

Dated August 2021

London Borough of Southwark

# Invitation to Tender (ITT)

## For

### Alternative Education Provision

Lot No.	Provision	Sub-Lot	Tenders Due
1	Primary (Key Stages 1 & 2)	1a - 1:1 (one to one)	<b>22/09/2021</b>
		1b - Small Group (2-4)	
		1c - SEND 1:1 (one to one)	
		1d - SEND Small Group (2-4)	
2	Secondary (Key Stages 3 & 4)	2a - 1:1 (one to one)	<b>22/09/2021</b>
		2b - Small Group (2-4)	
		2c - SEND 1:1 (one to one)	
		2d - SEND Small Group (2-4)	
3	English as an Additional Language (EAL) – Supporting pupils to develop proficiency in English alongside curriculum learning		<b>22/09/2021</b>
4	Online provision (comprising online teacher to student)		<b>22/09/2021</b>

**PLEASE READ THESE INSTRUCTIONS CAREFULLY BEFORE PREPARING  
YOUR SUBMISSION**

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## SECTION 1 – INVITATION TO TENDER (ITT)

### 1 DETAILS OF THE CONTRACT

#### 1.1 Introduction

By a Contract Notice placed in the UK e-notification service 'Find a Tender' and on Contracts Finder, London Borough of Southwark (the Council) invites suitably qualified and experienced providers to submit a tender for Alternative Education Provision (AP), to be approved for admittance onto a Framework Agreement. Pre-qualified providers will deliver alternative education to young people in accordance with the Service Specification set out in Appendix 2 of this Invitation to Tender (ITT).

The Council intends to establish a four (4) year multi-supplier Framework of approved providers commencing 3 January 2022 to deliver high quality Alternative Education Provision.

During the 4 year period, the council reserves the right to re-open the framework and admit new providers who meet the initial quality and price evaluation criteria.

The framework will comprise four (4) lots, and Bidders are invited to tender for one or more than one lot. The lots are listed in the Table below:

**Table 1: AP Lots**

Lot Ref	Provision	Sub Lots	Lot Value (approx.)	Description
1	<b>Primary - Key Stages 1 &amp; 2</b>	1a 1:1 (one to one)	£350,000	Lot 1 and Lot 2 are split into four sub-lots which include a provision for Special Education Needs and Disability (SEND) providers who have experience in teaching children with all types of special needs as set out and referenced in the SEND Code of Practice (2015).
		1b Small Group (2-4)		
		1c SEND 1:1 (one to one)		
		1d SEND Small Group (2-4)		
2	<b>Secondary - Key Stages 3 &amp; 4</b>	2a 1:1 (one to one)	£800,000	
		2b Small Group (2-4)		
		2c SEND 1:1 (one to one)		
		2d SEND Small Group (2-4)		

Lot Ref	Provision	Lot Value (approx.)	Description
3	English as an Additional Language (EAL)	£20,000	Supporting pupils to develop proficiency in English alongside curriculum learning.
4	Online Provision	£200,000	Meeting the needs of Children and Young People who will be taught online from Key Stages 1 to 4. Pupils should receive their lessons via a virtual teacher, who is an experienced specialist teacher.

## 1.2 Definitions

Except where defined below, defined terms shall have the same meaning as set out in clause 1 of the Framework Agreement (contained in Volume 3 of this Tender pack).

The terms defined below shall have the following meanings:

**Suitability Assessment:** means the questions set out in Appendix 1 which have been designed to assess the suitability of a Provider to deliver the Authority's contract requirements.

**ITT:** means this Invitation to Tender.

**Tender Documents:** means this ITT comprising:

- Volume 1** – Invitation to Tender
- Volume 2** – Evaluation Methodology
- Volume 3** – Draft Conditions of Contract (Framework Agreement)
- Volume 4** – Individual Placement Agreement
- Appendix A** - Supplier Guidance
- Appendix 1** – Suitability Assessment
- Appendix 2** – Service Specification
- Appendix 3** – Price Schedule
- Appendix 4** – Guidance and Response Document
- Appendix 5** – Generic Method Statement Response Template
- Appendix 6** – Lot Specific Method Statement Response Template

**Tender:** shall mean that document contained in Schedule 3 of the Framework Agreement (Volume 3), comprising the offer submitted by the Tenderer to

provide the Service incorporating, for the avoidance of doubt, but without limitation, the Tenderer's Form of Tender, Price Schedule, Method Statement Response/ Delivery Proposals, supporting documents and any post-tender clarifications.

