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| torbaycouncil |
| **Volume One (1) - 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 - phone 01803 208977** |

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**Instructions**

## General Guidance

This guidance is generic for all procurement processes undertaken by Torbay Council and may refer to tender documents that are not appropriate to the stage or type of process for which you are bidding, for example Volume Four (4) A Pricing is unlikely to be provided at the Selection Stage of a two (2) stage process. Applicants should refer to Volume Five (5) Forms for full details of the Volumes which are applicable to the process or stage of the process being undertaken.

## Study of the Document

Documents issued by the Authority to a prospective Applicant must not be passed on to a third party without the express permission of the Authority.

The Applicant is required to examine the documents and obtain all the information it may require them to make a Bid. The Applicant shall be deemed to have satisfied itself as to the correctness and sufficiency of its Bid. No claims whatsoever shall be entertained arising out of the Applicants failure to study the documents; the information provided will be relied upon as being true and accurate and will form part of the Contract with the successful Applicant. If any of the information given by your organisation within the document is subsequently identified as being inaccurate, this may exclude your organisation from further consideration.

Applicants shall be deemed to have satisfied themselves before making their Submission as to the accuracy and sufficiency of the prices and rates as stated in Volume Four A (4A) Pricing which shall (except in so far as it is otherwise provided in the Contract) cover all obligations under the Contract and Applicants shall also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect its bid.

The Applicant is responsible for obtaining all information necessary for the preparation of its bid and all costs, expenses and liabilities incurred by the Applicant in connection with it shall be borne by the Applicant.

## Ownership

The procurement documentation and all copies thereof are and shall remain the property of the Authority and save for the purposes of the Bid, must not be copied or reproduced in whole or in part and must be returned to the Authority upon demand.

## Authority’s Warranties and Disclaimers

The fact that an Applicant has been invited to bid 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.

The Applicant shall 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 save as expressly provided for in the Contract and (save 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.

Each Applicant to whom the document is sent must make its own independent assessment of the proposed terms after making such investigation and taking such professional advice as it deems necessary to determine its interest in the Contract.

This document is issued on the basis that nothing contained in it 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 an offer.

## Bribery Act

The Bribery Act 2010 modernises the law on bribery and came in to force on 01 July 2011. The Act requires Public Bodies to ensure that they have procedures in place to prevent bribery by persons associated with them. As part of this responsibility all Applicants should make themselves aware of the obligations set out at <http://www.justice.gov.uk/legislation/bribery>.

## Framework Agreements

This section only applies where the Authority is seeking to establish a Framework Agreement.

For the avoidance of doubt the Authority does not bind itself to secure the purchase whether in-house or by the customers (internal stakeholders) of any of the Services or specific quantities of any products required under this Framework Agreement.

Any formal Contract under a Framework Agreement will be formed by each Authority or another individual Authority to whom the Framework Agreement is available for use through a Further Competition exercise which is the process of competing for work between Contractor(s) on the Framework Agreement.

Where the Framework Agreement is open for use by other authorities, each Eligible User will be responsible for their individual Call-Off Contracts under the terms of the Framework Agreement. The contractual clauses incorporated in to those Call-Off Contracts of each Eligible User may vary, and should be considered in each order for the provision of Services.

## Public Services (Social Value) Act

The Public Services (Social Value) Act 2012 brings in a statutory requirement for public authorities to have regard to economic, social and environmental well-being in connection with public services contracts in a way that is relevant to the subject matter of the contract and compliant with the Public Contracts Regulations 2006. Applicants must note that they may be asked to comply with particular requirements based around such considerations as part of the selection and/or award process.

## Consortia and Sub-contracting

Where an Applicant wishes to make its application as a Consortium or utilising sub-contractors the Authority advises the group of organisations to select a Lead Applicant in whose name the Bid is to be submitted. The Lead Applicant is advised to confirm precisely what the arrangements are within its Bid including providing the names of all of the organisations to be involved, the nature and extent of their involvement and proposals regarding the structure and management of the Consortium or arrangements. Such details should be provided within Volume Five (5) Forms and/or Volume Four (4) Evaluation where appropriate and should enable the Authority to assess the overall Consortium or core supply base.

