



(1) - ATO Tender Instructions

Applicants should read this Volume first

If you need this suite of Tender documents in another language, print size or colour, braille, BSL, as an e-mail attachment, on audio tape or disk – please submit a request via the Supplying the South West e-Tendering Portal

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1 Electronic Tendering

1.1 Electronic Availability of Tender Documents

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

Please Note: The Documents in the Opportunities Area of the Portal are for information only and **must not** be used by Applicants to submit their tender response (***Tender***).

Applicants should note that any information considered by the Authority to be of a confidential nature will not be included within the publicly available Documents.

1.2 Registering an Interest in the Tender

In order to submit a Tender for this opportunity Applicants are required to register an interest via the Portal.

Any Applicants not already registered on the Portal will need to do so in order to register an interest and submit their Tender.

Please Note: Only those Applicants who have registered an interest will be notified of any updates or changes to this tender opportunity and the associated Documents.

1.3 Confidential Information

Applicants are required to complete and submit a Confidentiality Agreement, in order to access any information of a confidential nature. Signed Confidentiality Agreements must be returned to the Authority via the Discussions Facility on the Portal and the confidential information will be issued to the Applicant via the same.

Applicants should note that any confidential information issued to them by the Authority must not be passed onto a third party without the express permission of the Authority.

2 The Tender Documents

2.1 Documents for Information

The Documents listed within this section provide information for Applicants:

2.1.1 **(1) Tender Instructions** –instructions for Applicants on:

- (a) the way the procurement process (***the Process***) will be conducted;
- (b) the way in which the Documents must be completed;
- (c) the way in which the Documents must be submitted;

2.1.2 **(2) Tender Information** –information for Applicants on:

- (a) background to the procurement;
- (b) the procurement procedure;
- (c) the evaluation process;
- (d) information about the Contract;
- (e) TUPE requirements (where applicable);
- (f) definitions of specific terms used; and
- (g) all other information that may assist Applicants to complete their Tender.

2.1.3 **(3) Tender Specification** –the Authority's requirements in relation to the goods, services or works being procured.

2.1.4 **Contract Terms and Conditions (*the Terms*)** –the Agreement between the Authority and the successful Applicant for the provision of the goods, services or works. Applicants should refer to section 3.8 below for further information on Terms

2.1.5 **Appendices** – there may be a number of Appendices associated with the tender which provide additional background information.

2.2 Documents for Submission

The Documents listed within this section are for Applicants to complete and submit:

2.2.1 **Confidentiality Agreement** –the agreement which Applicants are required to complete and return in order to access any confidential information that forms part of the Documents. Applicants should note this document will only be included where the Documents contain confidential information.

2.2.2 **(4) Stage 1 Submission** – the PQQ information Applicants are required to submit, containing:

- (a) the Applicant's responses to the Pre Qualification Questionnaire;
- (b) the conditions of tender;
- (c) pricing schedule declaration.

- (d) confidentiality certificate; and
- (e) certificate of undertaking absence of collusion or canvassing.

2.2.3 **(4) Stage2 Submission** – the Award information Applicants are required to complete, containing:

- (a) the Applicant's Method Statement responses;
- (b) the Applicant's Technical Question responses

2.2.4 **(5) Pricing Submission** –the pricing information Applicants are required to complete.

2.3 Ownership

The Documents are and shall remain the property of the Authority. Applicants may only copy or reproduce the Documents for the purposes of their Tender. Applicants must return all copies of the Documents if requested to do so by the Authority.

3 Understanding the Tender Requirements

3.1 Conflicts of Interest

The Authority has taken appropriate measures to effectively prevent, identify and remedy any conflicts of interest arising from this Process, in order to avoid any distortion of competition and to ensure equal treatment of all Applicants.

3.1.1 Prior Involvement of Applicants

Where the Authority is aware, or becomes aware during the Process, that a potential Applicant has had an involvement in the preparation of the tender opportunity or has information that is likely to provide them with a competitive advantage, the Authority will put measures in place to ensure competition is not distorted. In the event that the Authority is unable to put appropriate measures in place the Applicant will be excluded from the process.