**Tenderer:** means those organisations invited to submit a Tender in response to this ITT.

**ProContract/e-Procurement Portal:** means the ProContract system used by the Council to conduct the Procurement. The e-procurement portal and all documentation can be accessed via <https://procontract.due-north.com>.

All Communication, including tender responses and clarification questions shall be sent through the Council's e-procurement portal. Tender responses shall be submitted no later than **3:00 pm on 22 September 2021**.

## **2 GENERAL REQUIREMENTS**

**2.1** To provide services as set out in the Service Specification; namely to deliver Alternative Education Provision (AP) for identified students.

### **2.2 Service Objectives**

A summary of the primary objectives of the AP service are:

- To ensure that learners receive a good education, regardless of their personal circumstances.
- To provide good quality educational provision that ensures learners make academic progress and supports real and sustained progression.

### **2.3 Policy and Service Development**

Providers will maintain clear policies, procedures and guidance for all staff on safety precautions. An essential list of policies, procedures and guidance is available within the Service Specification. Providers will ensure that all staff members are familiar with the guidelines and their application in the work situation. The policies cited in the Service Specification are not exhaustive, and will need to adapt to changes in future legislation.

### **2.4 Eligible Organisations**

Suitably experienced organisations which are able to provide the services as per the Service Specification (Appendix 2) of this ITT are invited to submit responses.

## **2.5 Contract Structure**

A Framework Agreement resulting from this ITT will be subject to the Terms and Conditions together with any schedules and appendices substantially in the form included at Volume 3 (the “Framework Agreement”). The Framework Agreement sets out the terms and conditions between the Council and the successful Provider(s) for the provision of the service. The successful Provider(s) will be required to deliver the service to the Council in line with the terms and conditions as set out in the Framework Agreement throughout the duration of the Framework Agreement.

## **2.6 Rules that apply to this Procurement**

This Procurement is for Social and Other Specific Services and as such falls under the ‘Light Touch Regime’ described in [Schedule 3](#) to the [Public Contracts Regulations 2015 \(SI 2015/102\)](#) (“**Regulations**”). Accordingly the Council is only bound by those parts of the Regulations referred to therein and, to the extent that it follows any other part of the Regulations, it does so entirely voluntarily.

## **2.7 Contract Award**

Contracts will be awarded on the basis of MEAT (“Most Economically Advantageous Tender”) and shall take both price and non-financial factors into account. Successful Tenderers shall be appointed to the Framework Agreement based on an evaluation of meeting the price and quality criteria as set out in Volume 2 (Evaluation Methodology) of this Tender pack.

## **2.8 Information Provided**

The Council has made every effort to ensure the completeness and accuracy of information provided to Tenderers but do not warrant any such information. Tenderers will be deemed to have satisfied themselves as to the accuracy and completeness of such information before submitting their Tenders.

## SECTION 2 – CONDITIONS OF TENDERING

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### 1 BASIS OF TENDERS

- 1.1 This is an 'Open' procurement procedure and consists of one stage where Tenderers are invited to submit bids.
- 1.2 Tenderers are able to bid for one or more lots and will be appointed to the lots they have bid for if they are successful in passing the evaluation stages.
- 1.3 Tenders shall be evaluated on their ITT submission in line with the guidance provided in these tender documents.
- 1.4 Tenders should be prepared under the same headings and in the same sequence as set out in the Invitation Document.
- 1.5 The successful Tenderers will need to agree to the Conditions of Contract provided in Volume 3 – Framework Agreement (subject to any amendments proposed in their Tender and accepted by the Council).
- 1.6 The composition of any pre-qualified Tenderer (including consortium members) shall not be changed except with the Council's prior written consent. Tenderers should also notify the Council of any changes to the identity of any significant subcontractor. The Council reserves the right to determine whether or not to continue with the assessment of a Tenderer's Tender, whether or not to allow a Tenderer to continue to participate in the procurement process and/or whether or not to enter into any agreement in respect of the project with a Tenderer where there has been a change (direct or indirect) in the composition or ownership of that Tenderer or a change in the principal relationships between the Tenderer's consortium members. If there has been a change to a Tenderer's consortium members, or a change to the identity of a significant subcontractor which the Council reasonably believes could impact on the delivery of the Project, the Council reserves the right (without being obliged) to request the Tenderer to complete a new Suitability Assessment in accordance with the criteria used for the Tenderer's original submission.
- 1.7 Tenderers are required to inform the Council immediately of any changes to the information provided in their response to the Suitability Assessment and Tender (including but not limited to information concerning members and structure of any consortium). Any new information that is provided to the Council in accordance with this requirement may be evaluated by the Council in accordance with the same assessment criteria used to evaluate the original responses to the Suitability Assessment or Tender stage as appropriate.