The Lead Applicant should provide details of the actual or proposed percentage shareholding of the constituent members within the Consortium or the exact nature of and degree to which the Goods/Services or Works will be sub-contracted.

Applicants that wish to bid as a Consortium or sub-contractor are discouraged from also making their own individual application or from participating in Consortia or providing sub-contracting arrangements for multiple Lead Applicants.

The Authority recognises that arrangements in relation to Consortia and sub-contracting may (within limits) be subject to future change. Applicants should therefore respond to this opportunity in the light of the arrangements as they are currently envisaged. Applicants are informed that any future change in relation to Consortia and sub-contracting must be notified to the Authority during the procurement process or in the event that they are the successful Contractor and in any event as soon as that change is known. The Authority may then make a further evaluation of that Applicant or Contractor by applying the Selection criteria to the new information provided. In the event that the Authority’s evaluation of the new information results in an outcome that is different from the original, the Authority reserves the right to deselect that Applicant from the process on those grounds and the Applicant shall be notified accordingly. As such, the Lead Applicant shall undertake to ensure that any change to its Consortium or sub-contractors shall not have a negative impact upon the arrangements.

If a Consortium is not proposing to form a corporate entity, full details of alternative proposed arrangements should be provided. Where the proposed Lead Applicant is a special purpose vehicle or holding company, information should be provided regarding the extent to which it will call upon the resources and expertise of its members.

Please note that the Authority reserves the right to require a successful Consortium to form a single legal entity in accordance with regulation 28 of the Public Contracts Regulations 2006.

## Contract Terms and Conditions

The Contract terms and conditions are provided with this documentation, which the Applicant is expected to read thoroughly before it makes its Submission. Any queries regarding the terms and conditions, including an Applicant’s request to suggest alternative drafting on some or all of the clauses contained therein, may be raised during the Tender clarification period and in accordance with that detailed at section 1.10 Clarification and Circular Advices within this Volume One (1) Instructions. The Authority requests that Applicants’ comments, queries and/or suggestions are clear and precise, otherwise they may be rejected.

Where the Authority is in agreement with any changes to the terms and conditions proposed during that period it will update and republish the relevant documentation and all Applicants will be notified accordingly. The Authority reserves the right to extend the Tender Submission deadline date in order to allow Applicants sufficient time to take these changes into account. Where the Authority is not in agreement with any changes those proposals shall have been judged to have been rejected and the Authority shall provide an explanation to the Applicants as to the reason/s why it has been judged so.

When the period for clarification has closed Applicants shall no longer be allowed to raise any further queries regarding the terms and conditions and the Applicant shall not be permitted to reserve their right to comment or negotiate upon the terms and conditions at any point thereafter.

Applicants are required to agree to the terms and conditions associated with this procurement opportunity as part of the Submission process and the Authority reserves its right to class any Tender submitted to the contrary as non-compliant. All such Applicants shall be judged to have failed with their Tender applications, shall be evaluated no further and notified accordingly.

The Contractor/s shall accept the terms and conditions as they are drafted in the final Contract document. No further negotiation shall take place nor changes allowed. Where a Contractor disputes this position the Authority reserves the right to withdraw the Contract award and class the Tender submission as non compliant.

## Clarification and Circular Advices

If your organisation has any questions relating to any part of this questionnaire or to the procurement process as a whole, please contact the Authority via the Supplying the South West e-Tendering portal, using the Discussions option.

There will be no negotiations of any of the substantive terms of the documents. Only clarification queries relating to the documents will be answered.

Applicants shall submit all clarification questions via the Supplying the South West e-Tendering portal before twelve (12) noon on the date given in the Procurement Timetable within Volume Two (2) Information.

Applicants should note that unless your question is innovation based, responses will be provided to all Applicants. The identity of Applicants raising any questions will remain confidential.

Any instruction by the Council prior to the due date will be issued to all Applicants via [the](http://www.devontenders.gov.uk) Supplying the South West e-Tendering portal.

