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**INVITATION TO TENDER**

**for the provision of**

**Belluton Narrows Slope Stabilisation**

South West reference number: DN127849

Date of release: 27 May 2016

Version No: 01

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**SECTION 1 – THE REQUIREMENT**

1.1 **Introduction**

This document sets out the requirements for the design and construction of slope stabilisation works at Belluton Narrows.

1.2 **Overview**

The Council wishes to establish a works Contract for the provision of Belluton Narrows Slope Stabilisation project.

This is a works Contract and is below the threshold level for the EU Directives. However, the Public Contracts Regulations 2015 guidelines will apply in terms of transparency and fairness to all tenderers.

1.3 **Background**

The B3130 road passes north-east to south-west through the village of Belluton, approximately 1km north of Pensford and 8km south of the centre of Bristol. The road is set in a steep cutting that is approximately 250m long, and is up to 5m deep. The cutting is partially vegetated with ivy, semi mature and mature trees, with occasional near vertical to overhanging rock faces, soil debris at the toe and small discrete soil slip scarps exposed.

The cutting slopes have a history of instability with localised soil and rock falls onto the road presenting a hazard to road users and requiring regular maintenance by Bath & North East Somerset Council (B&NES or ‘the Council’). Slope debris also appears to have blocked highway drainage at the toe of the slope.

The Council wishes to improve the stability of the cutting to reduce maintenance requirements and the risk to road users.

1.4 **Specification**

The Specification for the works is set out in Section 9 of this document (the Works Information).

1.4.1 Selection of Lots

Not used.

1.5 **Scope of Contract**

The Contract is to be a design and construct contract based on Option A of the Engineering and Construction Contract (ECC) (the third edition of the New Engineering Contract or NEC), as published for the Institution of Civil Engineers by Thomas Telford in April 2013, as modified and amended as identified in Section 8 of this document.

The scope of works is identified in Section 9 of this document (the Works Information).

Variants bids will only be considered as set out in Section 3 of this document.

1.6 **Term of Contract**

The term of the Contract is identified in Section 6 of this document (Contract Data part one).

1.7 **Value**

The value of the Contract is identified in Section 7 of this document (Contract Data part two).

1.8 **Dates**

The dates for the *works* are identified in Section 6 of this document (Contract Data part one).

**SECTION 2 – INSTRUCTIONS TO TENDERERS**

2.1 **E-tender System**

The Council uses ProContract as its e-tendering system. Assistance in relation to the e-tender system is available to Tenderers via the Supplier Help Icon within the system.

Supplier Guidance documents are also available to view and download.

If after reading the ProContract reference guides you are still unable to resolve your issue in using the system and require support please contact the technical Support Team

Due North Technical Support Team

By Tel: 0844 334 5204 (lines open from 08:30am to 17:00pm Monday to Friday, excluding English public holidays).

By Email: swsupport@due-north.com

2.2 **Register Intent or opt out**

The “Register Intent” button will be greyed out until the mandatory requirement to click on “View ITT” has been carried out.

Once the Tender Information has been viewed, Tenderers will be able to click on “Register Intent” which will inform the Council of your intention to respond to this opportunity.

If a Tenderer does not wish to, or is unable to submit a Tender and not interested in proceeding, then they are required to click on “Opt Out” to decline the opportunity.

2.3 **Preparation of tender**

Organisations must obtain for themselves all information necessary for the preparation of their Tender response and all costs, expenses and liabilities incurred by the Tender in connection with the preparation and submission of the Tender shall be borne by the Tenderer, whether or not their offer is successful.

Information supplied to the Tenderer by Council staff or contained in Council publications is supplied only for general guidance in the preparation of the Tender. It shall remain the property of the Council and shall be used only for the purpose of this procurement exercise.

Tenderers must satisfy themselves as to the accuracy of any such information and no responsibility is accepted by the Council for any loss or damage of whatever kind and howsoever caused arising from the use by Tenderers of such information.

Responses to each Tender question should be written concisely and clearly answer the question posed in English.

Tenderers will only be able to respond to questions that require an input from them and are located within the Invitation to Tender document attached within the e-tender system.

2.4 **Price Schedule/s**

The Council requires Tenderers to complete and upload a completed Activity Schedule and other pricing documentation (as set out in Section 4) within the e-tender system.

All prices shall be in Pounds Sterling.

2.5 **Other Documents or Supporting Evidence**

If instructed to do so within the e-tender system, the Tenderer must complete and upload other documentation that may be provided with this Tender process, or upload evidence to support their Tender submission.

Tenders must not be qualified, conditional, or accompanied by statements that could be construed as rendering them equivocal and/or placed on a different footing to those of other Tenderers. Only tenders submitted without qualification, in accordance with this invitation to tender will be accepted for consideration. The Council’s decision on whether or not a tender is acceptable will be final and the Tenderer concerned will not be consulted. If a Tenderer is excluded from consideration, the Tenderer will be notified.

2.6 **Submission deadline**

Tenderers are required to submit their Tender within the e-tender system by 12 noon on the closing date for receipt of Tenders as identified in paragraph 2.18 and should allow sufficient time to complete questions and upload documentation to the e-tender system, where requested to do so. Tenders received after the closing date will not be considered.

Failure to answer and complete the Tender within the e-tender system will result in the Council rejecting the Tender as a Fail / Non-compliant tender.

Failure to complete and upload any required documentation within the e-tender system will result in the Council rejecting the Tender as a Fail / Non-compliant tender.

The Council is under no obligation to consider partial or late submissions.

If the Council issues an amendment to the original Tender process, and if it regards that amendment as significant, an extension of the closing date may, at the discretion, of the Council be given to all Organisations.

The information supplied in response to the Tender will be checked for completeness and compliance before responses are evaluated. The Council expressly reserves the right to require a Tenderer to provide additional information supplementing or clarifying any of the information provided in response to the requests set out in the Tender. However, the Council is not obliged to make such requests.

Tenderers shall accept and acknowledge that by issuing this ITT the Council shall not be bound to accept any Tender and reserves the right not to conclude a Contract for some or all of the works for which tenders are invited.

2.7 **Tender Validity**

The tender should remain open for acceptance for a period of 120 days. A Tender valid for a shorter period may be rejected.

2.8 **Communication**

All contact and communication during this procurement should be submitted in writing through the e-tender system.

Tenderers should seek to clarify any points of doubt or difficulty via the e-tender system in sufficient time before the closing date of the Tender, to enable to the Council to respond to all Tenderers. It is not acceptable for Tenderers to seek clarifications via telephone or e-mail outside of the e-tender system.

Where the Council considers any question or request for clarification to be of material significance it may communicate both the query and the response, in a suitably anonymous form, to all interested parties. Tenderers should therefore not include within the question placed their organisation’s name and any potential commercially sensitive information.

2.9 **Confidentiality**

The Tenderer must keep confidential and will not disclose to any third parties any information contained within their bid. They shall not release details other than on an ‘In Confidence’ basis to those whom they need to consult for the purpose of preparing the Quote response, such as professional advisors or joint bidders.

The Tender shall not be canvassed for acceptance or discussed with the media, any other Organisation, member/officer of Bath & North East Somerset Council, or their representatives. Any Tenderer trying to exert any undue influence during the tender process could be excluded from the process.

2.10 **Grounds for Rejection**

The Council reserves the right to reject or disqualify a Tender and/or its Consortium Members where:-

* A Tender is submitted late, is completed incorrectly, is materially incomplete or fails to meet the Council’s submission requirements which have been notified to Tenderers;
* the Tenderer and/or its Consortium Members are guilty of material misrepresentation in relation to its application and/or the process;
* the Tenderer and/or its Consortium Members contravene any of the terms and conditions of this document or the ITT;
* there is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the Tenderer and/or its Consortium Members; or
* dis-qualification of a Tenderer will not prejudice any other civil remedy available to the Council and will not prejudice any criminal liability that such conduct by a Tenderer may attract.

2.11 **Disclaimer**

Whilst the information in this ITT and supporting documents has been prepared in good faith, it does not purport to be comprehensive nor has it been independently verified.

Neither the Council nor their advisors, respective directors, officers, members, partners, employees, other staff or agents:

* make any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the ITT; or
* accepts any responsibility for the information contained in the ITT or for their fairness, accuracy or completeness of that information nor shall any of then be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication.

Any Contract concluded as a result of this ITT shall be governed by English law.

2.12 **Freedom of Information Act**

Tenderers should note that the Council is subject to the ‘Freedom of Information Act 2000’ and provisions are in force allowing any person access to information held by the Council. There are limited exemptions to this including information, the disclosure of which would be an actual breach of confidence or likely to prejudice the commercial interests of any person, or information that constitutes a trade secret. Tenderers are requested to state which part, if any, of the information supplied with their tenders is confidential or commercially sensitive or should not be disclosed in response to a request for information. Where Tenderers state that any information is confidential or commercially sensitive, they must also state why they consider the information to be confidential or commercially sensitive. Tenderers’ statements will be considered in the context of the exemptions provided for under the Freedom of Information Act and the Council is unable to give any guarantee that the information in question will not be disclosed.

2.13 **Transparency**

Suppliers and those organisations who bid (Tenderers) should be aware that if they are awarded a contract, the resulting contract between the supplier and the Council will be published under the government transparency policy. To view details of what we must publish, see the Local Government Transparency Code 2015 at the link below.

[Local Government Transparency code 2015](file:///S%3A%5CCorporate%20Procurement%20Team%5CProcurement%5CTransparency%20Code%202014%5CLocal%20Government%20Transparency%20code%202015.pdf)

The Council is required to publish details of all expenditure over £500 made to its suppliers and all contracts and framework agreements over £5000.

Details will be published on the Council’s website and the government’s transparency website (Data.gov.uk) and Contracts Finder.

2.14 **Equality**

The Council is committed to equality of opportunity for everyone and believes that the diversity of the local community is a major strength that contributes to the social and economic prosperity of the area.   This extends to the way it deals with its suppliers. All suppliers will be treated fairly and equitably before, during and after this tender procedure.

2.15 **Ethical Standards**

Ethical procurement takes the wider view and incorporates the net benefits for both the buyer organisation and the wider world. The Council will consider the impact of environmental, economic and social factors along with price and quality and will lookout for signs of unacceptable practices in the supply chain such as fraud, corruption, modern-day slavery, human trafficking and wider issues such as child labour.

2.16 **Social Value**

The Council will procure its services, where appropriate, in line with the Public Service (Social Value) Act 2012. This Act asks commissioners to think about securing extra benefits for their area when they are buying services.

When responding to an Invitation to Tender, Tenderers might wish to consider the following:-

* Understand the needs of the local area and the Council’s priorities;
* Articulate the social value offer - quantify the value for money you will provide and make the case for your social value offer being a way for commissioners to navigate cost savings pressures;
* Help the Council to understand the full range of innovation you can provide; and
* Consider guidelines for paying a Living Wage.

For further details on the Council’s Social Value Policy, tenderers can request a copy of the policy from the Procurement Team by e-mailing procurement@banesnes.gov.uk

2.17 **Step-In Rights**

Please note that the Council reserves the right to incorporate step-in rights into this contract in the incidence of a failure of the main contractor or a sub-contractor to carry out their obligations under the contract.

2.18 **Procurement Timetable**

The indicative timetable for this procurement is set out below. This is intended as a guide and, whilst the Council does not intend to depart from the timetable, it reserves the right to do so at any time.

|  |  |
| --- | --- |
| **Date or Target Date** | **Activity** |
| **27 May 2016** | ITT issued to potential suppliers |
| **10 June 2016** | Closing date for clarification questions to be submitted |
| **17 June 2016** | Council responds to clarification questions |
| **24 June 2016, 12 noon** | Closing date and time for receipt by the Council of tenderers responses to the ITT |
| **27 June 2016** | Evaluation of the ITT responses by tender panel |
| **Not applicable** | Reference Site Visit (if required) |
| **22 July 2016** | Award decision made and award letter issued |
| **31 July 2016** | Contract award concluded |
| **1 August 2016** | Commencement date of Contract |

2.19 **Required documents**

Within this Tender process, Tenderers have been provided with the following documentation. Where indicated these are required to be completed and uploaded within the e-tender system.

|  |  |
| --- | --- |
| **DOCUMENT TITLE** | **COMPLETE AND UPLOAD** |
| Section 1 – The Requirement including specification | 🗶 |
| Section 2 – Instructions to Tenderers | 🗶 |
| Section 3 – Questionnaire (including separate Appendices, as appropriate) | ✓ |
| Section 4 – Pricing Schedule | ✓ |
| Section 5 – Evaluation and Award | 🗶 |
| Section 6 – Contract Data part one | 🗶 |
| Section 7 - Contract Data part two | ✓ |
| Section 8 – Additional *conditions of contract* | 🗶 |
| Section 9 – Works Information | 🗶 |
| Section 10 – Site Information | 🗶 |
| Section 11 - Appendix 1 – Non Collusion Certificate | ✓ |
| Section 11 - Appendix 2 - Scoring Methodology  | 🗶 |
| Section 11 - Appendix 3 - Form of Tender | ✓ |
| Section 11 – Appendix 4 – Form of Agreement | 🗶 |
| Section 11 – Appendix 5 – Form of Performance Bond | 🗶 |
| Section 11 – Appendix 6 – Form of Parent Company Guarantee | 🗶 |
| Section 11 - Appendix 7 – Tenderer’s proposals | ✓ |

Please Note: The completion and electronic return of all the documents ticked above at the time of tendering is mandatory.