The Council reserves the right to withdraw the qualification of a Tenderer at any time following the assessment of new information where the conclusion of such assessment is that, had the Council been aware of the new information at the time of evaluating the Tenderer's initial response to the Suitability Assessment or Tender, the Tenderer would not have qualified.

- 1.8** In regard to the tender process, the Council reserves the right at any time at its absolute discretion;
- (i)** to make whatever changes it sees fit to the content, process, timing and structure of the tender process and to issue amendments or modifications to this Invitation Document; and
  - (ii)** to accept or not accept any Tenders submitted pursuant to the Invitation Document; and
  - (iii)** not to award a Contract and to withdraw from, suspend or terminate the procurement procedure, any part of the procurement procedure and/or this Invitation Document and to procure a Contract with a provider by any alternative means within the legal requirements which the Council is subject to (including by way of undertaking a new procurement process).

## **2 SUMMARY OF STAGES OF TENDER PROCEDURE**

The ITT process shall follow these stages:

- 2.1 Suitability Assessment:** The Suitability Assessment Stage requires Tenderers to complete a questionnaire detailing their respective capabilities, capacity and experience to perform the contract. Following completion of the Suitability Assessment, the Council will notify any Tenderers who have not met the minimum criteria and therefore will be excluded from the tender process.
- 2.2 Assessment of Tenders:** The Council will assess the financial, commercial and qualitative elements of the Tenders and identify the tenderers that meet the price and quality criteria in accordance with the award criteria set out in Volume 2 (Evaluation Methodology) of this Tender Pack.
- 2.3 Award:** The Council will need to obtain formal approval from either the relevant Cabinet Member or Cabinet before appointing providers to the Framework. Tenderers should note that the Council reserves the right at its absolute discretion to award or not award contracts as it sees fit.

- 2.4 Contract Award:** Following the completion of the standstill period and if no legal challenges were raised, the Council will establish Contracts with the successful Tenderers.

### **3 INFORMATION, COSTS AND EXPENSES**

- 3.1** Tenderers are responsible for obtaining all information necessary for the preparation of their Tenders. All costs, expenses and liabilities incurred by any Tenderer in connection with the preparation and submission of a Tender, or in Clarification or Negotiation with the Council, and in providing any other information reasonably required by the Council to enable a detailed evaluation of their Tender, and in the case of acceptance of a Tender by the Council all costs, expenses and liabilities in connection with the execution of all and any contract documents, are to be borne by that Tenderer. Neither the Council nor any of its representatives (including its officers, members, employees and advisors) shall, under any circumstances, be liable in any way to any Tenderer for any costs, expenses or losses incurred by any Tenderer or other person in relation to their participation in this procurement or otherwise.
- 3.2** Tenderers shall ensure that they are fully familiar and have satisfied themselves as to the nature, extent and character of the Service and use of any location(s) (if applicable), the extent of the premises, employees, materials, equipment and machinery which may be required, and any other matter which may affect the obligations to be performed by them if their tender is accepted including, where relevant, the Council's Constitution which may be inspected on the Council's website at:  
[www.southwark.gov.uk/YourCouncil/HowTheCouncilWorks/councilconstitution.html](http://www.southwark.gov.uk/YourCouncil/HowTheCouncilWorks/councilconstitution.html)  
and the Council's policies (which may be inspected on the Council's website or requested from the Council).
- 3.3** The Council in no way warrants the information given to Tenderers by the Council and Tenderers must satisfy themselves of the accuracy of any information provided by the Council. Save in the case of fraud, under no circumstances will the Council, its officers, members, employees, agents or advisers accept any responsibility or liability whatsoever for any loss or damage of whatever kind and howsoever caused arising from or in consequence of the use by Tenderers of such information.
- 3.4** Tenderers should note that:

