

Invitation to Participate in Dialogue

1 Interpretation

The definitions below apply in this **Invitation to Participate** in a **Dialogue** (ITPD).¹

Agreement(s): means the agreement(s) to be entered into on behalf of Torbay Council and by one or more Qualified Bidders for the provision of the Project.

Authority: means Torbay Council.

Dialogue Phase: means the period of commercial, technical and legal meetings described in Section 3.3 of Part 1 (Information)².

Dialogue Protocol: means Torbay Council's protocol concerning the conduct of the Dialogue Phase set out in the Annex.

Final Tender: means a Qualified Bidder's proposal prepared and submitted in response to and in accordance with the requirements of the ISDS.

Invitation to Submit Outline Solutions (ISOS): means as described in Section 3.3 of Part 1 (Information).

Invitation to Submit Final (ISFS): means the document to be issued by Torbay Council pursuant to Regulation 30(15) of the Regulations at conclusion of the Dialogue Phase seeking Final Tenders.

Lots: means any of the lots identified in the OJEU Notice.

OJEU Notice: means the notice published in the Official Journal of the European Union on [DATE] under reference [DETAILS].

Selection Questionnaire (SQ): means the questionnaire issued to potential providers interested in taking part in the procurement.

Project: means the design, construction, operation, development and promotion of housing at the site at [Collaton St Mary]/[Preston Down Road].

Procurement Documents: means as defined in the Regulations.

Qualified Bidders: means the organisations qualifying and selected as candidates for the ITPD stage of the procurement.

Regulations: means the Public Contracts Regulations 2015.

Response: means a Qualified Bidder's proposal prepared and submitted in response to and in accordance with the requirements of the ISOS and/or the ISFS.

¹ Torbay Council reserves the right to amend, refine, expand upon, change or supplement this ITPD document and any information contained in it or documents referred to or accompanying it at any time after publication of the Contract Notice.

² Please see the timetable in Part 1 (Information) Section 2.7.

Words and Phrases:

- (a) defined in the Agreements have the same meaning and effect when used in this ITPD; and
- (b) defined in the Regulations have the same meaning and effect when used in this ITPD.

2 Introduction

2.1 Background

Torbay Council is procuring a partner to undertake the Project by means of a Competitive Dialogue Procedure which is being conducted under Regulation 30 of the Regulations. Under this procedure, Torbay Council shortlists and selects applicants on the basis of financial and technical experience and invites them to participate in the Dialogue Phase. Torbay Council then enters into separate meetings with each Participant to discuss Torbay Council's needs and requirements in greater detail, the aim of which discussions shall be to identify and define the means best suited to satisfying them. The Dialogue Phase comprises meetings with each Qualified Bidder until such time as Torbay Council is satisfied that it has identified one or more solutions to its needs and requirements whereupon the Dialogue Phase is brought to an end and Torbay Council invites remaining Qualified Bidders to submit a Final Tender.

2.2 Pre-qualification

Interested parties were provided with the SQ and access to the Procurement Documents in accordance with the Regulations. The SQ sought responses from interested parties on their technical capacity or professional ability and their economic and financial standing. Torbay Council evaluated the SQ responses and selected the Qualified Bidders. This ITPD is issued only to Qualified Bidders.

2.3 Invitation to participate in dialogue

You are invited to participate in the Dialogue process and in consideration of your organisation/consortium being invited to Participate in Dialogue by Torbay Council and doing so, your organisation/consortium and its advisers agree to adhere to the Protocol in the Annex. An original hard copy of this Protocol will need to be signed and returned to Torbay Council by no later than the first meeting with Torbay Council.

3 Purpose and scope of the ITPD

This ITPD:

- (a) marks the start of the Dialogue Phase and provides information about this period;
 - (b) explains the procedure and process to be followed during the Dialogue Phase; and
 - (c) [attaches as annexes various documents which will be referred to:] and
- comprises:

(d) this ITPD document and the Annex;

(e) **[to be stated]**.

4 General Information

4.1 Acceptance of terms in ITPD

By participating in the Dialogue Phase, Qualified Bidders are deemed to have accepted the terms of the ITPD and Dialogue Protocol and all documents referred to or annexed to it.

4.2 Queries

Any queries relating to this ITPD must be submitted in accordance with the Tender Requirements stated at Part 1 (Information), Section 4. Torbay Council will respond to all reasonable queries as soon as possible. All queries and responses will be dealt with through the Messaging facility on www.supplyingthesouthwest.org.uk only. Torbay Council reserves the right to issue the response to any query to all Qualified Bidders. If a Qualified Bidder wishes Torbay Council to treat a query as confidential and not issue the response to all Qualified Bidders, it must state this when submitting the query. If, in the opinion of Torbay Council, the query is not confidential, Torbay Council will inform the Qualified Bidder and it will have an opportunity to withdraw it. If the query is not withdrawn, the response will be issued to all Qualified Bidders.