Tenderers should note that Appendices 4, 5 and 6 (as appropriate) will need to be completed and submitted by the successful Tenderer either prior to contract award or as specified in the conditions of contract.

**SECTION 3 - QUESTIONNAIRE**

**A Notes for completion**

i. Please ensure that all questions are completed in full, and in the format requested. Failure to do so may result in your submission being disqualified.

If the question does not apply please state clearly ‘N/A’.

ii. Should you need to provide additional Appendices in response to the questions, these should be numbered clearly and listed as part of your declaration.

iii. Please return a completed version of this document with your tender submission using the e-tendering system.

**Verification of Information Provided**

iv. Whilst reserving the right to request information at any time throughout the procurement process, the Council may enable the Tenderer to self-certify that there are no mandatory/ discretionary grounds for excluding their organisation. When requesting evidence that the supplier can meet the specified requirements (such as the questions in section 5 relating to Technical and Professional Ability) the Council may only obtain such evidence after the final tender evaluation decision i.e. from the winning Tenderer only.

**Sub-contracting arrangements**

v. Where the Tenderer proposes to use one or more sub-contractors to deliver some or all of the contract requirements, a separate Appendix should be used to provide details of the proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.

**Confidentiality**

vi. When providing details of contracts in answering section 5, the Supplier agrees to waive any contractual or other confidentiality rights and obligations associated with these contracts.

vii. The Council reserves the right to contact the named customer contact in section 5 regarding the contracts included in section 5. The named customer contact does not owe the Council any duty of care or have any legal liability, except for any deceitful or maliciously false statements of fact.

viii. The Council confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the Public Contract Regulations.

**B Questionnaire**

1. **Supplier Information**

|  |  |
| --- | --- |
| **1.1 Supplier details** | **Answer** |
| Full name and address of the Supplier  |  |
| Registered company/charity number |  |
| Registered VAT number |  |
| Name of parent company |  |
| Please mark ‘X’ in the relevant box to indicate your trading status | i) a public limited company  |  ▢ Yes |
| ii) a limited company |  ▢ Yes |
| iii) a limited liability partnership | ▢ Yes |
| iv) other partnership | ▢ Yes |
| v) sole trader | ▢ Yes |
| vi) other (please specify) | ▢ Yes |
| Please mark ‘X’ in the relevant boxes to indicate whether any of the following classifications apply to you | i) Voluntary, Community and Social Enterprise (VCSE) | ▢ Yes |
| ii) Small or Medium Enterprise (SME) [[1]](#footnote-1) | ▢ Yes |
| iii) Sheltered workshop | ▢ Yes |
| iv) Public service mutual | ▢ Yes |

|  |  |
| --- | --- |
| **1.2 Bidding model** |  |
| **Please mark ‘X’ in the relevant box to indicate whether you are:** |  |
| a)   Bidding as a Prime Contractor and will deliver 100% of the key contract deliverables yourself | ▢ Yes |  |
| b)  Bidding as a Prime Contractor and will use third parties to deliver some of the servicesIf yes, please provide details of members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for. | ▢ Yes |  |
| c)   Bidding as Prime Contractor but will operate as a Managing Agent and will use third parties to deliver all of the servicesIf yes, please provide details of members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.d)   Bidding as a consortium but not proposing to create a new legal entity. If yes, please include details of your consortium in the next column and use a separate Appendix to explain the alternative arrangements i.e. why a new legal entity is not being created. Please note that the Authority may require the consortium to assume a specific legal form if awarded the contract, to the extent that it is necessary for the satisfactory performance of the contract. | ▢ Yes▢ YesConsortium membersLead member  |  |
| e)  Bidding as a consortium and intend to create a Special Purpose Vehicle (SPV). If yes, please include details of your consortium, current lead member and intended SPV in the next column and provide full details of the bidding model using a separate Appendix. | ▢ YesConsortium membersCurrent lead memberName of Special Purpose Vehicle |  |

|  |
| --- |
| **1.3 Contact details** |
| Supplier contact details for enquiries  |
| Name |  |
| Postal address |  |
| Phone |  |
| Mobile |  |
| E-mail |  |

|  |
| --- |
| **1.4 Licensing and registration (please mark ‘X’ in the relevant box)** |
| 1.4.1 | Registration with a professional bodyIf applicable, is your business registered with the appropriate trade or professional register(s). | ▢ Yes▢ NoIf Yes, please provide the registration number in this box. |

**2 Grounds for mandatory exclusion**

Tenderers will be excluded from the procurement process if there is evidence of convictions relating to specific criminal offences listed in the table below.

If you have answered “yes” to question 2.2 on the non-payment of taxes or social security contributions, and have not paid or entered into a binding arrangement to pay the full amount, you may still avoid exclusion if only minor tax or social security contributions are unpaid or if you have not yet had time to fulfil your obligations since learning of the exact amount due. If your organisation is in that position please provide details using a separate Appendix. You may contact the Council for advice before completing this form.

|  |  |
| --- | --- |
| **2.1 Within the past five years, has your organisation (or any member of your proposed consortium, if applicable), Directors or partner or any other person who has powers of representation, decision or control been convicted of any of the following offences?** | **Please indicate your answer by marking ‘X’ in the relevant box.** |
| **Yes** | **No** |
| 1. conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime;
 |  |  |
| 1. corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;
 |  |  |
| 1. the common law offence of bribery;
 |  |  |
| 1. bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010; or section 113 of the Representation of the People Act 1983;
 |  |  |
| 1. any of the following offences, where the offence relates to fraud affecting the European Communities’ financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities:
 |  |  |
| (i) the offence of cheating the Revenue; |  |  |
| (ii) the offence of conspiracy to defraud; |  |  |
| (iii) fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978; |  |  |
| (iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006; |  |  |
| (v) fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994; |  |  |
| (vi) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993; |  |  |
| (vii) destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969; |  |  |
| (viii) fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006; or |  |  |
| (ix) the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act; |  |  |
| 1. any offence listed—
 |  |  |
| (i) in section 41 of the Counter Terrorism Act 2008; or |  |  |
| (ii) in Schedule 2 to that Act where the court has determined that there is a terrorist connection; |  |  |
| 1. any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by subparagraph (f);
 |  |  |
| 1. money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002;
 |  |  |
| 1. an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996;
 |  |  |
| 1. an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004;
 |  |  |
| 1. an offence under section 59A of the Sexual Offences Act 2003;
 |  |  |
| 1. an offence under section 71 of the Coroners and Justice Act 2009
 |  |  |
| 1. an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994; or
 |  |  |
| 1. any other offence within the meaning of Article 57(1) of the Public Contracts Directive—
 |  |  |
| (i) as defined by the law of any jurisdiction outside England and Wales and Northern Ireland; or |  |  |
| (ii) created, after the day on which these Regulations were made, in the law of England and Wales or Northern Ireland. |  |  |
| **Non-payment of taxes****2.2 Has it been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which your organisation is established (if outside the UK), that your organisation is in breach of obligations related to the payment of tax or social security contributions?**If you have answered Yes to this question, please use a separate Appendix to provide further details. Please also use this Appendix to confirm whether you have paid, or have entered into a binding arrangement with a view to paying, including, where applicable, any accrued interest and/or fines? |  |  |

**3 Grounds for discretionary exclusion**

The Council may exclude any Tenderer who answers ‘Yes’ in any of the following situations set out in paragraphs (a) to (i);

|  |  |
| --- | --- |
| **3.1 Within the past three years, please indicate if any of the following situations have applied, or currently apply, to your organisation.** | **Please indicate your answer by marking ‘X’ in the relevant box.** |
| **Yes** | **No** |
| 1. your organisation has violated applicable obligations referred to in regulation 56 (2) of the Public Contract Regulations 2015 in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive as amended from time to time;
 |  |  |
| 1. your organisation is bankrupt or is the subject of insolvency or winding-up proceedings, where your assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;
 |  |  |
| 1. your organisation is guilty of grave professional misconduct, which renders its integrity questionable;
 |  |  |
| 1. your organisation has entered into agreements with other economic operators aimed at distorting competition;
 |  |  |
| 1. your organisation has a conflict of interest within the meaning of regulation 24 of the Public Contract Regulations 2015 that cannot be effectively remedied by other, less intrusive, measures;
 |  |  |
| 1. the prior involvement of your organisation in the preparation of the procurement procedure has resulted in a distortion of competition, as referred to in regulation 41, that cannot be remedied by other, less intrusive, measures;
 |  |  |
| 1. your organisation has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;
 |  |  |
| 1. your organisation:

(i) has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or(ii) has withheld such information or is not able to submit supporting documents required under regulation 59 of the Public Contract Regulations 2015; or |  |  |
| (i) your organisation has undertaken to: |  |  |
| (aa) unduly influence the decision-making process of the contracting authority, or |  |  |
| (bb) obtain confidential information that may confer upon your organisation undue advantages in the procurement procedure; or |  |  |
| (j) your organisation has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award. |  |  |

**Conflicts of interest**

In accordance with question 3.1 (e), the Council may exclude the Tenderer if there is a conflict of interest which cannot be effectively remedied which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Tenderer to inform the Council, detailing the conflict in a separate Appendix. Provided that it has been carried out in a transparent manner, routine pre-market engagement carried out by the Council should not represent a conflict of interest for the Tenderer.

**Taking Account of Supplier’s Past Performance**

In accordance with question 3.1 (g), the Council may assess the past performance of a Tenderer (through a Certificate of Performance provided by a Customer or other means of evidence).

**‘Self-cleaning’**

Any Tenderer that answers ‘Yes’ to questions 2.1, 2.2 and 3.1 should provide sufficient evidence, in a separate Appendix, that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively “self-cleans” the situation referred to in that question. The Tenderer has to demonstrate it has taken such remedial action, to the satisfaction of the Council in each case.

**4 Economic and Financial Standing**

|  |  |
| --- | --- |
|  | **ECONOMIC AND FINANCIAL INFORMATION**  |
| 4.1 | Please provide a copy of the audited accounts for the most recent two years for assessment of your economic/financial standing. | ▢ Yes▢ No  |
| 4.2 | Where the authority has specified a minimum level of economic and financial standing and/or a minimum financial threshold within the evaluation criteria for this ITT, please self-certify by answering ‘Yes’ or ‘No’ that you meet the requirements set out here.Refer to Section 11, Appendix 2 - Scoring Methodology. | ▢ Yes▢ No  |
| 4.3 | Are you are part of a wider group (e.g. a subsidiary of a holding/parent company)?If yes, please provide the name below:

|  |  |
| --- | --- |
| Name of the organisation |  |
| Relationship to the Supplier completing the ITT |  |

If yes, please provide Ultimate / parent company accounts if available. If yes, would the Ultimate / parent willing to provide a guarantee if necessary? If no, would you be able to obtain a guarantee elsewhere (e.g. from a bank?) | ▢ Yes▢ No▢ Yes▢ No▢ Yes▢ No |

**5 Technical and Professional Ability**

|  |  |  |
| --- | --- | --- |
| 5 | **Relevant experience and contract examples** |  |
| Please provide details of up to three contracts, in any combination from either the public or private sector, which are relevant to the Council’s requirement and have been performed during the past three years. The named customer contact provided should be prepared to provide written evidence to the Council to confirm the accuracy of the information provided below. |  |
|  |  | Contract 1 | Contract 2 | Contract 3 |
| 5.1 | Name of customer organisation |  |  |  |
| 5.2 | Point of contact in customer organisationPosition in the organisationE-mail address |  |  |  |
| 5.3 | Contract start dateContract completion dateEstimated Contract Value |  |  |  |
| 5.4 | In no more than 500 words, please provide a brief description of the contract delivered including evidence as to your technical capability in this market. |  |  |  |
| 5.5 If you cannot provide at least one example for questions 5.1 to 5.4, in no more than 500 words, please provide an explanation for this in a separate Appendix, e.g. your organisation is a new start-up. |