If during the period the Authority or Awarding Authority in the case of a Framework Agreement issues any circular letters to Applicants in order to clarify or alter part of the documents, then such circular letters shall form part of the Contract and Applicants shall be deemed to have taken account of them in preparing their bid. Applicants shall also promptly acknowledge any circular letters that they receive.

## Discrepancies, Omissions concerning the Documents

Should the Applicant find discrepancies in, or omissions from, the documents, the Authority’s Procurement Representative shall be immediately notified by the Applicant via the Supplying the South West e-Tendering portal.

Should any additions or deletions to the documents be considered necessary prior to the date for Submission, these will be issued by the Authority to Applicants and will be deemed to then form part of the documents; the Authority reserves the right to extend any date of Submission accordingly.

## Completion of Documents

All entries such as rates, price totals or any other endorsements entered must be typewritten in English.

Applicants will answer all appropriate questions and sign (if possible) where specified. You may continue on a separate sheet where necessary. Applicants will clearly reference its replies and any supporting documentation.

Any pro-formas must be fully completed even if your organisation has previously submitted information. It is not sufficient to cross-refer to previous responses.

## Innovative Offers, Alternatives and Variations

Innovative offers may be made in addition to making a full and complete Submission. The Submission of an innovative offer will not be considered if the Applicant fails to make a complete Submission in the prescribed format.

Should the Applicant wish to offer a variation or alternative to the Specification detailed within this document, including innovations to any Goods/Works or Services identified, please complete the Tender as described, answering the questions asked against the Specification provided at Volume Three (3) and submitting the relevant pricing within Volume Four A (4A) Pricing: the ‘standard bid’

Your alternative or variant bid should be prepared separately and submitted as such, giving clear details of your organisation’s departure from the specification or where your innovations alter other parts of the Tender, for example any Contract clauses or pricing. No alternative or variant shall be considered by the Authority without the Submission of a ‘standard’ bid.

## Return of Document

Documents must be returned electronically via the Supplying the South West Tenders e-Tendering portal. Should you experience any problems with Supplying the South West, please contact the support desk 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).

Submissions must be received in advance of the deadline in order to qualify as timely offers. As such, Applicants are urged to make their Submission well in advance of the stated time or date in order to avoid such issues as technical difficulties with the electronic system that may be due to the high volume of traffic attempting to submit offers on the same date at the same time, for example.

Submissions made after the date and time specified on the documents or to a different address, electronically or otherwise, will not be considered under any circumstances.

## Applicant’s Warranties

In submitting their Bid the Applicant warrants and represents and undertakes to the Authority that it has not done any of the acts or matters referred to in Article 23 of the Public Contracts Regulations 2006 (as amended in 2009) and has complied in all respects with the requirements;

* it has full power and authority to enter into the Contract and provide the Goods/Works or Services will if requested produce evidence of such to the Authority;
* it is of sound financial standing and the Applicant and its partners, directors, officers and employees are not aware of any circumstances (other than such circumstances as may be disclosed in the audited accounts or other financial statements of the Applicant submitted to the Authority) which may adversely affect such financial standing in the future.

## Non Submission

If no offer is to be made, this must be indicated via the Supplying the South West portal. In order that the Authority can better understand its Applicant base, your comments regarding the reasons behind your non-Submission would also be appreciated. These can also be made via the Supplying The South West portal.

## Errors and Omissions in the Applicant’s Bid

If the Authority discovers errors or omissions in the Bid, the Applicant may be required to justify the price or item(s) concerned. Any price adjustments to the Bid made by agreement between the Authority and the Applicant shall be confirmed in writing by the Applicant to the Authority before final acceptance by the Authority.

