pass		Pass

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Stage Two Award	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
	<p>Applicants are required to complete Part 5 Financial Model to provide a full breakdown of:</p> <ul style="list-style-type: none"> • Revenue Costs • Capital Costs • Income Details • Summary / Affordability <p>Part 5 Financial Model will be evaluated in accordance with the Mandatory (Pass / Fail) criteria.</p> <p>All costings shall be in pounds sterling and shall be exclusive of Value Added Tax (VAT).</p> <p>The 'Fees and Financial Requirements of the Contract' Method Statement (within Part 4 Award) submitted, will be evaluated and scored in accordance with the marking system in Section 3.4.2 below.</p>			
Total Score Available (MEAT)		100%		%
Quality				
Method Statements	The questions within this section will be assessed on the zero to five scoring basis.	75.00%		60.00%
Technical Questions	The questions within this section will be assessed on the zero to five scoring basis.	9.00%		n/a

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Stage Two Award	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
Presentation	<p>Applicants must be available for the timescales indicated within the procurement timetable at section 2.7</p> <p>Applicants will be contacted via the Supplying the South West e-tendering portal during the evaluation period. The invite will detail the date, time and location and the required content of the presentation, which will include any specific questions/topics to be covered and the scoring system.]</p> <p>The presentation will be assessed on the zero to five scoring basis, as follows:</p> <p>“Closing the word gap” – How does research inform your practice and provision?</p>	15.00%		10.00%
Social Value				
Qualitative	The questions within this section will be assessed on the zero to five scoring basis.	1.00%		n/a

3.4 Scoring Methodology

Responses will be assessed using one, some or all of the following methods:

3.4.1 Pass/Fail

Evaluation criteria assessed on a pass/fail basis are those where meeting the requirement is essential to Applicant’s ability to deliver the Contract. They will usually relate to questions where a Yes or No response can be provided. The ability to meet the requirement will achieve a Pass and the Applicant will achieve a fail where they are unable to meet the requirement.

Where an Applicant fails one or more Pass/Fail questions they will be deselected from participating further in the process and will be notified accordingly.

The question will also set out how the Applicant should evidence their ability to meet the requirement, this will be either:

- within their responses to the Award questions; or
- during due diligence prior to contract award.

If the Applicant does not evidence ability to meet the requirement the response will be considered to be a fail and the Applicant will be deselected from participating further in the process and will be notified accordingly.

3.4.2 Zero to Five Scoring

Evaluation criteria assessed on a scoring basis will be evaluated using the zero to five scoring system in the table below.

Score 5	Excellent	Exceeds the requirement. Exceptional demonstration by the Applicant of the relevant ability, understanding, experience, skills, resource & quality measures required to deliver the Contract. Response identifies factors that will offer significant added value and/or innovation, with evidence to support the response.
Score 4	Good	Satisfies the requirement with minor additional benefits. Above average demonstration by the Applicant of the relevant ability, understanding, experience, skills, resource & quality measures required to deliver the Contract. Response identifies factors that will offer potential added value, with evidence to support the response.
Score 3	Acceptable	Satisfies the requirement. Adequate demonstration by the Applicant of the relevant ability, understanding, experience, skills, resource & quality measures required to deliver the Contract, with sufficient evidence to support the response.
Score 2	Minor Reservations	Minor reservations on the Applicant’s ability to satisfy the requirement. Some minor reservations of the Applicant’s relevant ability, understanding, experience, skills, resource & quality measures required to deliver the Contract, with little or no evidence to support the response.

Score 1	Serious Reservations	Major reservations on the Applicant’s ability to satisfy the requirement. Considerable reservations of the Applicant's relevant ability, understanding, experience, skills, resource & quality measures required to deliver the Contract, with little or no evidence to support the response.
Score 0	Unacceptable	Does not meet the requirement. Does not comply and/or insufficient information provided to demonstrate that the Applicant has the ability, understanding, experience, skills, resource & quality measures required to deliver the Contract, with little or no evidence to support the response.

The scoring system is based on the Applicant’s ability to fully satisfy the requirement and provide sufficient evidence to support their response.

Where an Applicant’s response is considered to have achieved a score of three, a further assessment will be made to determine whether the response has met the criteria required for a score of four or five to be awarded.

Please Note: Where an Applicant’s response is considered not to satisfy the requirement and/or adequately demonstrate the ability to deliver the Contract the maximum score achievable will be two, regardless of whether the Applicant exceeds the requirement in relation to some aspects of their response.