**6 Project Specific Questions**

6.1 **Social Value**

Tenderers must produce a method statement (as a separate Appendix, in no more than 500 words) to include the following:

|  |  |  |
| --- | --- | --- |
|  | Please give examples of your involvement in each of the following:* Generating employment and training opportunities for long-term unemployed people;
* Providing training opportunities for young people;
* Promoting supply-chain opportunities to new and small enterprises.
 |  |
|  | What was your exact involvement in each of the above activities?* Employment.
* Training
* Supply-chain
 |  |
|  | Which of the examples have you cited have been more successful, and which have been less successful, and why? |  |

6.2 **Insurance**

|  |  |  |
| --- | --- | --- |
|  | Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below:Employer’s (Compulsory) Liability Insurance = £10m Public Liability Insurance = £10mProfessional Indemnity Insurance = £5m\* It is a legal requirement that all companies hold Employer’s (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders.\* Bath & North East Somerset Council has a mandatory requirement of £5m for Employer’s Liability and Public Liability Insurances. | ▢ Yes▢ No  |

6.3 **Compliance with equality legislation**

|  |
| --- |
| For organisations working outside of the UK please refer to equivalent legislation in the country that you are located. |
| (a) | In the last three years, has any finding of unlawful discrimination been made against your organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or in comparable proceedings in any jurisdiction other than the UK)? | ▢ Yes▢ No  |
| (b) | In the last three years, has your organisation had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds or alleged unlawful discrimination? If you have answered “yes” to one or both of the questions in this module, please provide, as a separate Appendix, a summary of the nature of the investigation and an explanation of the outcome of the investigation to date.If the investigation upheld the complaint against your organisation, please use the Appendix to explain what action (if any) you have taken to prevent unlawful discrimination from reoccurring.You may be excluded if you are unable to demonstrate to the Authority’s satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring.  | ▢ Yes▢ No |
| (c) | If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations? | ▢ Yes▢ No  |
| (d) | Does your organisation ensure that equality and diversity is embedded within your organisation?Please provide copies of any relevant policies or written statements/evidence of relevant actions. | ▢ Yes▢ No  |
| (e) | Do you actively promote good practice in terms of eliminating discrimination in all forms through:Guidance to your employee/suppliers concerned with recruitment, training and promotion?Making guidance or policy documents concerning how the organisation embeds equality and diversity available to employees/sub-contractors, recognised trade unions or other representatives groups of employees?Appropriate recruitment advertisements or other literature? | ▢ Yes▢ No ▢ Yes▢ No ▢ Yes▢ No  |

6.4 **Environmental Management**

|  |  |  |
| --- | --- | --- |
| (a) | Has your organisation been convicted of breaching environmental legislation, or had any notice served upon it, in the last three years by any environmental regulator or authority (including local authority)? If your answer to the this question is “Yes”, please provide details in a separate Appendix of the conviction or notice and details of any remedial action or changes you have made as a result of conviction or notices served.The Authority will not select supplier(s) that have been prosecuted or served notice under environmental legislation in the last 3 years, unless the Authority is satisfied that appropriate remedial action has been taken to prevent future occurrences/breaches. | ▢ Yes▢ No |
| (b) | If you use sub-contractors, do you have processes in place to check whether any of these organisations have been convicted or had a notice served upon them for infringement of environmental legislation? | ▢ Yes▢ No  |  |

6.5 **Health & Safety**

|  |  |  |
| --- | --- | --- |
| (a) | Please self-certify that your organisation has a Health and Safety Policy that complies with current legislative requirements.  | ▢ Yes▢ No  |
| (b) | Has your organisation or any of its Directors or Executive Officers been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years? If your answer to this question was “Yes”, please provide details in a separate Appendix of any enforcement / remedial orders served and give details of any remedial action or changes to procedures you have made as a result. The Council will exclude supplier(s) that have been in receipt of enforcement/remedial action orders unless the supplier(s) can demonstrate to the Council’s satisfaction that appropriate remedial action has been taken to prevent future occurrences or breaches.  | ▢ Yes▢ No  |
| (c) | If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations? | ▢ Yes▢ No  |
| (d) | Are you able to describe your arrangements for ensuring that your H&S measures are effective in reducing/preventing incidents, occupational ill-health and accidents?Please provide details of the arrangements for H&S management that are relevant to the anticipated nature and scale of activity to be undertaken and show clearly how these are communicated to the workforce. | ▢ Yes▢ No  |
| (e) | Do you have access to competent H&S advice/assistance – both general and construction/sector related?Please provide evidence of how your organisation obtains access to competent H&S advice. | ▢ Yes▢ No  |
| (f) | Do you have a policy and process for providing your staff/workforce with training and information appropriate to the types of activity that your organisation is likely to undertake?Provide evidence that your organisation has in place and implements, training arrangements to ensure that its staff/workforce has sufficient skills and understanding to discharge their various duties. This should include refresher training (e.g. a CPD programme) that will keep the workforce updated on good H&S practice applicable throughout the company. | ▢ Yes▢ No  |
| (g) | Does your staff/workforce have H&S or other relevant qualifications and experience sufficient to implement your H&S policy to a standard appropriate to the activity that your organisation is likely to undertake.You will be expected to demonstrate and provide evidence on request, that your staff/workforce possesses suitable qualifications and experience for the tasks assigned to them, unless there are specific situation where they need to work under controlled and competent supervision e.g. trainees. | ▢ Yes▢ No  |
| (h) | Do you check, review and where necessary improve your H&S performance?Please provide evidence that your organisation has in place and implements and ongoing system for monitoring H&S procedures on an ongoing basis and for periodically reviewing and updated that system as necessary. | ▢ Yes▢ No  |
| (i) | Do you have procedures in place to involve your staff/workforce in the planning and implementation of H&S measures?Please provide evidence that your organisation has in place and implements a means of consulting with its staff/workforce on H&S matters and show how staff/workforce comments, including complaints and taken into account. | ▢ Yes▢ No  |
| (j) | Do you routinely record and review accidents/incidents and undertake follow-up action?Please provide access to records of accident rates and frequency for all RIDDOR reportable events for at least the last 3 years. Demonstrate that your organisation has in place a system for reviewing significant incidents, and recording action taken as a result including action taken in response to any enforcement. | ▢ Yes▢ No  |
| (k) | Do you have arrangements for ensuring that your suppliers apply H&S measures to a standard appropriate to the activity for which they are being engaged?You will be expected to demonstrate and provide evidence on request that your organisation has and implements, arrangements for ensuring that H&S performance throughout the whole of your organisation’s supply chain is appropriate to the work likely to be undertaken. | ▢ Yes▢ No  |
| (l) | Do you operate a process of risk assessment capable of supporting safe methods of work and reliable project necessary?You will be expected to demonstrate and provide evidence on request that your organisation has in place and implements procedures for carrying out relevant risk assessments and for developing and implementing safe systems of work (‘method statements’). You should be able to provide indicative examples. The identification and control of any significant occupational health (not just safety) issues should be prominent. | ▢ Yes▢ No  |
| (m) | Do you have arrangements for co-operating and co-ordinating your work with others (including other suppliers, notably contractors)?Please provide explanation of how co-operation and co-ordination of the work is achieved in practice, and how other organisations are involved in drawing up method statements/safe systems of work etc. including arrangements for response to emergency situations. This should include details of how comments and input from our suppliers will be taken into account and how external comments including any complaints will be responded to. | ▢ Yes▢ No  |
| (n) | Do you have arrangements for ensuring that on-site welfare provision meets legal requirements and the needs /expectations of your employees?You will be expected to demonstrate and provide evidence on request about how you ensure suitable welfare facilities will be in place before starting work on site, whether provided by site-specific arrangements or your own organisational measures. | ▢ Yes▢ No  |

6.6 **Tender programme**

The Tender shall provide, as a separate Appendix, a preliminary resourced programme which shall show the periods required, the sequence in which the Tenderer proposes to construct the various parts of the *works* and the dates of the commencement and completion of principal operations. Tenderers are free to choose how the information is presented, but details must include an easily understood bar chart programme. The preliminary programme must show the periods required for each of the activities included in the *activity schedule* prepared by the Tenderer (including the items identified in Section 4). This information is for tender evaluation purposes and will not form part of any ensuing contract.

6.7 **Design and construction proposals**

The Tenderer shall provide, as a separate Appendix, a description of the design procedure and methodology to be adopted and outline design and construction proposals in sufficient detail to clearly show the full extent of the *works* to be provided by the *Contractor*.

The following aspects of design and construction proposals must be submitted in a document titled “*Contractor*’s Works Information” (and cross-referenced in Contract Data part two):

* Design methodology
* Design approvals
* Design quality assurance
* Outline proposals\*

The outline proposals shall include, as a minimum, the following information:

1. Proposals for testing/investigation ahead of the permanent works.
2. Proposals for earthworks criteria, including:
	1. Parameters for excavation (e.g. areas (by chainage), height, slope angle, etc).
3. Proposals for soil reinforcement, including:
	1. Design criteria for structural element/tendon, including geotechnical assumptions (soil/rock properties, groundwater conditions and soil chemistry);
	2. Areas (by chainage) of soil stabilisation;
	3. Details of structural element/tendon, including vertical and horizontal spacing, length, size and composition; and
	4. Methods of installation.
4. Proposals for facing system, including:
	1. Form of facing system(s);
	2. Means of anchoring/fix at crest and toe;
	3. Proposed seed mix; and
	4. Photographic examples of facing system(s):
		1. Immediately following construction; and
		2. Upon establishment/maturity of seed mix.
5. Proposal for an edge of carriageway solution to prevent vehicles from overrunning into the clearance zone.

The Tenderer shall also include an appraisal of the safety provisions associated with these tasks to ensure an adequate level of protection with respect to site operative, the general public and the environment.

\* The outline proposals shall be subject to review, amendment and acceptance by the Employer prior to entering into Contract. The Tenderers’ attention is drawn to clause Z2.12 in Section 8 of this document.

7. **Not used**

8. **Terms & Conditions**

8.1 The Council’s Terms and Conditions of Contract are the Engineering and Construction Contract (ECC), as modified and amended in this document**.**

 Please indicate in the table below if you do not comply with any of these clauses.

|  |  |  |
| --- | --- | --- |
| Clause Title | Clause Reference | Issue |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

**NOTE TO TENDERERS**:

You should ensure your legal representative has checked the Terms and Conditions of Contract and identified any clauses where you will be non-compliant prior to submitting your tender response (see section 8.2). Otherwise, the Council will award this Contract based on the Terms and Conditions contained within this document.

8.2 Alternative Proposals

During the tender period, Tenderers may make proposals for innovative improvements to the proposed *works* that do not comply with the *conditions of contract* or the Works Information. Such proposals shall be made to the *Employer* in confidence and should be in two parts:

a) Changes that would be necessary to the *conditions of contract* or the Works Information if the proposal was to be adopted. Notification is not required for proposals that do not require changes to the *conditions of contract* or Works Information.

b) Technical details of the proposal, including an explanation of why the proposal is considered to be an improvement (such as cost saving, environmental improvement, and safety) and why the proposal cannot be implemented without a change in the *conditions of contract* and/or the Works Information.

If the proposal is acceptable to the *Employer*, other Tenderers will be notified of the permitted change in the *conditions of contract* and/or the Works Information, but they will not be given details of the Tenderer’s alternative proposals.

9 **Additional Information**

9.1 In addition to completion of the questionnaires and provision of Appendices (as appropriate) in this Section 3, Tenderers are required to complete the following documentation which can be found at Section 11 and return with your completed response

* Form of Tender

**SECTION 4 – PRICING SCHEDULE**

4.1 **Pricing**

Tenderers must complete and submit a completed Activity Schedule in ProContract with all the proposed charges/prices to provide the requirement(s) as well as any supplementary spreadsheets to provide transparency of the metrics used for calculating fixed minimum and variable charges.

All charges/prices must be in pounds sterling and should be exclusive of VAT. All pricing information will form the basis of any resulting framework or contract.

4.2 **Preparation and structure of the Activity Schedule**

1) The Activity Schedule is to be provided by the Tenderer, and must contain the following preamble:

 “The Prices in this Activity Schedule allow for all costs of performing or procuring all activities and obligations required and described in, or that can reasonably be inferred from, the contract, other than any that are specifically described in the contract as costs to be borne by the *Employer.*”

“The Activity Schedule forms the basis for payment. The amount entered against an activity shall be the sum due to the *Contractor* on completion of the activity. The *Employer* will not make any payment for work other than against completed activities in the Activity Schedule*.* The *Employer* is not obliged to pay more frequently than calendar monthly.”