3.2 Understanding the Tender Documents

Applicants should ensure that they have read and understood all of the Documents and have obtained all of the information needed to enable them to submit a Tender. Applicants will be considered to be satisfied that their Tender is correct and sufficient. The Authority will not accept any claims related to an Applicant's failure to read and understand the Documents.

Applicants are encouraged to review the Documents, at the earliest opportunity, in order to be able to understand the nature and complexity of the requirements and to allow sufficient time to respond.

Applicants are responsible for obtaining all of the information necessary for the preparation of their Tender and any costs, expenses or liabilities incurred by an Applicant in connection with this Process shall be met by the Applicant.

Where an Applicant identifies an error or omission within the Documents they should immediately notify the Authority via the Discussions Facility. The Authority will then rectify the error or omission and re-issue any amended Documents.

3.3 Applicant's Submission

The information provided by Applicants will be relied upon to be true and accurate and will form part of the Contract with the successful Applicant. If any of the information provided by an Applicant within its Tender is subsequently found to be inaccurate the Applicant may be excluded from further participation in the Process or any future procurement process lead by the Authority and could cause the termination of any resultant Contract.

Applicants will be considered to have satisfied themselves of the accuracy and viability of all prices or rates stated within (6) Pricing Submission prior to submitting their Tender. All prices or rates quoted will (unless otherwise provided for in the Contract) cover all of the Applicant's obligations under the Contract and Applicants will be considered to have obtained all of the necessary information in relation to risks, contingencies or any other circumstances which reasonably influence or affect its their bid.

3.4 The Applicant's Warranties

In submitting their Tender the Applicant warrants, represents and undertakes to the Authority that it:

- 3.4.1 Has not done any of the acts or matters referred to in Regulation 57 of the Public Contracts Regulations 2015 and has complied in all respects with the requirements;
- 3.4.2 Has full power and authority to enter into the Contract and provide the goods, services or works and will, if requested, produce evidence of such to the Authority; and
- 3.4.3 Is of sound financial standing and the Applicant and its partners, directors, officers and employees are not aware of any circumstances (except those disclosed in the audited accounts or other financial statements submitted to the Authority by the Applicant) which may adversely affect such financial standing in the future.

3.5 The Authority's Warranties and Disclaimers

The Applicant will have no claim whatsoever against the Authority in respect of such matters and in particular (but without limitation) the Authority shall not make any payments to the successful Applicant except that expressly provided for in the Contract and (except to the extent set out in the Contract) no compensation or remuneration shall otherwise be payable by the Authority to the Applicant in respect of the services by reason of the specification being different from that envisaged by the Applicant or otherwise.

Whilst the information in this document has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified. With the exception of statements made fraudulently, the Authority does not accept any liability or responsibility for the adequacy, accuracy or completeness of such information. The Authority does not make any representation or warranty (express or implied) with respect to the information contained in the document or with respect to any written or oral information made or to be made available to any Applicant or its professional advisors.

Applicants must make their own independent assessment of the proposed Terms after making such investigation and taking such professional advice as it considers necessary to determine its interest in the Contract.

The Documents are issued on the basis that nothing contained in them shall constitute an inducement or incentive nor shall have in any other way persuaded the Applicant to bid or enter into any other contractual agreement. Under no circumstances shall the Authority be liable to an Applicant in respect of any costs incurred by an Applicant (whether directly or otherwise) in relation to the preparation or submission of their Tender.

The fact that a short listed Applicant has been invited to Tender does not necessarily mean that the Applicant has completely satisfied all the Authority's criteria and the Authority may require further information as appropriate and assess this as part of the evaluation process.

3.6 Delivering Policy through Procurement

The Authority's policy objectives are considered in all procurement processes and where appropriate and proportionate will be incorporated into the resultant Contract. The policy objectives which are considered may include, but are not restricted to:

- 3.6.1 Sustainable procurement;
- 3.6.2 Privacy impact assessments;
- 3.6.3 Public Services (Social Value) Act 2012;
- 3.6.4 Supporting Local Small and Medium Enterprises (SMEs);
- 3.6.5 Supporting the Voluntary, Community and Social Enterprise (VCSE) Sector;
- 3.6.6 Local Authority Equality Duty.

3.7 Sub-contracting and Consortia Arrangements

Applicants are required to provide details of their bidding model, including any sub-contracting and consortia arrangements, within their PQQ Submission. Detailed requirements can be found in sections 3.7.1 and 3.7.2 below and (4) ATR PQQ Submission.