4.3 Warnings or disclaimers

4.3.1 While the information and documents contained or referred to in or accompanying this ITPD are believed to be correct at the time of issue, neither Torbay Council nor its advisors will accept any liability for its accuracy, adequacy or completeness, nor will any express or implied warranty be given. This exclusion extends to liability for any statement, opinion or conclusion contained in or any omission from this ITPD and for any other written or oral communication transmitted (or otherwise made available) to any Qualified Bidder during the procurement of the Project including the Dialogue Phase. No representations or warranties are made for these statements, opinions or conclusions. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of Torbay Council.

4.3.2 If a Qualified Bidder proposes to enter into the Agreement(s) with Torbay Council, it must rely on its own enquiries and on the terms and conditions set out in the Agreement(s) (as and when finally executed), subject to the limitations and restrictions specified.

4.3.3 Neither the issue of this ITPD, nor any of the information presented in or with it or during any dialogue meetings or in any subsequent clarifications issued, should be regarded as a commitment or representation on the part of Torbay Council (or any other person) to enter into a contractual arrangement.

4.3.4 This ITPD should not be regarded as an investment recommendation made by Torbay Council or its appointed advisors.

4.4 Changes to the ITPD

- 4.4.1 The information and documents contained in this ITPD may be changed by Torbay Council from time to time without prior (or any) notice being given by Torbay Council.
- 4.4.2 In this document, words such as "anticipates", "expects", "projects", "intends", "plans", "believes" and "will" (and words and terms of similar substance) indicate Torbay Council's present expectation of future events, which are subject to a number of factors and uncertainties that could cause actual requirements to differ materially from those described.
- 4.4.3 Although it is intended that the Dialogue Phase of the procurement exercise will take place in accordance with this ITPD and the provisions of Sections 2.7 and 3.3 of Part 1 (Information), Torbay Council reserves the right to terminate, amend, vary, alter, supplement, extend or suspend the process by notice in writing. If Torbay Council does so then it shall have no liability to Qualified Bidders in respect of additional costs or otherwise.

4.5 Confidentiality

- 4.5.1 This ITPD and any other documents and information subsequently issued by Torbay Council during the Dialogue Phase as part of this procurement are (or will be) subject to the terms of any confidentiality undertaking signed by each Qualified Bidder before the issue of this ITPD.
- 4.5.2 This ITPD may only be used in connection with the preparation by Qualified Bidders for the Dialogue Phase.
- 4.5.3 No publicity regarding the Project or the award of any contract will be permitted unless and until Torbay Council has given express written consent to the relevant communication. For example, no statements may be made to the media regarding the nature of any response, its contents, any ongoing dialogue between Torbay Council and a Qualified Bidder or any proposals relating to it, without Torbay Council's prior written consent.

4.6 Eligibility requirements and changes affecting a Qualified Bidder

- 4.6.1 Qualified Bidders must inform Torbay Council in writing of any change in control, composition or membership of that Qualified Bidder or its consortium members and of any other material change to the Qualified Bidder's response to the SQ. Torbay Council reserves the right to disqualify any Qualified Bidder from any further participation in the procurement process in these circumstances
- 4.6.2 Qualified Bidders are reminded of the eligibility requirements applying to the procurement process at all times. In particular, these include the provisions set out in regulation 57 of the Regulations. Any change in the eligibility of a Qualified Bidder must be notified immediately to Torbay Council in writing and may result in the Qualified Bidder being disqualified from any further participation in the procurement.

4.7 Qualified Bidder conduct and conflicts of interest

- 4.7.1 Any attempt by Qualified Bidders or their advisors to influence the award process in any way may result in the Qualified Bidder being disqualified.
- 4.7.2 Qualified Bidders are responsible for ensuring no conflicts of interest exist between the Qualified Bidder, their advisors and their respective staff, and Torbay Council, its advisors and their respective staff. Any Qualified Bidder who fails to comply with this requirement may be disqualified from the procurement at the discretion of Torbay Council.

4.8 Torbay Council's rights

Torbay Council reserves the right to:

- (a) waive the requirements of all or any part of this ITPD and/or the conduct of the Dialogue Phase;
- (b) withdraw this ITPD at any time, and to re-issue it on the same or any alternative basis;
- (c) make whatever changes it sees fit to the timetable, structure content of or procedure for the Dialogue Phase.