“The costs of any activities which have not been included within the Activity Schedule shall be deemed to have been included within the Prices for the other activities within the Activity Schedule.”

“An activity shall not be considered complete until all quality assurance required under the contract have been satisfactorily completed.”

2) Activities in the Activity Schedule must be for discrete clearly identifiable sections of work. Because payment depends on the satisfactory completion of activities, it is necessary to define tangible completion for activities where completion is not physically obvious.

3) Every activity in the Activity Schedule upon which the Tender has been based and for which the Tenderer would expect to be paid under any ensuing contract shall be legibly priced in ink.

4) Separate sub-total sums of the Prices for all the activities within each group of activities must be shown, and these group of activities sub-totals must be added together to form the total amount of the Tender.

5) Each activity must be given a unique and logical reference number.

6) It must be possible to identify activities in the Activity Schedule with work activities shown on the programme.

7) The following activities must be included in the Activity Schedule:

Mobilisation & site facilities

Field testing

Design

Site clearance

Traffic management

Asset protection (including services, third party assets, etc.)

Temporary and permanent asset diversions

Soil reinforcement works:

* Supply:
	+ Tendons/anchors and structural elements;
	+ Facing and landscaping systems;
* Installation;
* Testing/verification.

Re-grading works:

* Excavation;
* Reuse;
* Disposal.

Road works

Landscaping works

Reinstatement works:

* Field test areas;
* Highways;
* Third party land.

Health & Safety File

Completion

8) The Tenderer may add activities as he wishes; bearing in mind that one aim of using an Activity Schedule is to simplify the assessment of payments due to the *Contractor.*

Activities need not be site construction activities; the various stages of design, the preparation of a CDM construction phase plan, or making a down payment to a steel fabricator, for example, are all legitimate activities, but it must be possible to identify tangible completion for activities where completion is not physically obvious.

**SECTION 5 – EVALUATION AND AWARD**

5.1 Evaluation and Award

Tenders will be evaluated to find the most suitable Tenderer who can meet the requirements of this Contract and provide competitiveness of price. The award will be based on the evaluation criteria as outlined under Award Criteria and Weightings. Tenderer(s) that are successful and unsuccessful will receive in writing an award decision letter.

The Council expects to make an award for the Contract within 30 days of the closing date for the submission of tenders. The Council may, if necessary, extend the period for completing the award process.

Upon acceptance, the Contract shall thereby be constituted and become binding on both parties and, notwithstanding that, the Tenderer upon request of the Council execute a formal Contract in the form contained in this Tender process.

Tenderers must not undertake work without written notification that they have been awarded a Contract and are required to start work.

Tenderers should note that the Council reserves the right to terminate this procedure without any decision to award.

Tenderers should also note that, should they be successful the Council reserves the right to terminate the Contract, if at any time it is discovered that the Tenderer made any material misrepresentation and/or have not notified to the Council about any material changes in relation to the information provided in the Tender submission.

5.2 Award Criteria and Weightings

Submitted Tender responses will be evaluated by officers of the Council using the award criteria and weightings detailed in the table below.

Tenderer’s completion of the evaluation questions will give the award score in terms of Quality. Such questions shall include, but are not limited to, questions in relation to company policies, accreditations and memberships, and specific questions to technical abilities in terms of contract delivery / performance in relation to the goods and services being tendered.

Tenderer’s completion of the Activity Schedule and assessment of a theoretical compensation event (as identified in Annex A) will give the award score in terms of Price.

**For full evaluation methodology, please see Appendix 2.**

|  |
| --- |
| **AWARD CRITERIA & WEIGHTINGS** |
| **Price** | **40%** | (i) Completed Activity Schedule(ii) Theoretical compensation event |
| **Quality** | **60%** | 1. Supplier Information2 Grounds for mandatory exclusion3 Grounds for discretionary exclusion4 Financial and economic standing5 Technical and professional ability6 Project specific questions6.1 Social Value6.2 Insurance6.3 Compliance with Equality Legislation6.4 Environmental Management6.5 Health and Safety6.6 Tender programme6.7 Design proposals6.8 Preliminary method statements7 Not used8 Terms & Conditions9 Additional Information |
| **TOTAL** | **100%** |  |

5.2 Moderation of Scores

Once all tenders have been received and scores completed, it may be necessary for the scoring panel to request clarifications from the tenderers. These will be submitted on the e-tendering system and will be available for all Tenderers to see and respond to.

As a result of these clarifications, it may be necessary to moderate the initial scores, for example, if Tenderer(s) have misunderstood a question.

5.3 Supplier Presentations/Clarification Meetings

It may be necessary to hold supplier presentations or clarifications meetings and these may also result in the initial scores being moderated.

5.4 Not used

5.5 Final moderation

All the scores from the tender, presentations and clarifications will be combined to produce a final score and the tenderer with the best overall score shall be identified. Notes must be kept of the reasons for score moderation.

5.6 Taking-Up of Customer References

The tender panel will take up references from the winning Tenderer.

5.7 Evaluation Report and Recommendation

An evaluation report will be produced by the procurer/tender panel and recommendation made to award to the winning Tenderer.

5.8 Contract Approval

The approval of the award will be made by the appropriate Council representative, usually the budget holder for the project.

5.9 Contract Award

The Contract award process is completed and the procurer will debrief all tenderers.

5.10 Debriefing

Upon completion of the tender exercise, the successful company will receive a written notification letter that the Council is intending to award them the business. The award letter will contain information to explain why the bid was successful, including scores and commentary pertaining to the award criteria published in the Invitation to Tender.

Unsuccessful companies will receive a written notification that the Council intends to award the Contract. The notification will state the name of the winning Tenderer, the overall scores and reasons to justify the award and will pertain to the published award criteria.

The Council will be careful not to disclose confidential information of the successful Contractor and may withhold debriefing information in certain circumstances including where disclosure would be contrary to the public interest, would prejudice the legitimate commercial interests of any supplier, or might prejudice fair competition.

**ANNEX A – Theoretical compensation event**

Prior to evaluation, the tendered Total of the Prices will be increased by the cost of theoretical compensation event created using the following data and the percentages entered in Contract Data part two:

|  |  |
| --- | --- |
|  | **Compensation Event 1** |
| Evaluated using | Shorter Schedule of Cost Components |
| Value of assumed Defined Cost element of the compensation event | £50,000 |
| Percentage of Defined Cost which are ‘people’ costs  | 20% |
| Percentage of Defined Cost which are ‘Equipment’ costs | 20% |
| Percentage of Defined Cost which are ‘Plant & Materials’ costs | 45% |
| Percentage of Defined Cost which are ‘manufacture & fabrication’ costs | 5% |
| Percentage of Defined Cost which are ‘design’ costs | 10% |
|  | 100% |
| Percentage of Defined Cost subject to *direct fee percentage*  | 75% |
| Percentage of Defined Cost subject to *subcontracted fee percentage work* | 25% |
|  | 100% |

The price used is the ‘tendered Total of the Prices’ plus the value of compensation events calculated as described above (T). The price score will be calculated by comparison with the *Employer*’s estimate as follows:

*Employer*’s estimate value: E

Lowest price for (tendered Total of the Prices + CE values) t

Adjustment Factor f = (t – T)/E

Adjustment factor as a percentage F = 100f

Maximum Points available for Price as a percentage of total P

Points awarded (as a percentage) for each tender P – F.

**SECTION 6 – CONTRACT DATA PART ONE**

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

**Part one - Data provided by the *Employer***

|  |  |  |
| --- | --- | --- |
| **Statements given in all contracts** |  |  |
| **1. General** | * The *conditions of contract* are the core clauses and the clauses for main Option**A***,* dispute resolution Option **W2** andsecondary Options**X4, X7, X13, X16, Y(UK)2 and Z**of the NEC3 Engineering and Construction Contract (April 2013).
 |  |
|  | The *works* are**the design and construction of soil stabilisation works at Belluton Narrows, including but not limited to site establishment, site clearance, field testing, slope reinforcement works and landscaping, all as described in more detail in Section 9 of this document.** | 11.2(13) |
|  | 1. The *Employer* is

Name: **Bath & North East Somerset Council**Address: **Guildhall****Bath****BA1 5AW** | 11.2(11) |
|  | 1. The *Project Manager* is

Name: **Dale Mynett**Address: **Lewis House****Manvers Street****Bath****BA1 1JG** | 11.2(10) |
|  | 1. The *Supervisor* is

Name: **to be notified in accordance with Clause 14.4 of the conditions of contract.****…………………………………..**Address: **to be notified in accordance with Clause 14.4 of the *conditions of contract*.** **…………………………………..****…………………………………..** | 11.2(10) |
|  | 1. The *Adjudicator* is

Name: **To be agreed.****…………………………………..** Address: **To be agreed.****…………………………………..****…………………………………..** | 11.2(10) |
|  | * The Works Information is in **Section 9 of this document**.
 | 11.2(19) |
|  | * The Site Information is in **Section 10 of this document**.
 | 11.2(16) |
|  | * The *boundaries of the site* are **shown on Drawing Number 013**.
 | 11.2(15) |
|  | * The *language of this contract* is **English**.
 | 13.1 |
|  | * The *law of the contract* is the law of **England and Wales, subject to the jurisdiction of the Courts of England and Wales.**
 | 12.2 |
|  | * The *period for reply* is **two (2)** weeks.
 | 13.3 |
|  | * The *Adjudicator nominating body* is **the Institution of Civil Engineers**.
 | W2.2(3) |
|  | 1. The *tribunal* is **arbitration**.
 | W2.4 |
|  | 1. The following matters will be included in the Risk Register

**None**. | 11.2(14) |
|  | 1. The *arbitration procedure* is **the latest version of the Institution of Civil Engineers ‘Arbitration Procedure’ or any amendment or modification to it in force when the arbitrator is appointed**.
 | W2.4(4) |
|  | 1. The place where arbitration is to be held is **London**.
 | W2.4(4) |
|  | 1. The person or organisation who will choose an arbitrator
2. if the Parties cannot agree a choice or
3. if the *arbitration procedure* does not state who selects an arbitrator is

**the President for the time being of the Institution of Civil Engineers**. | W2.4(4) |
|  | 1. The *additional conditions of contract* are **within Section 8 of this document**.
 | Z1.1 |
| **2. Not used** |  |  |
| **3. Time** | 1. The *starting date* is **1 August 2016**.
 | 31.2 |
|  | 1. The *access dates* are
 | 30.1 |
|  | Part of the Site  |  | Date  |  |
|  | 1 **site compound** |  | **1 August 2016** |  |
|  | 2 **area for field tests** |  | **1 August 2016** |  |
|  | 3 **the remainder of the *works*** |  | **5 September 2016** |  |
|  | * The *Contractor* submits revised programmes at intervals no longer than **fortnightly.**
 | 32.2 |
|  | * The *completion date* for the whole of the *works* is **30 November 2016**.
 | 11.2(3) |
|  | * The *Contractor* is to submit a first programme for acceptance within **two (2)** weeks of the Contract Date.
 | 31.1 |
| **4. Testing and Defects** | * The *defects date* is **fifty-two (52)** weeks after Completion of the whole of the *works*.
 | 42.2 |
|  | 1. The *defect correction* *period* is **two (2)** weeks except that
2. The *defect correction period* for

**Rectifying defects requiring a road closure** is **8** weeks. | 43.2 |
| **5. Payment** | * The *currency of this contract* is the **pound sterling (£)**.
 | 51.1 |
|  | * The *assessment interval* is **a calendar month**.
 | 50.1 |
|  | * The *interest rate* is **two (2)**% per annum (not less than 2) above the **Bank Rate** of the **Bank of England**.
 | 51.4 |
|  | * The period for payment is **twenty-one days**.
 | Y2.2 |
|  | The Contractor provides these additional insurances 1. Insurance against **Professional Indemnity**. Cover/indemnity is **£5m**. | 84.1 |
|  | Delay damages for Completion of the whole of the works are **£500** per day | X7.1 |
|  | The amount of the performance bond is **10% of the tendered total of the Prices**.  | X13.1 |
|  | The retention free amount is **£0 (nil)**. | X16.1 |
|  | The retention percentage is **5**%. | X16.1 |
| **6. Compensation Events** | * The place where weather is to be recorded is **Filton**.
 | 60.1(13) |
|  | 1. The *weather measurements* to be recorded for each calendar month are
 |  |
|  |  | 1. The cumulative rainfall (mm)
 |  |
|  |  | 1. The number of days with rainfall more than 5mm
 |  |
|  |  | 1. The number of days with minimum air temperature less than 0 degrees Celsius
 |  |
|  |  | * The number of days with snow lying at **0900** hours GMT
 |  |
|  |  |  and these measurements:**None.** |  |
|  | * The *weather measurements* are supplied by **The Met Office, FitzRoy Road, Exeter, EX1 3PB, United Kingdom**.
 |  |
|  | * The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at **Filton** and which are available from **The Met Office**.
 |  |
| **7. Not used** |  |  |
| **8. Risks and Insurance** | * The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event is **£10 million**.
 | 84.2 |
|  | * The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is **£10 million**.
 | 84.2 |