The scoring system awards the highest marks to those Applicants who, in addition to fully satisfying the requirement, demonstrate to a high level they have the relevant ability, understanding, experience, skills, resources and quality measures in place and/or offer added value or innovative solutions.

Scoring Example:

Applicant	Assessment	Score
Applicant A	Fully satisfies the requirement and provides sufficient evidence to demonstrate their ability to deliver the contract	3
Applicant B	Fully satisfies the requirement, provides sufficient evidence to demonstrate their ability to deliver the contract and offers some potential added value.	4
Applicant C	Only meets some of the requirements, provides adequate evidence to demonstrate their ability to meet those requirements satisfied within the response and offers some added value and innovation in relation to aspects of their offer.	2
Applicant D	Applicant says they fully satisfy the requirement, but provides insufficient evidence to demonstrate relevant ability, understanding, experience, skills, resource & quality measures required to deliver the Contract.	2

a) The Requirement

Applicants will be initially assessed against all of the requirements within Part 2 Specification.

3.4.3 Comparative Scoring

Evaluation criteria assessed on a comparative basis are those where the Applicant’s response can be compared to that of other Applicants, for example in relation to Pricing criteria and the qualitative element of the Social Value criteria:

- Price: Applicants offering the lowest price will score maximum marks out of a possible 100 and Applicants submitting higher prices will be awarded marks proportionate to their distance from the lowest price.
- Social Value: Applicants offering the highest monetary benefit will score maximum marks out of a possible 100 and Applicants with lower monetary benefit will be awarded marks proportionate to their distance from the highest monetary benefit.

Scoring Example:

$$\frac{\text{Lowest Price}}{\text{Applicant's Price}} \times \text{Available Marks} = \text{Score}$$

Lowest Price: £1,000,000		Criteria: 60.00%
Applicant	Price	Score
Applicant A	£1,000,000	60.00%
Applicant B	£1,100,000	54.55%
Applicant C	£1,273,050	47.13%
Applicant D	£1,899,999	31.58%

4 Tender Requirements

4.1 Communication

All communication between Torbay Council and Applicants will take place through ProContract, this includes but is not limited to:

- (a) clarification questions;
- (b) submission of Confidentiality Agreements and issue of confidential Documents;
- (c) requests to participate in site visits;
- (d) suggestions and queries in relation to the Terms and Conditions;
- (e) post tender clarification questions;
- (f) invitations to demonstrations, interviews or presentations;
- (g) outcome notification letters.

Please Note: Applicants are responsible, at all times during the Tender process, for checking whether any messages or amendments have been issued and should not rely solely upon automatic notification from ProContract.

4.2 Tender Clarification

Please Note: Torbay Council will only accept clarification questions, including queries or suggestions on the Terms and Conditions, during the clarification period stated in the Procurement Timetable, unless the question is directly related to a response issued by Torbay Council on or after the deadline for submission of questions.

Where the Tender is being run as a 2 stage process queries or suggestions on the Terms and Conditions may only be raised during Stage One.

Torbay Council will not negotiate on or of any of the substantive terms of the Documents.

Responses to clarification questions will be provided to all Applicants except where the question:

- (a) is innovation based, in which case the response will only be provided to the Applicant who raised the question; or
- (b) relates to confidential Documents, in which case the response will only be provided to Applicants who have submitted a Confidentiality Agreement.

Torbay Council will endeavour to respond to clarification questions within 5 working days of the date the question is submitted, or the next working day if the question is submitted on a non-working day.

The identity of Applicants raising questions will remain confidential.

Applicants are responsible for ensuring they read and understand all of the responses to questions that have been raised.

Applicants will need to register an interest in the Tender on ProContract in order to access responses to clarification questions or receive communications from Torbay Council regarding amendments to the Documents.

4.3 Amendment to Documents

Amended Documents will be made available in both the publicly accessible opportunities area of ProContract and within the tender opportunity itself, except where the amendment relates to a confidential Document. Where necessary the Tender Submission deadline will be extended to enable Applicants time to take these changes into account.

Where the amendment relates to a confidential Document the amended Document will only be shared with those Applicants who have submitted a Confidentiality Agreement.

Amended Documents will form part of the resultant Contract.

Please Note: Applicants are responsible for ensuring they have read all communications and the amended Documents and will be considered to have taken any amendments into account when preparing their submission.