4.9 Costs

Torbay Council will not be liable for any costs, expenditure in the Dialogue Phase, work or effort incurred by a Qualified Bidder in proceeding with or participating in this procurement exercise, including if the procurement process is terminated or amended by Torbay Council.

4.10 Law

This ITPD and any disputes concerning it (including non-contractual disputes or claims) shall be governed by English law and subject to the jurisdiction of the English courts.

5 Timetable

The key dates for this procurement exercise as currently anticipated are set out at Section 2.7 of Part 1 (Information).

6 Activity in the Dialogue Phase

The Dialogue Phase

- 6.1 Torbay Council will hold dialogue meetings with Qualified Bidders who need to ensure they have appropriate legal, technical and financial support available during this phase of the procurement and maintain continuity of this personnel throughout the process.
- 6.2 The dialogue meetings with each Qualified Bidder will discuss the ITPD documentation to address:
- (a) [commercial and financial issues;

(b) legal issues; [and]

(c) [technical issues.]

During the dialogue meetings, Torbay Council will seek to identify one or more solutions which it considers will meet its needs and requirements. The process may include presentations, interviews and site visits.

6.3 ISOS stage

Torbay Council intends, as explained in Part 1 (Information) Section 3.3, to hold a process of de-selection to eliminate from further participation or consideration in the procurement process any Qualified Bidders whose solutions, in Torbay Council's opinion, appear unlikely to produce the most economically advantageous solution to Torbay Council's needs and requirements. Qualified Bidders should not, therefore, automatically expect to proceed to the ISDS stage of the procurement.

6.4 ISOS Stage Response

6.4.1 Details of the procedure Torbay Council will adopt in conducting the ISOS stage and evaluation process will be set out in the ISOS to be sent to qualified bidders.

6.4.2 All proposals contained in a Response must be capable of delivery and the Response must have commitment from within the Qualified Bidder's organisation.

6.4.3 A Response may not refer to any information contained in the SQ submitted by the Qualified Bidder.

6.4.4 The ISOS Response will be evaluated in accordance with the provisions of Sections 3.3 and 3.6 of Part 1 (Information). The outcome will be communicated before the ISFS commences.

6.5 Resumption of Dialogue

The Dialogue Phase will resume when indicated in the timetable set out at Section 2.7 of Part 1 (Information) unless indicated to the remaining Qualified Bidders (after deselection) to the contrary.

6.6 Closure of the Dialogue Phase

When Torbay Council has identified the solution or solutions which are capable of meeting its needs and requirements, Torbay Council will close the Dialogue Phase in accordance with the procedures set out at Part 1 (Information) Section 3.4 and Regulation 30(15) of the Regulations and will invite the remaining Qualified Bidders to submit a Final Tender.

6.7 The ISFS stage

6.7.1 Details of the procedure Torbay Council will adopt in conducting the ISFS stage process will be set out in the ISDS to be sent to the remaining Qualified Bidders.

6.7.2 Announcement of the contract award decision will be made in accordance with Section 4 of Part 1 (Information).

6.7.3 Qualified Bidders are reminded that in accordance with the statement in the Selection Questionnaire at page 13 of Part 1 (Information) further due diligence before the final contract award decision is announced may be undertaken by Torbay Council.

6.8 **Contract award**

Details of the Agreement Torbay Council proposes to use are set out in **[to be stated]**.

7 **Accompanying Documentation and Information**

Enclosures:

1 **[to be stated]**

2 **[to be stated]**

The Annex³

1 Competitive Dialogue Protocol

- 1.1 This document is not intended to replace or amend any of the Instructions to Qualified Bidders included in the Invitation to Participate in Dialogue (the **Invitation Document**) or in Part 1 (Information), Section 4 – Tender Requirements.
- 1.2 Qualified Bidders should ensure that all members of their bid team, including their sub-contractors (first and second tier) and advisers are aware of the requirements for participation in the Dialogue Phase set out in this Protocol. Qualified Bidders should ensure that all members of their bid team understand the legal implications of a Competitive Dialogue Procedure under the Regulations.
- 1.3 Qualified Bidders agree that by participating in the Competitive Dialogue they commit to this protocol in relation to the Dialogue Phase. Qualified Bidders acknowledge that a delay in closing the Dialogue Phase will have serious resource implications for Torbay Council. Qualified Bidders agree to work with Torbay Council to ensure that the dialogue is completed within the agreed timescales.
- 1.4 Torbay Council reserves its right to amend this protocol at any time during the Dialogue Phase and to issue updated or replacement protocol documentation.