**SECTION 7 – CONTRACT DATA PART TWO**

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

|  |  |  |
| --- | --- | --- |
| **Statements given in all contracts** | * The *Contractor* is

Name ……………………………………………………* The *Contractor*’s Address is:

…………………………………………………..………………………………………………….* The Company Registration Number of the *Contractor*  is:

……………………. | 11.2(11) |
|  | * The *direct* *fee percentage* is .....................%
 | 11.2(8) |
|  | * The *subcontracted fee percentage* is ..................... %
 | 11.2(8) |
|  | * The *working areas* are the Site and

………………………………………………………………….…………………………………………………………………. | 11.2(18) |
|  | * The key people are
 | 24.1 |
|  |  (1) Name ……………………………………………………Job…………………………………………………………..Responsibilities……………………………………………Qualifications……………………………………………….. Experience………………………………………………….. |  |
|  | (2) Name ……………………………………………………Job…………………………………………………………..Responsibilities……………………………………………Qualifications……………………………………………… Experience………………………………………………… |  |
|  | * The following matters will be included in the Risk Register

……………………………………………………………………………………………………………………………………………………………………………………………… | 11.2(14) |
|  | * The Works Information for the *Contractor*’s design is in

……………………………………………………………… ……………………………………………………………… | 11.2(19) |
|  | * The *activity schedule* is ……………………………………
 | 11.2(20) |
|  | * The tendered total of the Prices is ………………………
 | 11.2(30) |
| **Data for the Shorter Schedule of Cost Components** | * The percentage for people overheads is ………………..%
 | SSCC 41 |
|  | * The published list of Equipment is the last edition of the list published by ………………………………………………
 | SSCC 21 |
|  | * The percentage for adjustment for Equipment in the published list is …………………………% (state plus or minus)
 | SSCC 21 |
|  | * The rates for other Equipment are
 |  |
|  | Equipment | size or capacity | rate |  |
|  | ………………… | ………………… | ………………… |  |
|  | ………………… | ………………… | ………………… |  |
|  | ………………… | ………………… | ………………… |  |
|  | ………………… | ………………… | ………………… |  |
|  | * The hourly rates for Defined Cost of design outside the Working Areas are
 |  |
|  | category of employee | hourly rate |  |
|  | ……………………….. | ……………………. |  |
|  | ……………………….. | ……………………. |  |
|  | ……………………….. | ……………………. |  |
|  | ……………………….. | ……………………. |  |
|  | * The percentage for design overheads is……………..….%
 | SSCC 62 |
|  | * The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are

 ……………………………………………………………… ……………………………………………………………… ……………………………………………………………… ……………………………………………………………… |  |
|  |  |  |

**SECTION 8 – ADDITIONAL CONDITIONS OF CONTRACT**

The following modifications and additions will apply to the Engineering and Construction Contract (ECC) core clauses.

|  |  |
| --- | --- |
| Z2 | **Modifications and additions to the Engineering and Construction Contract (ECC) core clauses.** |
| Z2.01 | Additional sub-clause 21.4 | “The particulars of the *Contractor*’s design are deemed to be accepted if the *Contractor* does not receive a response from the *Project Manager* within the timescales for acceptance specified in clause Z2.06 or as stated elsewhere in this contract.”When submitting the particulars of his design, the *Contractor* states whether it is a first submission and whether it is a submission of a major item or section of work.” |
| Z2.02 | Clause 25.4, additional Clause | **CONFIDENTIALITY**“The *Contractor* treats the contract and everything in it as confidential and does not give any information regarding the contract to any member of the Press or general public.” |
| Z2.03 | Clause 27.5, additional Clause | **PRINCIPAL CONTRACTOR** “The *Contractor* is the principal contractor in terms of The Construction (Design and Management) Regulations 2015.” |
| Z2.04 | Clause 27.6, additional Clause | **PRINCIPAL DESIGNER** “The *Contractor* is the principal designer in terms of The Construction (Design and Management) Regulations 2015 from the Contract Date.” |
| Z2.05 | Clause 27.6, additional Clause | **URGENT REPAIRS**“If, at any time before the *defects date* including the period before Completion, the *Project Manager* decides that, because of any emergency, accident, failure or other event, remedial or other work or repair is urgently necessary, the *Project Manager* may instruct the *Contractor* to do at once such remedial or other work or repair. “If the *Contractor* is unable or unwilling at once to do such remedial or other work or repair the *Project Manager* may arrange for others do such remedial or other work or repair. The *Project Manager* notifies the *Contractor* that he has arranged for others to do such remedial or other work or repair. “If *Project Manager* decides that the remedial or other work or repair so done by others is work which would not, in itself, lead to a change in the Prices, all costs and charges properly incurred by the *Employer* in employing others are paid by the *Contractor*.” |
| Z2.06 | Clause 31.4, additional Clause | **TIMETABLE FOR ACCEPTANCE OF DESIGNS**“The *Contractor* allows in his programme the following periods for the *Project Manager* to accept his design proposals:“a) first submission of major items or sections of work – **2 weeks**“b) revised submission of major items or sections of work – **1 week**“c) first submission of design details – **1 week**“d) revised submission of design details - **2 working days**“The *Employer* is not responsible for delay or additional cost if the *Contractor* repeatedly submits designs that fall short of the requirements in the Works Information.” |
| Z2.07 | Clause 34.1, delete Clause and substitute | “The *Project Manager* or the *Supervisor* may instruct the *Contractor* to stop or not to start any work and may later instruct him that he may re-start or start it.” |
| Z2.08 | Clause 34.2, additional Clause | “If the *Project Manager* or the *Supervisor* instructs the *Contractor* to stop or not to start any work for which the appropriate Quality Assurance system or procedure or plan has not been accepted, then such an instruction shall not be a compensation event.” |
| Z2.09 | Clause 51.5, additional Clause | “The Parties agree that the provisions in this contract for the payment of interest constitute a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998 as amended by Late Payment of Commercial Debts Regulations 2002.” |
| Z2.10 | Clause 56, additional Clause | “Immediately on receipt of payment, the *Contractor* issues to the *Employer* a Value Added Tax invoice. Notwithstanding any provisions to the contrary elsewhere in the *conditions of contract*, the *Employer* is not obliged to make any further payment to the *Contractor* under the *conditions of contract* if the *Contractor* is in default in providing the invoice.” |
| Z2.11 | Clause 60.1 (4), delete Clause and substitute: | “The *Project Manager* or *Supervisor* gives an instruction to stop or not to start any work or to change a Key Date, unless such an instruction is issued because the *Contractor*’sactivities are not in accordance with the requirements of the Works Information or where such instruction is given due to a breach of contract by the *Contractor*.” |
| Z2.12 | Clause 60.1 (20), additional sub-clause | Add additional sub-clause as follows:“A change to the outline proposals for soil stabilisation works as specified in the *Contractor*’s Works Information solely as a result of necessary changes to such outline proposals following the field testing.”“Only the difference between the tendered and actual amounts is taken into account in assessing a compensation event.” |
| Z2.13 | Clause 85.1, amend Clause | Amend first sentence by deleting “for acceptance” from the second line.Add new sentence between second sentence and last sentence: “The *Project Manager* submits policies and certificates for insurances provided by the *Contractor* to the *Employer* for acceptance.” |
| Z2.14 | Clause 91.8, additional Clause | **GIFTS, INDUCEMENTS AND REWARDS**“The *Employer* may also terminate if the *Contractor* offers or gives or agrees to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing or forbearing to show favour or disfavour to any person in relation to this contract or any other contract with the *Employer* or if any of the like acts shall have been done by any person employed by the *Contractor* or acting on his behalf (whether with or without the knowledge of the *Contractor*) or if in relation to this contract or any other contract with the *Employer* the *Contractor* or any other persons employed by him or acting on his behalf shall have given any fee or reward the receipt of which is an offence under the Bribery Act 2010 or Section 117 of the Local Government Act 1972.” |
| Z2.15 | Clause 92.3, additional Clause | **“Procedures on termination**When the *Employer* terminates for a reason given in clause 91.8, the procedure for termination is P1, P2, and P3.” |
| Z2.16 | Clause 93.7 additional Clause | **“Payment on termination**When the *Employer* terminates for a reason given in clause 91.8, the amount due is A1 (clause 93.1) and A3 (clause 93.2).” |
| Z2.17 | Clause 93.8, additional Clause | “When the *Employer* terminates for a reason given in clause 91.8, the *Employer* may recover from the *Contractor* all its losses incurred as a result of termination.” “Any clause limiting the *Contractor’s* liability shall not apply to this clause.” |
| Z2.18 | Clause X4.1: Parent company guarantee, amend clause | Amend clause by deleting “the Works Information” and inserting “Section 11, Appendix 6 of the tender document.” |
| Z2.19 | Clause X13.1: Performance bond, amend clause | Amend clause by deleting “the Works Information” and inserting “Section 11, Appendix 5 of the tender document.” |

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| Z4 | **Security** |
|  | Site admittance |
| Z4.01 | The *Contractor* submits to the *Project Manager* details of people who are to be employed by him and his Subcontractors in connection with the *works*. The details include a list of names and addresses, the capacities in which they are employed, and other information required by the *Project Manager*.  |
| Z4.02 | The *Project Manager* may instruct the *Contractor* to take measures to prevent unauthorised persons being admitted on to the Site. The instruction is a compensation event if the measures are additional to those required by the Works Information.  |

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| Z5Z5.01 | **Joint Inspection of Assets**The *Contractor* appoints a Public Relations Officer to act as the interface between the *Contractor* and the public/third parties.The *Contractor* and the *Project Manager* arrange to inspect all third party assets that could be affected by construction activities. The properties to be inspected will include roads, walls, fences, storage tanks, etc. This inspection is carried out at least one week before work is planned to commence on the Working Areas near these properties. The arrangement for the inspection and notification of third party property owners is the responsibility of the *Contractor* and in particular of the Public Relations Officer. The *Project Manager* is given at least two weeks’ notice of the intended date for the inspection. Any interested insurance companies are also advised of the intended inspection and given the opportunity to attend. The *Contractor* makes a detailed record of the inspection in textual and photographic form as appropriate. The *Contractor* compiles the records and provides copies of the agreed records to the *Project Manager*, to the third party property owners (as appropriate) and to the insurance companies (as requested). |

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| Z6Z6.01 | **Encourage Third Party Cooperation**The Public Relations Officer, as part of the pre-construction inspection, advises third party property owners that they should give immediate notification of any damage or other cause for concern arising from the *Contractor*'s construction activities. They should be advised that delay in notification could prejudice the validity of any claim and/or the degree of compensation to which they might otherwise be entitled. |

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| Z7Z7.01 | **Third Party Agreements**The *Contractor* provides the *Project Manager* with a copy of all third party agreements that have relevance to the *Contractor*'s obligations to Provide the Works. |

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| --- | --- |
| Z8Z8.01 | **Vibration, Traffic Management and Other Records**The *Contractor* keeps a record of all construction activities that could give rise to third party claims. These records shall include details of ground vibrations during piling or similar activities, road closures and obstructions, spillage of construction materials outside the Site, other off site accidents, movement of heavy or wide vehicles, emission of odours and any other activity or event that might give cause for complaint. |

|  |  |
| --- | --- |
| Z9Z9.01 | **Prompt Attention to Complaints or Causes for Complaint**The *Contractor* takes immediate steps to eliminate the source or cause of an event that results in, or could result in, justifiable third party claims for compensation. The *Project Manager* is fully informed of any such complaint and of actions taken to eliminate the cause of the complaint, or to mitigate the effects of the event. |

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| Z10Z10.01 | **Form of Agreement**The *Contractor* shall if called upon so to do enter into and execute an agreement in the form included in Appendix 4 of this document. |