4.4 Post Tender Clarification

Post tender clarification will be for the purposes of clarifying or supplementing the content of an Applicant's submission or Torbay Council's requirements where this would not be discriminatory to other Applicants. Questions may be issued to one, some or all Applicants as appropriate.

Where post tender clarification results in substantial modification to the Contract Torbay Council reserves the right to restart or abandon the Tender process.

Please Note: Failure to respond to post tender clarification questions in a timely manner may result in the Applicant's Tender being rejected.

4.5 The Tender Documents

The Documents are and shall remain the intellectual property of Torbay Council. Applicants may only copy or reproduce the Documents for the purposes of their response. If no response is submitted the Applicant shall delete any documents downloaded.

Where an Applicant identifies an error or omission within the Documents they should immediately notify Torbay Council through ProContract. Torbay Council will then rectify the error or omission and issue any amended Documents.

Some tenders will include confidential Documents and the tender documents will then include a separate Confidentiality Agreement appendix. Any Documents considered by Torbay Council to be of a confidential nature will not be made publicly available. Applicants are responsible for ensuring that confidential Documents are treated as such, are used only for the purposes of this tender and are not disclosed in whole or part to any 3rd party without Torbay Council's prior written consent.

Applicants can access confidential Documents by completing and submitting the Confidentiality Agreement through the ProContract Messaging Facility.

Torbay Council may reproduce the whole or any portion of submitted Tenders for the purpose of tender evaluation.

4.6 Preparation and Completion of Tenders

Applicants are responsible for ensuring they fully understand the requirements and have all the information they need to enable them to submit a response, within the time required. Torbay Council will not accept any claims related to an Applicant's failure to read and understand the Documents.

Applicants are responsible for meeting any costs, expenses or liabilities incurred in connection with this process, including if it is terminated or amended by Torbay Council. Torbay Council will not be responsible, nor will they pay for any expense or loss which may be incurred by Applicants in the preparation of their Tenders, or any other aspect of the Tender process.

Applicants are advised to note the following when completing their response:

- (a) all entries including responses to questions, rates, price totals or any other endorsements must be typewritten in English and in £ sterling. Handwritten responses will not be accepted;
- (b) responses must be submitted in the documents as provided or on-line where required;
- (c) the format and layout of the response documents must not be altered;
- (d) 6 Certificates and Declarations may be submitted in pdf format, but all other response documents must be submitted in the format issued;
- (e) responses should be made in full and should not refer to information provided elsewhere in the Submission;
- (f) where a word or page limit has been set any portion of the response which exceeds that limit will not be evaluated;
- (g) supporting documents / appendices will only be evaluated where these have been permitted within the response;
- (h) appendices, where permitted, must be clearly referenced within the response;
- (i) where a question does not apply to an Applicant they should clearly state N/A in the response section;
- (j) individual evaluators may not evaluate the entire response and the evaluation panel may include other stakeholders, such as partner organisations or people who use Council services;
- (k) do not make any assumptions about your past or current supplier relationship with Torbay Council or to assume that such prior relationships will be taken into account in the evaluation procedure;
- (l) all Documents must be completed in full and signed where required.

Please Note: Failure to complete or submit any of the Documents in accordance with Torbay Council's requirements may result in the Tender being rejected.

As arrangements relating to consortium bids or sub-contracting may change Applicants should respond on the basis of the arrangements envisaged at the time the Tender is submitted. Torbay Council must be notified immediately of any changes or proposed changes in relation to the bidding model, so that a further assessment against the selection criteria can be made. Torbay Council reserves the right to deselect the Applicant prior to any award of contract, based on an assessment of the updated information.

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Where the Applicant is relying on the capacity of a consortium member or sub-contractor and that organisation does not meet any relevant selection criteria Torbay Council reserves the right to require the Applicant to replace the organisation with an alternative.

Before submitting any documentation, Applicants need to understand the nature of Torbay Council's transparency commitments for tenders and contracts and the scope of Torbay Council's ability to withhold material. What will be disclosed does not differ from that currently disclosable under Freedom of Information legislation, but Applicants must ensure they understand the limitations on Freedom of Information exemptions for confidentiality and commercially sensitive information. **Please Note:** Applicants are requested to clearly identify any documents they consider to be commercially sensitive either during the tender process or after conclusion of the Contract.

Please Note: Applicants are expected to read, understand and confirm their acceptance of the Terms and Conditions before submitting their Tender. Applicants cannot reserve the right to comment or negotiate on them at a later date.