2 Resources and meetings

- 2.1 Torbay Council has a challenging procurement timetable and wishes to optimise the benefits of the Competitive Dialogue Procedure by engaging in effective and productive Dialogue during this period. Qualified Bidders agree to provide sufficient resources from the outset to ensure that this timetable will be met.
- 2.2 Qualified Bidders are to note that all dialogue meetings will be held at **[to be stated]**.
- 2.3 Qualified Bidders must ensure that the relevant attendees are available to attend dialogue meetings during this time period. Attendees should be of sufficient seniority to make decisions and agree actions during the dialogue meetings.
- 2.4 In accordance with Regulation 30, all issues must be agreed and resolved during Dialogue. Once Dialogue has been formally closed by Torbay Council, the opportunity for clarification, specification or optimisation of the Final Tender and for negotiation (limited) to the confirmation of financial commitments or other terms contained within the Final Tender provided that such negotiation does not have the effect of materially modifying essential aspects of the tender and does not risk distorting competition or causing discrimination. Accordingly, Qualified Bidders are expected to resource, attend and participate in all dialogue meetings so that this objective can be achieved.

³ Torbay Council reserves the right to amend, refine, expand upon, change or supplement this Protocol and any information contained in it or documents referred to or accompanying it at any time after publication of the Contract Notice.

3 **Meeting agendas**

- 3.1 Torbay Council will confirm meeting dates and issue draft agendas. Torbay Council may update these agendas with more detail as and when necessary in its opinion and re-issue to the Bidders.
- 3.2 The aim of the meeting agendas is to ensure that Bidders understand what will be discussed at each meeting and to assist in planning attendees and resources. Where relevant there may also be specific instructions as to work that is required to be carried out by each Qualified Bidder prior to a meeting. Qualified Bidders must supply documents to be used in meetings at least 2 working days in advance.
- 3.3 At the end of each dialogue meeting, attendees will agree a list of key points agreed, action points and timescales for carrying out these actions.

4 **Meetings topics**

- 4.1 Dialogue meetings will be held under the broad outline of:
 - i Round 1. **[to be stated]**
 - ii Round 2. **[to be stated]**
- 4.2 It is anticipated that the dialogue meetings will cover the matters in 4.2 above but Torbay Council reserves the right to introduce different topics. Qualified Bidders may be invited to propose additional topics in advance of dialogue meetings.

5 **Correspondence during the Dialogue**

- 5.1 Qualified Bidders are referred to **[to be stated]**, which shall apply to all stages of the Dialogue Phase.

6 **Meeting attendees**

- 6.1 Qualified Bidders should notify Torbay Council of the attendees for each dialogue meeting at least 2 working days in advance of the meeting. This is to facilitate security arrangements and attendees may not be able to attend meetings if Torbay Council has not been notified in advance of their arrival.
- 6.2 The contact point for emailing attendees at Torbay Council is **[to be stated]**.
- 6.3 Torbay Council requests that Qualified Bidders keep the number of attendees to a minimum i.e. only those who will be making an active contribution to the meeting, to ensure meetings are conducted efficiently and productively. Torbay Council reserves the right to ask Qualified Bidders to reduce the number of attendees if necessary.
- 6.4 Qualified Bidders must ensure that those attending the meetings are authorised on behalf of their organisation to participate in the Dialogue Phase and meeting, including making and confirming all relevant decisions that may arise in any dialogue meetings.

7 **Updates**

- 7.1 If it may be necessary to update Qualified Bidders on new developments or additional information or documentation arising on the procurement exercise and the Project.
- 7.2 If Qualified Bidders request clarifications, Torbay Council reserves the right to share the response (duly anonymised) with other Qualified Bidders.

8 **Confidentiality and FOIA**

Qualified Bidders are to note and follow the procedures set out in the Procurement Documents (Part 1, Section []) relating to confidentiality and the Freedom of Information Act 2000.

9 **Costs**

- 9.1 Qualified Bidders shall bear their own costs in respect of their participation in the Competitive Dialogue including the Dialogue Phase, including the conduct of due diligence, preparation of documents and discussions all of which are “subject to contract”.
- 9.2 Torbay Council accepts no liability for costs incurred by any Qualified Bidders if the procurement process ceases or a contract is not awarded.

10 **General**

- 10.1 This Protocol shall come into force on **[to be stated]** (or if earlier such other date that the Invitation to Participate in Dialogue document is issued to the Qualified Bidders) and shall continue in force for the duration of the Dialogue Phase or until otherwise notified by Torbay Council.
- 10.2 Torbay Council reserves the right to vary, add to, delete or suspend the operation of any of this Protocol by notice to the Qualified Bidders.
- 10.3 Qualified Bidders are asked to sign and return a copy of this Protocol to confirm their acceptance of and agreement to the terms of this Protocol, and return it to Torbay Council.

Signed for and on behalf of	Signed for and on behalf of
Dated	Dated