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| Z11 | **Not used** |

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| Z12 | **Not used** |

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| Z13Z13.01 | ***Employer* as regulatory authority** The *Employer’s* position as a regulatory authority and as *Employer* under the contract is separate and distinct. Actions taken in one capacity are deemed not to be taken in the other.Where statutory consents must be obtained from the *Employer* in its capacity as a regulatory authority, the *Contractor* is responsible for obtaining these and paying fees. The *Employer’s* acceptance of a tender and the *Employer’s* instructing or varying work does not constitute statutory approval or consent. |

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| Z14Z14.01 | **Special Requirements in Relation to Statutory Authorities**“The *Contractor* shall comply with the latest edition of the Special Requirements in published by the Undertakers and Authorities.“Compliance with such Special Requirements shall not relieve the *Contractor* of any of his obligations and liabilities under the contract and fulfilment of such obligations and liabilities shall not relieve him of his responsibility to comply with the said Special Requirements.” |

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| --- | --- |
| Z15Z15.01 | **PROTECTION OF INFORMATION****Definitions**For the purposes of clauses Z16 to Z19, the following definitions shall apply:“Commercially Sensitive Information” means the information listed in the Commercially Sensitive Information Schedule comprised of information:(a) which is provided by the *Contractor* to the *Employer* in confidence for the period set out in that Schedule; and/or(b) that constitutes a trade secret.“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act. Confidential Information shall not include information which: (a) was public knowledge at the time of disclosure (otherwise than by breach of clause Z16 (Confidential Information)); (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or(d) is independently developed without access to the Confidential Information.“Contracting Authority” means any contracting authority as defined in Part 1 of the Public Contracts Regulations 2015. “Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.“Staff” means all persons employed by the *Contractor* to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and Subcontractors used in the performance of its obligations under the Contract.“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London. |

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| Z16 | **Confidential Information** |
| Z16.01 | Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:(a) treat the other party's Confidential Information as confidential and safeguard it accordingly; and(b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent. |
| Z16.02 | Clause Z16.01 shall not apply to the extent that: (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z17 (Freedom of Information); (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; (c) such information was obtained from a third party without obligation of confidentiality; (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or (e) it is independently developed without access to the other party's Confidential Information. |
| Z16.03 | The *Contractor* may only disclose the *Employer*'s Confidential Information to the Staff who are directly involved in the provision of the *works* and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality. |
| Z16.04 | The *Contractor* shall not, and shall procure that the Staff do not, use any of the *Employer*'s Confidential Information received otherwise than for the purposes of this Contract. |
| Z16.05 | At the written request of the *Employer*, the *Contractor* shall procure that those members of the Staff identified in the *Employer*'s notice signs a confidentiality undertake ng prior to commencing any work in accordance with this Contract. |
| Z16.06 | Nothing in this Contract shall prevent the *Employer* from disclosing the *Contractor*'s Confidential Information: (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority; (b) to any consultant, contractor or other person engaged by the *Employer* or any person conducting an Office of Government Commerce gateway review; (c) for the purpose of the examination and certification of the *Employer*'s accounts; or (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources. |
| Z16.07 | The *Employer* shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the *Contractor*'s Confidential Information is disclosed pursuant to clause Z16.06 is made aware of the *Employer*'s obligations of confidentiality. |
| Z16.08 | Nothing in this clause Z16 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights. |

|  |  |
| --- | --- |
| Z17 | **Freedom of Information** |
| Z17.01 | The *Contractor* acknowledges that the *Employer* is subject to the requirements of the Freedom of Information Act (FOIA) and the Environmental Information Regulations and shall assist and cooperate with the *Employer* to enable the *Employer* to comply with its Information disclosure obligations. |
| Z17.02 | The *Contractor* shall and shall procure that any Subcontractors shall transfer to the *Employer* all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;(a) provide the *Employer* with a copy of all Information in its possession, or power in the form that the *Employer* requires within five Working Days (or such other period as the *Employer* may specify) of the *Employer*'s request; and (b) provide all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations. |
| Z17.03 | The *Employer* shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations. |
| Z17.04 | In no event shall the *Contractor* respond directly to a Request for Information unless expressly authorised to do so by the *Employer*. |
| Z17.05 | The *Contractor* acknowledges that (notwithstanding the provisions of Clause Z17) the *Employer* may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the *Contractor* or the *works* in certain circumstances:1. without consulting the *Contractor*; or
2. following consultation with the *Contractor* and having taken their views into account;

provided always that where Z17.05(a) applies the *Employer* shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the *Contractor* advanced notice, or failing that, to draw the disclosure to the *Contractor*’s attention after any such disclosure. |
| Z17.06 | The *Contractor* shall ensure that all Information is retained for disclosure and shall permit the *Employer* to inspect such records as requested from time to time |
| Z17.07 | The *Contractor* acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the *Employer* may be obliged to disclose it in accordance with this clause Z17. |

|  |  |
| --- | --- |
| Z18 | **Publicity, Media and Official Enquiries** |
| Z18.01 | Without prejudice to the *Employer*’s obligations under the FOIA, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party. |
| Z18.02 | Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause Z18.01. |

|  |  |
| --- | --- |
| Z19 | **Audit** |
| Z19.01 | The *Contractor* shall keep and maintain until 6 years after the *defects date*, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the *works* supplied under it, all expenditure reimbursed by the *Employer*, and all payments made by the *Employer*. The *Contractor* shall on request afford the *Employer* or the *Employer*’s representatives such access to those records as may be requested by the *Employer* in connection with the Contract. |

**SECTION 9 – WORKS INFORMATION**

The Works Information is provided in a separate document, reference ‘Belluton Narrows Slope Stabilisation - Works Information – v2.doc’, along with the drawings (in PDF format), uploaded in ProContract.

**SECTION 10 – SITE INFORMATION**

The Site Information is uploaded in ProContract in the following folders:

|  |  |
| --- | --- |
| **Folder** | **Contents** |
| 1. Topographic survey | * ‘21 Dec survey drawings’.
 |
| 2. Enviroreport  | * ‘Enviroreport 2014.zip’.
 |
| 3. Enviro desk study  | * ‘Belluton Enviro Desk Study.pdf’.
 |
| 4. Utility information | * ‘Highway Drainage - Stanton Rd’;
* ‘NRSWA\_Stanton Road Belluton Publow 2016’
* 204269.BX.00.49-014 - Existing Utilities.pdf
 |
| 5. Ground conditions  | * ‘Belluton Slope Stabilisation Options Report Version Draft (REDACTED FOR TENDER).pdf’
 |
| 6. Great Crested Newts eDNA test results | * ‘D1549 CH2M Hill UK.pdf’
 |
| 7. Title Deeds | * Official Copy (Register) - AV232970.pdf
* Official Copy (Register) - AV241827.pdf
* Official Copy (Register) - AV243421.pdf
* Official Copy (Register) - AV250983.pdf
* Official Copy (Register) - ST128560.pdf
* Official Copy (Register) - ST152831.pdf
* Official Copy (Title Plan) - AV232970.pdf
* Official Copy (Title Plan) - AV241827.pdf
* Official Copy (Title Plan) - AV243421.pdf
* Official Copy (Title Plan) - AV250983.pdf
* Official Copy (Title Plan) - ST128560.pdf
* Official Copy (Title Plan) - ST152831.pdf
* VM-CAN-UF2\_Canon MPS C5030 GNM53108\_0089\_001.pdf
 |

**SECTION 11 - APPENDICES**

1. Non-Collusion Certificate
2. Scoring Methodology
3. Form of Tender
4. Form of Agreement
5. Form of Performance Bond
6. Form of Parent Company Guarantee
7. Tenderer’s Proposals

**APPENDIX 1**

**NON-COLLUSION CERTIFICATE**

I, the undersigned, in submitting the accompanying tender to

(Name of Client)………………………………………………

………………………………………………………………………………………………

in relation to (details of tender and reference)……………………………............

……………………………………………………………………………………………….

certify on behalf of (name of Tenderer)………………………………………………

that, with the exception of any information attached hereto (see \* below):

1) this tender is made in good faith, and is intended to be genuinely competitive;

2) the amount of this tender has been arrived at independently, and has not been fixed, adjusted or influenced by any agreement or arrangement with any other undertaking, and has not been communicated to any competitor;

3) we have not entered into any agreement or arrangement with any competitor or potential competitor in relation to this tender;

4) I have read and I understand the contents of this Certificate, and I understand that knowingly making a false declaration on this form may result in legal action being taken against me.

In this certificate, the word ‘competitor’ includes any undertaking who has been requested to submit a tender or who is qualified to submit a tender in response to this request for tenders, and the words ‘any agreement or arrangement’ include any such transaction, whether or not legally binding, formal or informal, written or oral.

\* Information is/is not attached hereto (delete as appropriate)

SIGNED:....................................................

FOR AND ON BEHALF OF:........................................

DATE:.........................................

**APPENDIX 2**

**SCORING METHODOLOGY**

|  |
| --- |
| **Below Threshold Invitation to Tender - Scoring Methodology** |
|  |  |
| **This scoring methodology explains how each section of the ITT will be assessed by the procuring panel.** |
|  |  |
| **Scoring of Responses** |  |
| The table below summarises the scoring percentages for each part of the ITT. Procurers will satisfy themselves that the methodology is correct for their particular requirements. |
|  |  |
| **Section Title** | **Method of Scoring** |
| 1. Supplier Information | Not scored but must be completed in full |
| 2. Grounds for Mandatory Exclusion | Not scored but must be completed in full. Automatic disqualification if answer 'YES' to any question. |
| 3. Grounds for Discretionary Exclusion | Not scored but must be completed in full. Supplier may be disqualified if answer 'YES' to any question. Procurer must provide a statement to the supplier if they are disqualified explaining why. |
| **QUALITY 60%** |
| 4. Economic and Financial Standing | Turnover must be at least £4 million. Pass/fail. |
| 5. Technical & Professional Ability | 15% weighting for this section (max. no. of points) |
| 6. Additional Modules (Project Specific questions to assess technical and professional ability) | Weightings for each sub-section are:6.1 Social Value – 1%6.2 Insurance – Pass/fail6.3 Compliance with Equality Legislation – 1%6.4 Environmental Management – 1%6.5 Health and Safety – 2%6.6 Tender programme – 5%6.7 Design and construction proposals – 35% |

|  |
| --- |
| **PRICE 40%** |
| Price | All tenderers should supply the price and cost information as requested. Failure to do so may result in a zero score due to the Council's inability to evaluate the response in full. 40% weighting for this section (max. no. of points) |
| Terms & Conditions | Suppliers will be expected to comply with the Contract Data. The Council will determine in its absolute discretion if any non-compliances and/or alternative proposals are acceptable or unacceptable. If unacceptable, Tenderers will be given the opportunity to re-consider their position or may be required to withdraw their Tender. |

|  |
| --- |
| **Scoring - Quality** |
| Unless otherwise stated points shall be attributed as follows:- |
| **5 points** | 5 – The standard of the response is very high and the relevance of the response and the supporting evidence is very comprehensive and provides the Council with a very high level of confidence in the Applicant’s and/or, where applicable, the Associated Company’s and/or Named Supplier’s and/or consortium member’s experience, capacity and capability to meet the Council’s requirements. |
| **4 points** | 4 – The response is comprehensive and supported by a good standard of relevant evidence and provides the Council with a good standard of confidence in the Applicant’s and/or, where applicable, the Associated Company’s and/or Named Supplier’s and/or consortium member’s experience, capacity and capability to meet its requirements. |
| **3 points** | 3 – The response is satisfactory and supported by an acceptable standard of relevant evidence but with some reservations/issues not addressed. The Council is satisfied with the Applicant’s and/or, where applicable, the Associated Company’s and/or Named Supplier’s and/or consortium member’s experience, capacity and capability to meet its requirements. |
| **2 points** | 2 – Large portions of the response are not satisfactory and/or are not supported by a satisfactory level of evidence and the Council has limited confidence in the Applicant’s and/or, where applicable, the Associated Company’s and/or Named Supplier’s and/or consortium member’s experience, capacity and capability to meet its requirements. |
| **1 point** | 1 – The response and/or the evidence are deficient (or not relevant) in the majority of areas and the Council has a low level of confidence in the Applicant’s and/or, where applicable, the Associated Company’s and/or Named Supplier’s and/or consortium member’s experience, capacity and capability to meet its requirements. |
| **0 points** | 0 – No response and/or evidence is unacceptable or non-existent, or there is a failure to properly address any issue. The Council does not have any confidence in the Applicant’s and/or, where applicable, the Associated Company’s and/or Named Supplier’s and/or consortium member’s experience, capacity and ability to meet its requirements. |