4.7 Submission and Opening of Tenders

Applicants should submit all documentation electronically through ProContract (www.supplyingthesouthwest.org.uk) using the Response Wizard as directed in the 'Supplier Guide' located in the help section or in Appendix A ProContract User Guide.

Applicants are responsible for ensuring:

- (a) they have submitted all of the required documents in the correct format;
- (b) their response is submitted by the deadline. **Please Note:** any submissions classified by ProContract as late will be rejected.

In the event Torbay Council is made aware of any technical issues with ProContract, which may prevent Applicants from meeting the submission deadline, the deadline may be extended. However Applicants are strongly advised to submit their Tender in good time.

Where an Applicant decides not to submit a Tender Torbay Council requests that the Applicant formally 'Opts Out' through ProContract, giving the reasons for non-submission. Torbay Council may contact Applicants who have expressed an interest but have not submitted a Tender, in order to understand their reasons for non-submission.

An Applicant's submitted Tender will constitute an irrevocable offer to provide the required goods, services or works.

Technical Support

Any Applicants who experience problems with ProContract should contact the support desk:

ProContractSuppliers@proactis.com

Or click on the Help link at the bottom of the web page.

Please Note: If your issue is time sensitive call:

0330 005 0352

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This line is available 09:00 to 17:30 Monday to Friday (excluding English bank and public holidays).

All Tenders will remain electronically sealed until the Submission deadline, when they will be unsealed by an independent Verifier in the presence of a member of the Procurement Team.

4.8 Rejection of Tenders

Torbay Council will only reject Tenders where rejection is without prejudice to any other civil remedies available to Torbay Council or any criminal liability which the Applicant's conduct may attract.

Torbay Council will reject any Tender where:

- (a) submission was made after the date and time specified on the documents;
- (b) submission was not made through ProContract;
- (c) the Applicant's price exceeds Torbay Council's declared budget;
- (d) the Applicant has not accepted Torbay Council's Terms and Conditions. **Please Note:** Torbay Council will seek clarification from the Applicant prior to rejecting the Tender;
- (e) the Applicant acts in any way improperly, including but not limited to canvassing, price fixing or inducements (which relate to offences under the Bribery Act 2010, Section 117 of the Local Government Act 1972 or any future legislation); or
- (f) Torbay Council has become aware at any point that the Applicant has been afforded a competitive advantage or has a conflict of interest that cannot be rectified.

Torbay Council may at its absolute discretion reject any Tender where:

- (a) the price has been assessed as being abnormally low (see 4.9);
- (b) it is considered by Torbay Council to be incomplete (see 4.10) or vague;
- (c) it is not in accordance with the required format;
- (d) the Applicant alters the Documents in any way or misrepresents itself in terms of any previous information provided;
- (e) the Applicant does not respond to post tender clarification questions in a timely manner;
- (f) the tender has been qualified in any way; or
- (g) it is in breach of any condition contained within it.

4.9 Abnormally Low Tenders

Where an Applicant's price has been assessed as being abnormally low Torbay Council will require the Applicant to explain the price proposed and will assess the explanation in accordance with the guidance set out in the Public Contracts Regulations 2015. The Tender will only be rejected where the evidence provided does not satisfactorily account for the low price or where the Applicant has obtained State Aid that has resulted in a distortion in competition.

Advice in assessing the explanation may be sought from Torbay Council's Corporate

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Finance section.

4.10 Incomplete Tenders

Tenders will be considered incomplete where the Applicant has not:

- (a) submitted all of the required documents, including any supporting information requested;
- (b) fully completed all of the Documents required;
- (c) responded to all of the questions; or
- (d) submitted the Documents in the required format.

4.11 Evaluation and Award

All accepted Tenders will be evaluated in accordance with the evaluation criteria set out in the Documents.

Torbay Council will only complete a full evaluation of accepted Tenders which meet all of the mandatory requirements as set out within the Documents.

The evaluation will be carried out by an Evaluation Panel and will be moderated by a member of the Procurement Team.

Please Note: Not all Panel members may assess every question, but all Tenders will be evaluated in the same manner and by the same Panel. Evaluation Panels may not comprise solely of Torbay Council's Officers, but may also include other key stakeholders, such as partner organisations and people who use Council services.

On completion of the evaluation process approval to award the Tender will be sought in accordance with Torbay Council's approval procedure.