- (i) any information provided by or on behalf of the Council including, without limitation, the particulars of their properties are a general outline, for the guidance of the Tenderers and do not constitute the whole or any part of an offer or contract; and
- (ii) neither the Council nor their professional advisers guarantee the accuracy of any description, dimensions, references to condition, necessary permissions for use and occupation and other details forming part of or appended to this Invitation Document and Tenderers must not rely on them as statements of fact or representations and must satisfy themselves as to their accuracy; and
- (iii) neither the Council nor their professional advisers will be liable, in negligence or otherwise, for any loss arising from the use of the relevant information.
- (iv) all descriptions, dimensions, references to condition and necessary permissions for use and occupation, and other details are given without responsibility and any Tenderer should not rely on them as statements or representations of fact but must satisfy themselves by inspection or otherwise as to the correctness of each of them.
- (v) the Council expects Tenderers to conduct their own due diligence and not totally rely on the information the council provides.
- (vi) Tenderers' attention is drawn to the Conditions of Contract set out in Volume 3 (Framework Agreement) of the Invitation Document. It is essential that Tenderers are completely familiar with the contents of the Conditions of Contract before compiling their Tenders. Tenderers considering entering into a contractual relationship with the Council should make their own enquires and investigations of the Council's requirements beforehand. The subject matter of this Invitation Document shall only have contractual effect when it is contained in the express terms of an executed form of Contract or such other agreement properly entered into and executed by the Council.

## **4 COMMUNICATIONS PROTOCOL**

- 4.1** All queries and other relevant permitted correspondence should be submitted via the messaging/clarification service on ProContract, Southwark Council's e-procurement portal.
- 4.2** Any communication or attempt to contact any other member of the Council's staff, officers, consultants or members may result in your organisation being disqualified from the procurement process and not considered further.

#### **4.3 Queries and Answers during the Tender Period.**

- (i)** The Tenderer is requested to read the Tender Documents prior to submitting any query.
- (ii)** Where Tenderers have a query they must submit the query via ProContract, Southwark Council's e-procurement portal.
- (iii)** All queries must be submitted through the portal at least five (5) working days before the final date for receipt of Tenders as detailed in Table 3 (or as subsequently advised by the Council).
- (iv)** Tenderers must clearly indicate, when submitting a question, which (if any) part of their question they view as confidential and applicable only to the Tenderer submitting the question. If the Council does not agree that the question is confidential and applicable only to the Tenderer, the Tenderer will be given the right to withdraw the question without it being answered, and if the question is not withdrawn within five working days, the Council shall provide the response to all Tenderers.
- (v)** The query and response will be posted on ProContract, Southwark Council's e-procurement Portal. The Tenderer will receive notification by email via ProContract that the query list has been updated, and the query and response document will be uploaded on the portal for all Tenderers to view.
- (vi)** The Tenderer is advised to check their 'spam'/'junk mail/quarantined' inbox for correspondence from ProContract, Southwark Council's e-procurement portal, to ensure that all emails are received.

## **5 SUBMISSION OF TENDERS**

- 5.1** The final date for receipt of Tenders is by 15:00 hours on the date detailed in Table 3 (or such later date as the Council may subsequently advise).
- 5.2** All entries in the tender must be written in ink or typed in English, and must be clearly referenced according to the heading and number for each of the question.
- 5.3** Tenders should be submitted in Arial, font size 11.