|  |
| --- |
| **Scoring – Price** |
| The scoring is carried out within an Excel spread sheet outside of the e-tender system. |
| **Stage 1** | All price bids are compared against lowest bid to reach percentage difference from lowest bid. |
|  | *Equation: price bid – lowest bid / lowest bid \* 100 = Sum A* |
| **Stage 2** | Sum A is then shown as % different from 100 |
|  | *Equation: 100 – Sum A = Sum B* |
| **Stage 3** | Sum B is then divided by 100 to show it as a figure |
|  | *Equation: Sum B / 100 = Sum C*  |
|  | Within a Score Card all weightings are allowed a maximum of 100 and based on percentages. This applies to a single weighting of an overall question template, section or question.  |
|  | *For example*: |
|  | Score Card with four sections |
|  | Four sections totalling 25 points each = 100 for the whole evaluation |
|  | Each question in a section totalling 20 points each = 100 for that section |
|  | When evaluating weightings are applied first to the questions, and then the results of those weightings are applied to those of the sections. If scored 100% for the questions in a section, that result would be multiplied against the section’s weight. So 100% of a section with a weight of 100 would be 100% of the evaluation – however, 100% of a section with a weight of 10 would only account for 10% of the evaluation in relative terms. |

|  |
| --- |
| **Note: Tie Breaks** |
| In the event of a tie break between the top two overall highest scoring bidders, the Council will do the following:Return to the costs of the respective bidders and where there is one company who have lower costs, they will be declared the winning bidder. Example: Bidder A 80 points, Overall cost - £10,000, Bidder B 80 points, Overall cost - £12,000. Company A is lower in costs and will therefore be declared the winning bidder. In the event that the top two overall highest scoring bidders have the same costs, then the Council will go back to the Quality sub-criteria scores and will declare the winning bid the bidder with the highest weighted scores in order of sub-criteria weightings. If the quality sub-criteria were as follows: Experience 50%, Contract Management 30%, Implementation 20%, then the Council will declare the winner the highest weighted scorer for Experience, then Contract Management, then Implementation respectively.  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Below Threshold Invitation to Tender - Scoring Methodology** |  |  |  |
|  |  |  |  |  |  |  |
| This page gives an example of how each question may be scored. |  |  |  |
| All scored questions will be marked out of 5 points |  |  |  |  |
|  |  |  |  |  | **[Enter Supplier Name]** |
| **Section** | **Question** | **Section Weighting**  | **Individual Question Weighting % or Pass/Fail**  | **Guidance** | **Points out of 5 or PASS/FAIL** | **Weighted Score %** |
| **1** | **Supplier Information** | n/a | n/a | Not scored but must be completed in full | n/a | n/a |
| **2** | **Grounds for Mandatory Exclusion** | n/a | Pass/Fail | Not scored but must be completed in full. Disqualify if answer YES to any question | Pass or Fail | n/a |
| **3** | **Grounds for Discretionary Exclusion**  | n/a | Pass/Fail | Not scored but must be completed in full. Supplier may be disqualified if answer YES to any question. If disqualified, Banes must provide a statement to supplier explaining why evidence of self-cleaning is not accepted. | Pass or Fail | n/a |
|  |  |   |   | **PASS OR FAIL** |  |   |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **60%** | **QUALITY** |  |  |  |  |  |
| **Section** | **Section Title** | **Section Weighting (out of 100%)** | **Individual Question Weighting (out of 100%)** | **Guidance** | **Points out of 5 or PASS/FAIL** | **Weighted Score %** |
| **4** | **Economic and Financial Standing** | n/a |   |  |   |   |
|   | 4.1 Provision of economic/financial information |   | n/a | Each organisation must be in a sound financial position to participate in the procurement.  This will entail independent financial checks of the information provided by Tenderers to assess whether contractors are low, medium or high risk. Companies that are low or medium risk will Pass. Companies that are high risk will Fail. | Pass or Fail | n/a |
|  | 4.2 self-certification that the requirements are met |  | n/a | Turnover must be at least £4 million. If answered ‘Yes’, Pass. If answered ‘No’, Fail. | Pass or Fail | n/a |
|   | 4.3 part of a wider group |   | n/a | Questions need to be satisfactorily completed (if applicable). | Pass or Fail | n/a |
|   |  |  |   |  **Questions Total** | **Pass or Fail** |
|   |  |  |   |   | **Economic & Financial Standing Weighted Score** | **n/a** |
| **5** | **Technical & Professional Ability** | 25 |   |   |   |   |
|   | 5.1 to 5.5 Details of up to 3 contracts |   | 100 | Full response with 3 contracts, details of dates and value and with relevant experience of delivering similar type of contract = 5 points.Partial response with less than 3 contracts and/or some details of dates and value and with relevant experience of delivering similar type of contract = 4 pointsLimited response with less than 3 contracts and/or some details of dates and value and contract experience not a good match = 2 pointsNo response or irrelevant experience = 0 points | 5 | 100 |
|   |  |  |   |   | **Questions Total** | **100** |
|   |  |  |   |   | **Technical & Professional Ability Weighted Score** | **25** |
| **6** | **Additional Project Specific questions**  | 75 |   |   |   |   |
|  | 6.1 Social Value |  | 2 | Points to be awarded from 0 to 5 in accordance with quality scoring methodology | 5 | 2 |
|  | 6.2 Insurance |  | n/a | Does the supplier have the required minimum insurance levels? If so, pass. If not, fail. Must have the proof of required levels before contract can be awarded.  | n/a | Pass or fail |
|  | 6.3 Compliance with Equality Legislation |  | 2 | For (a) and (b), supplier must answer ‘NO’ or if answered ‘YES’ be able to demonstrate that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring. No = 5 points, YES = score dependent on response.For (c), no sub-contractors = 5 points, sub-contractors = points depends on response.Points to be awarded from 0 to 5 in accordance with quality scoring methodology for other elements. | 5 | 2 |
|  | 6.4 Environmental Management |  | 2 | For (a), supplier must answer ‘NO’ or if answered ‘YES’ be able to demonstrate that appropriate remedial action has been taken to prevent future occurrences/breaches. No = 5 points, YES = score dependent on responseFor(b), no sub-contractors = 5 points, sub-contractors = points depends on response | 5 | 2 |
|  | 6.5 Health and Safety |  | 4 | For (a) suppliers with more than 5 employees should answer YES, otherwise disqualified.For (b), supplier must answer ‘NO’ or if answered ‘YES’ be able to demonstrate that appropriate remedial action has been taken to prevent future occurrences/breaches. No = 5 points, YES = score dependent on response.For (c), no sub-contractors = 5 points, sub-contractors = points depends on response.For other elements, points to be awarded from 0 to 5 in accordance with quality scoring methodology | 5 | 4 |
|  | 6.6 Tender programme |  | 12 | Points to be awarded from 0 to 5 in accordance with quality scoring methodology | 5 | 12 |
|  | 6.7 Design and construction proposals |  | 78 | Points to be awarded from 3 to 5 in accordance with quality scoring methodology. Responses must achieve at least 3 marks or be disqualified. | 5 | 78 |
|   |  |  |   |   | **Questions Total** | **100** |
|   |  |  |   |   | **Additional Project Specific Questions Weighted Score** | **75** |
| **7** | **Payment Terms** | 0 |   |   |   |   |
|   | n/a |   | n/a | n/a | n/a | n/a |
|   | n/a |   | n/a | n/a | n/a | n/a |
|   | n/a |   | n/a | n/a | n/a | n/a |
|   |  |  |   |   | **Questions Total** | **n/a** |
|   |  |  |   |   | **Payment Terms Weighted Score** | **n/a** |
| **8** | **Terms & Conditions** | 0 |   |   |   |   |
|   | Terms & Conditions agreement |   | n/a | Does supplier agree to the Council’s Terms & Conditions without any required amendments? If so, pass. Has supplier identified non-conformances or alternative proposals which are acceptable to the Council? If so, pass.Has supplier identified non-conformances or alternative proposals which are not acceptable to the Council and the supplier is not willing to withdraw these qualifications? If so, fail. | n/a | Pass or fail |
|  |  |  |  |   | **Questions Total** | **n/a** |
|  |  |  |  |   | **Terms & Conditions Weighted Score** | **n/a** |
|  |  |  |  |  | **QUALITY Total Weighted Score (out of 100)** | **100** |
|  | **Total** | **100%** | **100%** |   | **GRAND TOTAL FOR QUALITY** | **60** |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **40%** | **PRICE**  |  |  |  |  |  |
| **Section** | **Question** | **Section Weighting (out of 100%)** | **Individual Question Weighting (out of 100%)** | **Guidance** | **Points out of 100** | **Weighted Score %** |
|  | **Price** | 100 |   |  |   |   |
|   | Cost (completed Activity Schedule + theoretical compensation event) |   | 100 | see explanation in Overall Section Scoring of scoring on price | 100 | 100 |
|  | **Total** | **100%** | **100%** |  | **GRAND TOTAL FOR PRICE** | **40** |
|  |  |  |  |  |  |  |
|  |  |  |  | **OVERALL TOTAL (QUALITY + PRICE)**  |  | **100** |

**APPENDIX 3**

**FORM OF TENDER**

**FORM OF TENDER**

The *works* arethe design and construction of soil stabilisation works at Belluton Narrows, including but not limited to site establishment, site clearance, field testing, slope reinforcement works and landscaping, all as described in more detail in the Works Information.

**TENDER**

To: **Bath & North East Somerset Council**(the *Employer*)

 Address:**Guildhall**

**Bath**

**BA1 5AW**

We offer to Provide the Works in accordance with the Contract Data part one and the attached Contract Data part two for a sum to be determined in accordance with the *conditions of contract*.

We confirm that we are familiar with all the Tender Documents and that we have raised and the *Employer* has answered and clarified during the Tender period all and any queries, doubts, or uncertainties that we may have had concerning the Tender Documents.

Unless and until a formal Agreement is prepared and executed, this Tender, together with your written acceptance thereof, shall constitute a binding contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive.

You may accept this offer on or before 120 days from the date for submission of Tenders.

Yours faithfully,

Signed:…………………………………………………………………

Name:

Position:

On behalf of: (the *Contractor*)

Address:

Date:

**APPENDIX 4**

**FORM OF AGREEMENT**

**FORM OF AGREEMENT**

This agreement is made on the……….…….… day of ……….……… 20……..

between

* **Bath & North East Somerset Council**

of **Guildhall, Bath. BA1 5AW** (the *Employer*)

and

* ……………………………………………………………………………………

of ………………………………………………………………………………………

 ……………………………………………………………………… (the *Contractor*)

The *Employer* wishes to have the following works provided*:*

The design and construction of soil stabilisation works at Belluton Narrows, including but not limited to site establishment, site clearance, field testing, slope reinforcement works and landscaping, all as described in more detail in the Works Information.

NOW IT IS AGREED THAT

1. The *Contractor* will Provide the Works in accordance with the *conditions of contract* identified in the Contract Data.

2. The *Employer* will pay the *Contractor* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data.

3. The documents forming part of this agreement are:

1. the *Contractor’*sForm of Tender
2. the *Employer*’s letter of acceptance
3. the Contract Data part one
4. the Contract Data part two
5. the Works Information
6. the Site Information
7. the following documents

AS WITNESS WHEREOF the parties have caused their common seals to be affixed hereto, or executed as a Deed hereto, on the day and year first before written.

THE COMMON SEAL of

Bath and North East Somerset

Was hereto affixed in the presence of:

Name ………………………………

Position ……………………………….