3.7.1 Sub-contracting Arrangements

Where an Applicant 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.

The Authority recognises that arrangements in relation to sub-contracting may be subject to future change, and may not be finalised until a later date. However, Applicants should be aware that where information provided to the Authority indicates that sub-contractors are to play a significant role in delivering key contract requirements, any changes to those sub-contracting arrangements may affect the ability of the Applicant to proceed with the procurement process or to provide the supplies and/or services required. Applicants should therefore notify the Authority immediately of any change in the proposed sub-contractor arrangements. The Authority reserves the right to deselect the Applicant prior to any award of Contract, based on an assessment of the updated information.

3.7.2 Consortia Arrangements

If the Applicant completing the PQQ is doing so as part of a proposed consortium, the following information must be provided:

- (a) names of all consortium members;
- (b) the lead member of the consortium who will be contractually responsible for delivery of the Contract (if a separate legal entity is not being created); and
- (c) if the consortium is not proposing to form a legal entity, full details of proposed arrangements within a separate Appendix.

Please note that the Authority may require the consortium to assume a specific legal form if awarded the Contract, to the extent that a specific legal form is considered by the Authority as being necessary for the satisfactory performance of the Contract.

All members of the consortium will be required to provide the information required in all sections of the PQQ as part of a single composite response to the Authority i.e. each member of the consortium is required to complete the form.

Where you are proposing to create a separate legal entity, such as a Special Purpose Vehicle (SPV), you should provide details of the actual or proposed percentage shareholding of the constituent members within the new legal entity in a separate Appendix.

The Authority recognises that arrangements in relation to a consortium bid may be subject to future change. Applicants should therefore respond on the basis of the arrangements as currently envisaged. Applicants are reminded that the Authority must be immediately notified of any changes, or proposed changes, in relation to the bidding model so that a further assessment can be carried out by applying the selection criteria to the new information provided. The Authority reserves the right to deselect the Applicant prior to any award of contract, based on an assessment of the updated information.

3.8 Contract Terms and Conditions

Applicants are expected to read and understand the Contract Terms and Conditions (***the Terms***) before submitting their Tender.

Queries or suggestions regarding the Terms may only be raised during the Tender clarification period and in accordance with the process detailed at section 3.9.1 below. The Authority may reject queries or suggestions that are not submitted in a clear and precise manner.

Where the Authority:

- 3.8.1 Agrees with any suggested changes to the Terms it will update and republish the Document and Applicants will be notified accordingly. The Authority reserves the right to extend the Tender Submission deadline date to allow Applicants sufficient time to take these changes into account;
- 3.8.2 Does not agree with the suggested changes, they will be judged to have been rejected and the Authority will provide Applicants with the reasons for rejection.

The Authority will not consider any queries or suggestions after the Tender clarification period has ended.

Applicants are required to agree to the Terms for this opportunity and cannot reserve the right to comment or negotiate on them at any point following the closing of the Tender clarification period. Where an Applicant does not agree to the Terms that Applicant will be judged to have submitted a non-compliant Tender, their submission will not be evaluated further and the Applicant will be notified accordingly.

The successful Applicant will accept the Terms as they are drafted in the final Contract document. No further negotiation will take place and no changes will be allowed. Where the successful Applicant disputes this position the Authority reserves the right to withdraw the Contract award and class the Tender submission as non compliant.

3.9 Communication

3.9.1 Tender Clarification

Clarification questions and responses to questions during this Process will be conducted via the Discussions Facility. Unless a question is innovation based the response will be provided to all Applicants.

Where a question relates to TUPE information provided by an external organisation, questions

must submitted via the Discussions Facility, the Authority will then forward the questions to the organisation. The organisation's response will be provided to all Applicants via the Portal.

The identity of Applicants raising questions will remain confidential.

The Authority will not negotiate on of any of the substantive terms of the Documents. Only clarification queries relating to the Documents will be answered.

It is the responsibility of all Applicants to ensure they read and understand all of the responses to questions that have been raised.