Torbay Council is not bound to make any award of Contract. If the Contract is awarded it will be on the basis of the most economically advantageous tender, which may not be the lowest price offered.

All Applicants will be notified of the Tender outcome at the same time, whether this is to award or not to award the Contract. Notification will be through ProContract.

Please Note: Applicants will be advised through ProContract of any changes to the decision date.

Torbay Council will comply with the requirements of *Regulation 87 Standstill period* of the Public Contracts Regulations 2015.

4.12 Legal and Contracting Arrangements

Information supplied by Torbay Council as part of the tender process is supplied in good faith and Applicants must satisfy themselves as to the accuracy of such information. Torbay Council accepts no responsibility for any loss or damage arising from the use by Applicants of such information. All information issued to Applicants must be treated as confidential.

Applicants must ensure that they are fully familiar with the nature and extent of the obligations that they will take on if their Tender is accepted.

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This Tender will be run in accordance with the requirements of regulations *24 Conflicts of interest* and *41 Prior involvement of candidates or tenderers* of the Public Contracts Regulations 2015.

Where the successful Tender is on behalf of a consortium Torbay Council may require the consortium to assume a specific legal form or require joint liability for the execution of the Contract, where this is considered necessary for the satisfactory performance of the Contract.

The information provided by Applicants will be relied upon to be true and accurate and will form part of the Contract with the successful Applicant. **Please Note:** If any of the information provided by an Applicant is found to be inaccurate the Applicant may be excluded from further participation in this or any future Tender issued by Torbay Council and could lead to termination of any resultant Contract.

In submitting a response Applicants will be confirming to Torbay Council that:

- (a) they have satisfied themselves of the accuracy and viability of all prices or rates stated within their response;
- (b) all prices or rates quoted will (unless otherwise provided for in the Contract) cover all of the Applicant's obligations under the Contract;
- (c) they have obtained all of the necessary information in relation to risks, contingencies or any other circumstances which reasonably influence or affect their bid;
- (d) their Tender is accurate and sufficient.

Torbay Council may, at its absolute discretion, extend the closing dates and times by amending the Tender on ProContract. Prospective Applicants will receive notification of the change of submission date and time. Unless any such extension has been granted, Tenders submitted after the submission dates and times will not be considered.

Torbay Council may, at its sole discretion, terminate the tendering procedure at any time. If such action is taken, Applicants will be notified through ProContract.

Torbay Council reserves the right to restart or abandon the Tender process where the lowest price submitted exceeds its estimate or available budget.

The Applicant's offer shall remain open for acceptance for a period of 6 months from the closing date and may be extended by mutual agreement.

Please Note: if the successful Applicant does not accept the Terms and Conditions as drafted Torbay Council reserves the right to withdraw the Contract award and class the submission as non-compliant.

Any acceptance of the Tender by Torbay Council will be communicated in writing to the Applicant and upon that acceptance the Contract shall become binding on all parties.

Prior to issuing the Contract Torbay Council will require the successful Applicant to provide evidence of compliance with any Contractual requirements, such as insurances, disclosure and barring service checks and policies and procedures. **Please Note:** If the successful Applicant is unable to provide this evidence Torbay Council reserves the right to withdraw the Contract award and class the submission as non-compliant.

The successful Applicant will not be allowed to commence performing the Contract prior to

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the formal Contract documents being signed by both parties, unless written agreement to do so has been given by Torbay Council's Legal Service.

5 Glossary

5.1 Tender Documents

The following documents, together with the Appendices and Links at 5.2 below, form the tender documents:

Document	Purpose	For Completion and Submission
Part 1 Information	Contains information on the procurement process and instructions on how it will be conducted.	No
Part 2 Specification	Contains Authority's requirements in relation to the goods, services or works being procured.	No
Part 3 Selection Questionnaire	Contains the Selection Questions and may include the requirement for Applicants to provide some on-line responses.	Yes
SQ Part 1 and 2 Declaration	Contains the Part 1 and Part 2 of the Selection Questionnaire, which must be completed by any organisations the Applicant relies on to meet the selection criteria. This document must be submitted by the Applicant on their behalf.	Yes, if applicable
Part 4 Award Questionnaire	Contains the Award Questions and may include mandatory requirements, method statements and/or technical questions.	Yes
Part 5 Financial Model	Contains the Applicant's Financial Model proposals for this Tender.	Yes
Part 6 Certificates and Declarations	Contains the Certificates and Declarations to which all Applicants must conform.	Yes