Date ………………………………

|  |
| --- |
| **For and on behalf of the *Contractor*:** ……………………………… EXECUTED AS A DEED BY: |
| Name  |  |
| Position |  |
| Signature |  |
| Date |  |

**APPENDIX 5**

**FORM OF PERFORMANCE BOND**

**FORM OF PERFORMANCE BOND**

**Date**

**Parties**

 **[Names addresses and Company Numbers if applicable]**

|  |  |
| --- | --- |
| SURETY (1)CONTRACTOR (2)EMPLOYER (3)**Background****Surety’s obligation 1** | (A) By a Contract defined in the Schedule hereto the *Contractor* has agreed with the *Employer* to carry out the *works*.(B) The Surety has agreed to provide this Bond in favour of the *Employer* in order to guarantee the performance by the *Contractor* of his obligations under the Contract.(1) If the *Contractor* fails to pay the Excess Sum within 28 days of receipt by the *Contractor* of a certification of an amount due to the *Employer* under Clause 93 of the Contract following the issue by the *Project Manager* of a termination certificate under Clause 90 of the Contract for any reason in Clause 91.1 of the Contract the Surety hereby guarantees to the *Employer* that the Surety shall subject to the terms and conditions of this Bond pay the Excess Sum in accordance with Clause 1(3) up to the Bond Amount.(2) It shall be a condition precedent to payment by the Surety that the *Employer* send to the Surety a copy of any termination certificate issued by the *Project Manager* under Clause 90.1 of the Contract and a copy of any payment certificate issued under Clause 93 of the Contract in each case within 14 days of such certification being issued on the *Contractor* and that any copy certification sent to the Surety shall be certified by the *Project Manager* as being a true copy of his certification.(3) Subject to Clause 1(4) payment by the Surety shall be made not later than 28 days after the later of(a) the expiry of the 28 days period referred to in Clause 1(1) (save in respect of any payment made by the *Contractor* within that time) and(b) service on the Surety of the copy certificate referred to in Clause 1(2).  |
| **Surety’s rights 2****Accounting 3** | (4) If the Surety objects to the contents of or entitlement to issue a certificate under Clause 93 of the Contract in respect of which the *Employer* seeks payment from him the Surety shall have the right to refer the matter to adjudication in accordance with the adjudication provisions contained in Clauses W2.1 to W2.3 of the Contract as if the Surety were a party to the Contract in place of the *Contractor*.(5) Any adjudication under Clause 1(4) shall be commenced by the Surety within 14 days of receipt by the Surety of the documents referred to in Clause 1(2) and the Surety shall have no right to refer the matter to adjudication after that time.(6) If the content of or entitlement to issue the certificate under Clause 90.1 of the Contract in respect of which payment is sought by the *Employer* is or has been prior to the occurrence in relation to the *Contractor* of any of the events set out at Clause 91 of the Contract the subject of an adjudicator’s decision in an adjudication between the *Employer* and *Contractor* under the Contract the Surety agrees to be bound by the result of such adjudication and shall have no right to refer the matter to adjudication under Clause 1(4).(7) In the case of an adjudication under Clause 1(4) payment by the Surety shall be made within 7 days of the decision in such adjudication.(1) The *Employer* shall send to the Surety copies of any termination certificate issued by the *Project Manager* under Clause 90.1 of the Contract and any payment certificate issued under Clause 93 in each case within 14 days of such certificate being issued on the *Contractor* and that any copy certification sent to the Surety shall be certified by the *Project Manager* as being a true copy of his certification.(2) The Surety shall be entitled at any time within 7 days of receipt by the Surety of the copy notification referred to in Clause 1(2)(a) to require the *Employer* to provide the Surety with such further information and documentation as the Surety may reasonably require to verify the Excess Sum (including information or documentation held by the *Project Manager*) and/or(b) to request to inspect the Site upon reasonable notice (the *Employer* may require that a representative of the *Employer* accompanies the Surety during such inspections).(1) If the Excess Sum is subsequently determined by reason of a subsequent payment certificate issued by the *Project Manager* under Clause 93 of the Contract or by adjudication arbitration litigation or agreement between the Surety and the *Employer* to be less than the amount paid by the Surety the difference (if the Excess Sum has already been paid by the Surety) shall be repaid by the *Employer* to the Surety with Interest within 14 days (or such other period as the *Adjudicator* arbitrator or Court may direct) after the date of such determination or agreement.(2) If the Excess Sum is subsequently determined or agreed to be greater than the amount already paid by the Surety any difference (up to the Bond Amount) shall be paid by the Surety to the *Employer* with Interest within 14 days (or such other period as the *Adjudicator* arbitrator or Court may direct) after the date of such determination or agreement. |
| **Interest 4****Expiry 5****Forbearance 6****Governing Law 7****Assignment 8****Third Parties 9** | Subject to the amount payable by the Surety being varied in accordance with Clause 3 above in the event that any amount payable by either the Surety or the *Employer* under this Bond is not made by the date determined by Clause 1(3) or in accordance with Clause 3 (the Due Date) then the payer shall pay Interest on the sum from whichever shall be the earlier of the Due Date and the date such overpayment was made until the date of payment.Save in respect of any failure to pay the Excess Sum in respect of which a claim in writing has been received beforehand from the *Employer* by the Surety this Bond shall expire on the earlier of the date stated in a certificate of Completion issued by the *Project Manager* and the Final Expiry Date.The Surety shall not be discharged or released by any alteration variation or waiver of any of the terms and conditions and provisions of the Contract or in any extent or nature of the *works* and no allowance of time by the *Employer* under or in connection with the Contract or the *works* shall in any way release reduce or affect the liability of the Surety under this Bond.This Bond shall be governed and construed in accordance with the laws of the country named in the Schedule (“the Country”) and the courts of the Country shall have exclusive jurisdiction.This Bond may only be assigned by the *Employer* with the prior consent of the Surety and the *Contractor* which consent shall not be unreasonably withheld. In the event of any such assignment the *Employer* and assignee shall remain jointly and severally liable for any repayment due to the Surety under Clause 3(1). Notice of any assignment shall be given to the Surety as soon as practicable.Nothing in this Bond confers or purports to confer on any third party any benefit or any right pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Bond.  |

**EXECUTED AS A DEED**

on behalf of the Surety (1) director………………………………………

 (2) director/secretary………………………………

on behalf of the *Contractor* (1) director…………………………………………

 (2) director/secretary………………………………

on behalf of the *Employer* (1) director………………………………………

1. director/secretary………………………………

**SCHEDULE**

Address for Service

 ***Contractor***:

 Tel: Fax:

 ***Employer***:

 Tel: Fax:

 **Surety**:

 Tel: Fax

“Bond Amount” means the sum of £[ ] ([ ] pounds) being the maximum aggregate liability of the Surety under this Bond.

“Contract” means the contract [made between the *Employer* and the *Contractor* dated the [ ] day of [ ][ ]] / [to be entered into between the *Employer* and the *Contractor*] incorporating the NEC Engineering and Construction Contract 3rd Edition.

“Excess Sum” an amount certified as due to the *Employer* under Clause 93 of the Contract.

“*Project Manager*” “*works*” have the same meaning as in the Contract.

and “Site”

“Final Expiry Date” means the [ ] day of [ ] [ ].

“Interest” means the rate of interest specified in the Contract.

“The Country” means [England and Wales] [Scotland] [Northern Ireland]

**APPENDIX 6**

**FORM OF PARENT COMPANY GUARANTEE**

**DATED 20[ ]**

1. **BATH AND NORTH EAST SOMERSET COUNCIL**

**AND**

**(2) [PARENT COMPANY GUARANTOR]**

**PARENT COMPANY GUARANTEE**

relating to the design and construction of

 [ ]

at …………………..

**THIS PARENT COMPANY GUARANTEE** is dated of 20[ ]

**BETWEEN:**

**(1) The Employer** whose registered office is at The Guildhall, High Street, Bath BA1 5AW

and

**(2) The Guarantor** (registered in England and Wales under company number )

whose registered office is at [ ]

**NOW IT IS AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATIONS**

In this Deed where the context so admits:

1.1 The following expression shall have the following meanings:

|  |  |
| --- | --- |
| **"Contract"**  | means a building contract dated [ ] [to be entered into] between the Employer and the Contractor for the design and construction by the Contractor of the Works at the Property and any other amendments agreed by the Contractor and the Employer during the period of this Guarantee; |
| **"Contractor"** | means [insert name of building contractor]; |
| **"Expiry"** | means a period of 12 years following [ ] under and inaccordance with the Contract; |
| **"Property"** | means [ ]; |
| **"Works"** | means [ ] as set out in the Contract; |

1.2 **Successors in Title**

The Employer and the Guarantor shall include both parties’ successors in title and assigns.

1.3 **Headings**

The headings in this Deed are inserted for convenience only and shall be ignored in construing the terms and provisions hereof.

1.4 **Joint Liability**

Where there are two or more persons included in the expressions “Guarantor” or

“Employer” then such expressions shall include the plural number and any obligations expressed to be made by or with such party hereunder or pursuant hereto shall be deemed to be made and undertaken by such persons jointly and severally.

**2 GUARANTEE**

The Guarantor guarantees to the Employer that in the event of a breach of the Contract

 (which for the purposes of this Guarantee shall include any default, occurrence or

 omission by the Contractor which results in the determination of the Contractor’s

 employment under the Contract and shall not be limited to a breach per se of any term

 of the Contract) the Guarantor shall, subject to the provisions of this Guarantee, fully

 indemnify the Employer against all damages, losses, costs and expenses which may be

 incurred by the Employer by reason of any such breach, as are established and

 ascertained pursuant to and in accordance with the provisions or by reference to the

 Contract and taking into account all sums due or to become due to the Contractor. For

 the avoidance of doubt the decision of a court or tribunal of competent jurisdiction or

 agreement reached between the Contractor and the Employer shall be binding on the

 Guarantor.

**3 RELEASE**

The Guarantor shall be, and continue to be, liable under this Deed even if the Contract is

 or becomes not binding on or unenforceable against the Contractor for any reason

 whatsoever. No alterations in the Contract or in the works and no extensions of time,

 forbearance or forgiveness, nor any act, matter, or thing whatsoever, except an express

 release by the Employer, shall in any way release or reduce any liability of the

 Guarantor hereunder. References to the Contract in this Deed shall include all

 amendments, variations or additions to it whether made before or after the date hereof.

**4 LIMITATION ON GUARANTOR’S LIABILITY**

The Employer hereby agrees that the Guarantor’s liability under this Guarantee shall be

limited to and shall not exceed the obligations assumed by the Contractor under the

Contract.

**5 ASSIGNMENT**

The Employer shall be entitled to assign the benefit of this Deed to any party to whom it

assigns its interest under the Contract but not otherwise provided the Guarantor a

Contractor shall be entitled to receive notice of such assignment in writing within

reasonable period of the assignment taking

place.

**6 DURATION**

The obligations of the Guarantor under this Guarantee shall be released and discharged

 absolutely upon Expiry save in respect of a demand made by the Employer prior to

 such date. For the avoidance of doubt the establishment and ascertainment pursuant to

 clause 2 above of the damages, losses, costs and expenses sustained by the

 Employer may occur subsequent to such demand which may be validly given

notwithstanding any lack of particulars of breach of the Contract or of the damages,

losses, costs and expenses sustained by the Employer.

**7 JURISDICTION**

This Deed shall be governed by and construed in accordance with the laws of England

 and Wales and the courts of England and Wales have non-exclusive jurisdiction with

regard to all matters arising in connection with or under this Guarantee.

**IN WITNESS** whereof this Deed has been duly executed and delivered on the date and year stated above.

**EXECUTED** as a **DEED** by **THE**

**EMPLOYER** by the signatures of:

Authorised Signatory ……………………………………………………………………

Authorised Signatory ……………………………………………………………………

**EXECUTED** as a **DEED** by **THE**

**GUARANTOR** by the signatures of:

Director ……………………………………………………………………

Director/Company Secretary ……………………………………………………………………

**APPENDIX 7**

**Tenderer’s proposals**

Tenderers shall insert their tender proposals as a series of Annexes within this Appendix, including but not limited to:

* Additional information in response to questions in Section 3 (as appropriate);
* Social Value method statement;
* Tender programme;
* Design proposals;
* Outline method statements,

all as identified in Section 3 of this document.

**ANNEX [*to be completed by Tenderer*] TO APPENDIX 7**

**[*to be completed by Tenderer*]**

**Glossary**

Refer to Clause 11 of the ECC for identified and defined terms.

Contracting Bodies’ or `Contracting Body’ or `End User’ means any other contracting bodies described in the framework agreement.

‘Contractor' and ‘*Contractor*’ means the person, firm or company appointed by the Council or Contracting Body to supply the goods, services or works under this Contract and shall include the Contractor's employees, personal representatives, successors and permitted assigns.

‘Council’ means Bath & North East Somerset Council.

`Contract’ means the written agreement between the Council or Contracting Body consisting of the clauses within the terms and conditions of contract and the Order.

 “e-tender system” means the electronic tender system named Pro-Contract. It is provided by Due North and is hosted via http://www.supplyingthesouthwest.org.uk.

`Invitation to Tender’ or ITT means the Tender process and all its components, inviting tenders for inclusion within theContract.

`Offer’ means the offer made by the Tenderer in relation to the proposed Contract.

 ‘Specification’ means the scope of the goods, services or works to be provided pursuant to this Contract as set out in the Works Information.

‘Tender’ means all documentation provided by a Contractor as part of its Tender submission together with such modifications and additions thereto as may be agreed between the parties prior to the Contract Date.

`Tenderer’ and/or ‘Supplier’ means person, firm or company submitting a Tender to the Council for inclusion on the Contract.

**Interpretation**

Words importing the singular also include the plural and vice-versa where the context requires.

Words in any gender include all genders.

1. See EU definition of SME: <http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/> [↑](#footnote-ref-1)