- 5.4 Tenderers should not cross reference any questions i.e. ‘see answer to question x in question x’. If Tenderers only respond with a cross-reference to a question they will receive a score of 0 for that question; where Tenderers include a cross-reference as part of their response they will also not be awarded any marks for that part.
- 5.5 Unless otherwise specified, Tenderers **MUST** keep their responses within the specified word limits. Any words appearing after the relevant word limit has been reached, will **NOT** be evaluated.
- 5.6 All sums in the Price schedule shall be stated in pound sterling (£).
- 5.7 The Price Schedule must be provided in exactly the same format as provided, unless otherwise stated.
- 5.8 Tenderers should read all the documents forming this Invitation Document carefully and ensure that they submit the mandatory documents detailed in Table 2 in the manner described in condition 5 of Section 2 (this document) and by the date and time stated in Table 3 (or such other date as notified by the Council).
- 5.9 Tenderers should include in their Tenders all information required by the Invitation Document and all costs necessary to undertake the Project safely and in compliance with all statutory provisions and other rules or regulations relating to the Service Agreement.
- 5.10 No unauthorised alteration or addition (save for the inclusion of the relevant information) should be made to the Form of Tender or any other part of the Invitation Documents. Tenders must not be qualified in any way apart from as allowed under the Invitation Document and must be submitted strictly in accordance with the Invitation Document, including these Instructions. Tenders must not be accompanied by any covering letter or any statement that could be construed as rendering the Tenders equivocal and/or placing it on a different footing from other Tenders.

Table 2: Mandatory Documents to be submitted:

<b>Tender Documents to be completed and returned</b>		
1	<b>Completed Suitability Assessment</b>	<b>Appendix 1</b>
2	<b>Completed Method Statement Responses</b>	<b>Appendix 5 &amp; 6</b>

3	<b>Completed Price Schedule</b>	<b>Appendix 3</b>
4	<b>Fairer Future Procurement Framework (FFPF)</b> – completed and signed	<b>Appendix 4</b>
5	<b>Form of Tender</b> – completed and signed	<b>Appendix 4</b>
6	<b>Certificate of Non-Collusion, Non-Canvassing Certificate and Conflict of Interest Certificate</b> - completed and signed	<b>Appendix 4</b>
7	<b>Offences Certificate</b> - completed and signed	<b>Appendix 4</b>
8	<b>Parent Company Guarantee Undertaking</b> – completed and signed ( <i>If applicable</i> )	<b>Appendix 4</b>
9	<b>Confidentiality Undertaking</b> – completed and signed	<b>Appendix 4</b>
<b>Supporting documents to be supplied by the Tenderer</b>		
10	Such further details or information reasonably requested by the Council.	

**5.11** The Council reserves the right, at its sole discretion, to supplement this Invitation Document at any time throughout this process in order to identify and define the means best suited to satisfy its needs in relation to the Project.

**5.12** The Form of Tender must be signed:

- a) where the Tenderer is an individual, by that individual;
- b) where the Tenderer is a partnership, by 2 authorised partners;
- c) where the Tenderer is a company, by 2 directors, or by a director and the secretary of the company, such persons being authorised for that purpose;

**5.13** Tenderers shall produce forthwith on the request of the Council documentary evidence of any authorisation referred to in 5.12.

**5.14** The Tender must be uploaded onto ProContract, Southwark Council's e-procurement portal, by the time and date detailed in Table 3.

**5.15** Each file must be uploaded separately. The Tender Pricing Schedule (Appendix 3) must be uploaded in Excel (unprotected cells), do not use PDF files. Folders cannot be uploaded. Other documents can be uploaded in

Excel/Word/PDF. All signed documents must be with manual signatures and scanned in a PDF format. Zip files may be uploaded.

- 5.16** Please allow ample time to upload your documents as the tender will close at 15:00 hours precisely on the Tender Deadline date stated in Table 3. The Council reserve the right to reject any Tenders received after 15:00 on the date for the Tender Deadline detailed in Table 3.
- 5.17** The uploaded documents must have each page numbered consecutively with a footer using the following format – Attachment [A-Z] page [number] of [total page number] the question number and the name of the Tenderer]. Each attachment shall contain a contents list for that volume on the immediate inside the cover. Any drawings or diagrams included within the Tender shall be numbered.
- 5.18** The Tenderer must keep its Tender valid for acceptance 180 days from the tender return date set out in Table 3 (or such other deadline as the Council may notify to Tenderers). If the Council has not accepted the Tender within this period it shall remain in force without variation.
- 5.19** Tenderers may decline to tender, and if they choose not to tender, they should notify the Council promptly through ProContract, the e-procurement portal, giving reasons.
- 5.20** If at any time during the tender period there are any material changes to the information provided by Tenderers in their response to the Suitability Assessment or the Tender, they must advise the Council promptly through ProContract, the e-procurement portal, giving reasons.