Document	Purpose	For Completion and Submission
Terms and Conditions of Contract and draft Lease	Contains the terms and conditions under which the resultant Contract will operate and draft Lease	<p style="text-align: center;">No</p> <p style="text-align: center;">Applicants are required to confirm acceptance as part of their response</p>

5.2 Appendices and Links

5.2.1 Appendix A ProContract User Guide;

5.2.2 Appendix B Confidentiality Agreement;

5.2.3 Appendix C Base Data of Staff (Confidential);

5.2.4 Appendix D Actuary Report (Confidential);

5.2.5 Appendix E Employer Briefing 3 - 2019 Actuarial Valuation - COVID-19 Update (Confidential);

5.2.6 Appendix F Guarantee Bond - 2020 (Confidential);

5.2.7 Appendix G Torbay Local Agreement Early Years Funding 20-21;

5.2.8 Appendix I Barewell Road Site Plan - Nursery Location;

5.2.9 Appendix J St Margaret's Primary School Plan - Nursery is Block F;

5.2.10 Appendix K Barewell Road Nursery - Block F - Floor Plan;

5.2.11 Appendix L Presentation Requirements;

5.2.12 Selection Questionnaire – List of Mandatory and Discretionary Exclusions:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf

5.2.13 Selection Questionnaire – EU Definition of an SME:

<http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/>

5.2.14 Selection Questionnaire – PSC Guidance:

<https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>

5.3 Definitions

Term	Definition
Torbay Council	The Contracting Authority
Applicant	An organisation that may respond to this Tender.
Authority Authorised Representative	The Officer leading the Tender process on behalf of Torbay Council who will be responsible for managing the resultant Contract.
Award	The process by which Torbay Council will determine the successful bidder in accordance with <i>Regulation 67 Contract award criteria</i> of the Public Contracts Regulations 2015.
Award Questions	The written response submitted by the Applicant to evidence their ability to meet Torbay Council's requirements, which will form part of the evaluation process upon which award of the Contract will be based.
Bidding Model	The Applicant's proposals relating to any consortia or sub-contracting arrangements that will be put in place in order to deliver the Contract.
Call for Competition	The Contract Notice sent electronically for publication in the Official Journal of the European Union .
Confidential Information	Any information or documents which Torbay Council considers to be confidential in nature and which will only be made available to Applicants who sign and submit a Confidentiality Agreement.
Consortia/Consortium	Two or more persons, at least one of whom is an economic operator, acting jointly for the purpose of being awarded a public contract in accordance with <i>Regulation 19 Economic operators</i> of the Public Contracts Regulations 2015.
Contract Term	The length of the Contract including extensions, if available.
Contracting Authority	Torbay Council and any other Authority on whose behalf Torbay Council may be working.

Term	Definition
Contractor	The Applicant awarded the Contract culminating from an offer to supply accepted by Torbay Council.
Messaging Facility	The area within ProContract where Applicants submit clarification questions and Confidentiality Agreements during the tender process and through which Torbay Council will post its replies.
Documents	All of the tender documents in relation to this Tender.
Eligible Users	Any organisation given access to the Contract resulting from this Tender.
Lead Applicant	The organisation leading the bidding process on behalf of its consortia or sub-contractor partners.
Lot	One of a number of categories of goods or services into which a single procurement process has been divided. The use of lots potentially allows for multiple providers to be appointed following a single procurement process.
Official Purchase Order	Torbay Council's Official Purchase Order, to which these conditions apply.
ProContract	The e-tendering portal through which Torbay Council advertises opportunities and conducts Tenders.
Price Review Mechanism	The mechanism that will be used during the life of the Contract to review and vary the price.
Procurement Representative	The Procurement Officer who is leading the procurement process on behalf of Torbay Council.
Public Contracts Regulations	The UK legislation concerning public procurement, which can be found at: www.legislation.gov.uk .
Relevant Tax Authority	The organisation responsible for administering tax policy in the country in which the Applicant's organisation is established.
Standstill	The period, as set out in Regulation 87 of the Public Contracts Regulations 2015, immediately following notification of the award decision to Applicants during which Torbay Council must not enter into the Contract.

Term	Definition
Supplying the South West	Means the same as ProContract.
Tender	The invitation to bid for this Contract; and / or The Applicant's response to this tender opportunity.
Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE)	The regulations which govern how employers must deal with transfer of staff when a service or business changes hands from one employer to another in order to ensure the principal terms of employees' rights are protected.