The timescale for the submission by Applicants of clarification questions is twelve (12) noon on the date given in the Procurement Timetable within (2) ATR Tender Information. The Authority will not consider any clarification questions that are submitted after the deadline, unless they are directly related to a response issued by the Authority on or after the deadline for submission of questions.

3.9.2 Amendments to Documents

All communication by the Authority to Applicants regarding amendments to the Documents will be via the Portal and organisations will need to register an interest in order to receive those communications.

If any amendments are made to the Documents before the submission deadline the revised Documents will form part of the suite of Documents and the resultant Contract.

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

The Authority reserves the right to extend the submission deadline if appropriate.

4 Completion, Submission and Receipt of Tenders

4.1 Completion of Tenders

All Documents must be completed in full and signed (if possible) where required. If an Applicant has previously submitted information they may not refer to previous responses, except where it specifically states within the Documents that they may do so.

All Documents must be submitted in the format in which they have been issued, e.g. where a document is issued in Word format it must be submitted by the Applicant in Word format and not changed to a PDF document. Failure to do so may result in the Tender being rejected.

Applicants should ensure that all questions are completed in full and in the format requested, taking into account any requirements relating to word limits and supporting documents. Failure to do so may result in the Tender being rejected. Where a question does not apply to an Applicant, for example when it relates to a Lot which the Applicant is not bidding for, the Applicant should state clearly N/A in the response section.

Should an Applicant need to provide Appendices in response to the Selection questions, these should be numbered clearly and listed as part of the Applicant's declaration. A template for providing additional information is provided at the end of the Selection questionnaire

Applicants may only provide supporting documentation for Award questions where it is allowed for within the question and any documents provided must be clearly referenced within the Applicant's response. Any supporting documents provided that are not referenced within the Applicant's response will not be evaluated.

All entries including responses to questions, rates, price totals or any other endorsements must be typewritten in English. Handwritten responses will not be accepted.

4.2 Submission and Receipt of Tenders

All Documents for Submission listed in 2.2 above, together with any supporting documents, must be returned electronically via the Portal, in advance of the deadline for submission.

It is the responsibility of Applicants to ensure they have submitted all of the required Documents.

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

Applicants are responsible for ensuring the timely submission of their Tenders. Only those Tenders received by the deadline will qualify as timely offers and all submissions will be automatically classified by the system as being 'On Time' or 'Late'.

Applicants are strongly urged to make their submission in advance of the deadline, in order to ensure it is not delayed by any technical issues with their own IT systems or technical difficulties with the Portal due to a number of Applicants attempting to submit Tenders at the same time.

4.2.1 Technical Support

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

swsupport@due-north.com

or call:

0844 334 5204 This line is available between 08:30 and 17:00 Monday to Friday (excluding English bank holidays).

4.3 Opening of Tenders

All Tenders will be electronically unsealed at the same time, in the presence of an Officer and a Verifier, after the prescribed submission date and time. The Verifier will be an Officer who is independent of the procurement process.

4.4 Tender Opt Out

Where an Applicant decides to opt out of the Tender the Authority requests that they do this formally through the Portal, giving the reasons for non-submission.

5 Acceptance and Rejection of Tenders

5.1 Late Tenders

Submissions made after the date and time specified on the documents will not be considered under any circumstances.

5.2 Irregular Tenders

Submissions that are not made via the Portal or to a different address, electronically or otherwise will be considered by the Authority to be irregular and will be rejected from the Process.

5.3 Abnormally Low Tenders

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

Where necessary, advice in assessing the explanation will be sought from the Authority's Corporate Finance section.

5.4 Tenders Exceeding Estimate

The Authority will deal with any Tenders which exceed the estimated budget in the following way:

- 5.4.1 Where the Authority has not declared a price or budget for the Contract and the submitted Tenders exceed the Authority's estimate or budget, the Authority reserves the right to restart or abandon the Process;
- 5.4.2 Where the Authority has declared the maximum budget for the Contract, all Tenders submitted must be within that stated budget. Any Applicant's whose price exceeds the stated budget will be excluded from any further participation in the process and will be notified accordingly.

5.5 Incomplete Tenders

Tenders will be considered incomplete where the Applicant has not:

- 5.5.1 Submitted all of the required documents, including any supporting information requested;
- 5.5.2 Completed all of the documents required;
- 5.5.3 Responded to all of the questions; or
- 5.5.4 Submitted the Documents in the required format.