## Rejection of Offers

The Authority may at its absolute discretion refrain from considering or reject a Bid if: it is incomplete or vague or is submitted later than the prescribed date and time; or it is not in accordance with the approved format and all other provisions of the documents or is in breach of any condition contained within it. Any Submission in respect of which the Applicant

* has directly or indirectly canvassed any Official, Member or Officer of any of the Authority or 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 or who has directly or indirectly obtained or attempted to obtain information from any such Official, Member or Officer concerning any other Applicant; or
* fixes or adjusts the prices by or in accordance with any agreement or arrangement with any other person; or
* communicates 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; or
* enters 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; or
* offers to agree to pay to any person having direct connection with the procurement process or does pay or give any sum of money, inducement or valuable consideration, directly or indirectly, for doing or having done or causing or having caused to be done in relation to any other Applicant or any other person’s proposal, any act or omission

shall not be considered for acceptance and shall accordingly be rejected by the Authority provided always that such non-acceptance or rejection shall be without prejudice to any other civil remedies available to the Authority or any criminal liability which such conduct by a Applicant may attract.

## Acceptance of Offers

The Authority reserves the right to award the business in whole to one (1) Applicant, in part to more than one (1) Applicant or to make no award at all. The Authority is prepared to consider part bids as appropriate.

## Award of Contract

Submitted documents shall constitute an irrevocable offer to provide the Goods/Works or Services. Any acceptance of it by the Authority shall be communicated in writing to the Applicant. Upon such acceptance the Contract shall become binding on all parties.

The successful Applicant shall conclude a formal Contract with the Authority, which shall embody the Applicant’s offer. No Applicant may consider itself successful unless and until a formal Contract has been signed by a Duly Authorised Officer of the Authority and co-signed by the Applicant’s Authorised Officer.

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

Financial Check

This section applies only where Selection forms part of the Tender process.

## Financial Check Process

Within the South West Region Selection Questionnaire Applicants will be asked to give their permission for a financial check by a credit management agency named ICC. Where Applicants give their permission a check shall be performed to determine the financial position based on a range of factors including, but not limited to, Directors (number and experience) and parent companies/subsidiaries involved with the organisation, outstanding mortgages or loans, the organisation’s profit and loss and balance sheets, the organisation’s turnover, profit solvency and cash in the bank figure. The financial check shall yield a score, which will be utilised by the Authority for the purposes of the evaluation of this procurement process, as it determines the following risk factor posed to it by the Applicant:

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| --- | --- |
| - | **No credit score** |
| **0-35** | **Proceed with caution / high risk** |
| **35-50** | **Caution / moderate risk** |
| **50-60** | **Normal / limited risk** |
| **60+** | **Confidence / low risk potential** |

## Financial Check Results

Those Applicants that achieve a score of fifty (50) or more shall be judged to have passed this element of the evaluation process.

Where:

### an Applicants score less than fifty (50); or

### the financial check yields information that may prove to be of concern, regardless of the Applicant’s financial check score; or

### a check is unable to be performed, for example, your organisation does not lodge its final accounts with Companies House

the financial information shall be referred to the Authority’s Corporate Finance department for further investigation. This may comprise the full ICC generated credit report and any other information as requested by the Authority either during the procurement process or thereafter. The Applicant shall cooperate with the Authority in such instances by responding to any and all requests for further financial information within the deadlines set at the time of request.

The Authority’s Corporate Finance department shall determine the organisation’s suitability to progress with the procurement process, taking all of the available facts in to account including the subject matter of the Contract and the risk factors inherent to it.

Where the Corporate Finance department rules that an Applicant is suitable to progress with the procurement process the Applicant shall be judged to have passed this element of the evaluation process.

Where the Corporate Finance department rules that an Applicant is not suitable to progress with the procurement process the Applicant shall be judged to have failed this element of the evaluation process. The Authority’s Corporate Finance department’s professional judgement is final. The Applicant shall, as a result, also be judged to have failed with their Tender application and shall be evaluated no further and notified as such.

## Applicant Fails to Give Permission for Financial Check

Where Applicants refuse to give their permission for a check, your organisation shall be judged to have failed this element of the evaluation process. The Applicant shall, as a result, also be judged to have failed with their Tender application and shall be evaluated no further and notified at the Contract award stage of the procurement process as such.

## Future Financial Checks

Where the procurement process is likely to span across a lengthy period of time or financial years, the Authority reserves the right to undertake a further financial check/s in order to ensure that the organisation’s credit rating is suitable. The aforementioned process shall be followed during any subsequent financial checks. The Authority shall notify the Applicant in writing prior to undertaking any further financial checks.