5.6 Rejection of Offers

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

The Authority reserves the right to reject any submitted Tender where:

- 5.6.1 It is considered by the Authority to be incomplete or vague;
- 5.6.2 It has been submitted later than the prescribed date and time;
- 5.6.3 It has been submitted by any means other than via the Portal;
- 5.6.4 It is not in accordance with the required format;
- 5.6.5 The Applicant has not accepted the Authority's Contract Terms and Conditions;
- 5.6.6 It is in breach of any condition contained within it; or
- 5.6.7 The Authority has become aware, either on submission or at any point during or after the Process, that an Applicant has:
 - (a) directly or indirectly canvassed any Official, Member or Officer of the Authority;
 - (b) obtained information from any other person who has been contracted to supply goods or provide the service or works to the Authority concerning the award of the Contract;
 - (c) directly or indirectly obtained or attempted to obtain information from any such Official, Member or Officer concerning any other Applicant;
 - (d) fixed or adjusted the prices by or in accordance with any agreement or arrangement with any other person;
 - (e) communicated to any person other than the Authority the price or approximate price (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the bid or for the purposes of insurance or financing);
 - (f) entered into any agreement with any other person that such other person shall refrain from submitting an offer or shall limit or restrict the prices to be shown or referred to by another Applicant;
 - (g) offered to agree to pay or have paid or given any sum of money, inducement or valuable consideration to any person having direct connection with the procurement process;
 - (h) paid or given any sum of money, inducement or valuable consideration, directly or indirectly, for doing or having done or causing or having caused to be done any act or omission in relation to any other Applicant or any other person's proposal.

6 Tender Evaluation

6.1 The Evaluation Process

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

The Authority will complete the full evaluation process for all compliant Tenders which meet all of the mandatory requirements as set out within the Documents.

Award criteria will be evaluated by an Evaluation Panel and the process will be moderated by a member of the Procurement Team. Applicants should note that not all Panel members may assess every question, but all Tenders will be evaluated in the same manner and by the same Panel.

6.2 Post Tender Clarification

Post tender clarification will only be for the purposes of clarifying or supplementing the content of an Applicant's Tender or the requirements of the Authority where this would not be discriminatory to other Applicants.

All post tender clarification will be conducted via the Portal, unless under exceptional circumstances a formal meeting is required. Where clarification is by way of a formal meeting, notice of the meeting will be issued via the Portal and an electronic record of that meeting will be made.

The Authority will determine whether individual post tender clarification questions should be asked to just one, some or all Applicants. Where post tender clarification results in substantial modification to the Contract the Authority reserves the right to restart or abandon the Process.

Please Note: Any clarification sought by the Authority in relation to individual Applicant's Tenders will be issued via the Portal and only to the individual who has registered an interest in the opportunity.

6.3 Approval to Award the Tender

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

6.4 Tender Outcome Notifications

All Applicants will be notified of the Tender Award decision at the same time, via the Portal and on the date given in the Procurement Timetable within (2) ATR Tender Information document.

If the decision is not to award the Tender all Applicants will be notified via the Portal, as soon as possible after the decision has been made.

Please Note: Applicants will be advised via the Portal of any changes to the decision date.

6.5 Acceptance of Tender

The Applicant's offer shall remain open for acceptance for a period of twelve (12) months from the closing date for the receipt of Tenders.

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

6.6 Standstill

In accordance with Regulation 87 of the Public Contracts Regulations, where the decision is to award the Tender the Authority must observe a mandatory minimum Standstill period of ten (10) calendar days from the date of the Tender outcome notification, before any resultant Contract can be entered into.

6.7 Issuing and Signing Contracts

Prior to issuing the Contract the Authority will require the successful Applicant to provide evidence of compliance with any Contractual requirements, such as insurances, disclosure and barring service checks and policies and procedures.

The successful Applicant will conclude a formal Contract with the Authority, which will include the Applicant's offer and the Applicant may not consider itself successful unless and until a formal Contract has been signed by duly authorised officers of both the Authority and the Applicant.

The successful Applicant will not be allowed to commence performing the Contract prior to the formal Contract documents being signed, unless written agreement to do so has been given by the Authority's Legal Services.