Table 3: Indicative Procurement Timetable

Activity	Date
Invitation to tender	24/08/2021
Clarification questions closing date (by 15:00)	15/09/2021
Closing date for receipt of tenders (by 15:00)	22/09/2021
Completion of evaluation of tenders	21/10/2021
Internal governance period	22/10/2021 – 02/12/2021
Debrief Notice and Standstill Period	06/12/2021 – 16/12/2021
Contract award	17/12/2021
Mobilisation / TUPE Consultation period (if applicable)	20/12/2021 – 31/12/2021
Contract start	03/01/2022
Contract end date	02/01/2026

The above timetable is indicative only and subject to variation by the Council. Tenderers will be informed of any significant changes.

## 6 EVALUATION OF TENDERS

### 6.1 Evaluation Process

This is a Tender conducted under the Light Touch Regime (LTR); tenderers are required to complete a suitability assessment as part of their tender submission. Tenderers must complete all questions set out in the document using the accompanying Supplier Guidance (Appendix A).

### 6.2 Suitability Assessment

There are two parts to this section. The first part of this section is for General Information about your organisation and contains practical, general and relevant contact information for your organisation. It will not be evaluated, but it is important that the Council has a full picture and therefore failure to provide relevant details could result in your organisation's Tender being rejected.

The second part of this section is the Selection Questions in regards to the Suitability, Eligibility and Capability to participate in the tender process. Companies must provide the information requested and failure to provide this information will result in the Tender being rejected.



### **6.3 ITT Quality Evaluation**

The ITT quality evaluation will consist of method statements, which will be scored by an evaluation panel, which will consist of Council Staff. Tenderers shall respond to each of the method statements as set out in Appendices 5 and 6 Method Statement Response Templates. The evaluation panel appointed for this procurement will meet to agree a consensus score for each of the method statements. The moderation of scores shall give regard to any variance in the scores between the evaluators following any clarification obtained from the Tenderer. Where a consensus score cannot be agreed for a method statement response, an average score will be taken for each Tenderer, for that particular method statement response.

Provided against each of the method statements are the marks allocated to that question and also any limitation to the length of response required. Tenderers are to use font style Arial, size 11 point, providing a response within the stipulated word limits. Tenderers may make use of supporting documents (appendices to questions etc.) only where truly relevant and appropriate. Any appendix that is judged to be essentially the continuation of a question, and therefore a circumvention of the word limit, will be rejected and ignored. Any information given outside the stated parameters will not be considered in the evaluation.

### **6.4 ITT Price Evaluation**

Tenderers are required to complete a Price Schedule (Appendix 3) as per stated guidelines.

The Price Evaluation is set out in detail in Volume 2 (Evaluation Methodology).

### **6.5 Evaluation Panel**

The Evaluation Panel will evaluate the Tenders received to establish the providers who have qualified to be appointed to the Framework Agreement in terms of the criteria set out in Volume 2 (Evaluation Methodology). That assessment will be made on the basis of Tenderer responses to this ITT.

The Evaluation Panel will consist of:

- operational officers
- an officer from commissioning

Tenderers are required to submit responses to method statements demonstrating how specific elements of the service, as defined in the Service Specification and Conditions of Contract, will be delivered. The method statements will make up 100% of the Evaluation Score.

Tenderers are required to submit a response to all questions in each method statement using the space provided in Appendices 5 and 6 (Method Statement Response). Failure to do this may result in a response not being taken into account.

## **6.6 Final Scores**

Once the evaluations have been completed, the Council will combine the method statement scores to provide an overall final score. The Tenderers who have met the price and quality criteria will be appointed to the framework agreement.

## **6.7 Contract Award**

The Council will inform successful Tenderers of their Contract Award, and inform unsuccessful Tenderers of their scores.

## **6.8 Non-Consideration of Tenders**

The Council may, at its absolute discretion, refrain from considering Tenders if either:

- (i)** the whole of the scope of the Service Specification and the Key Deliverables are not tendered for or there are omissions in the Tender;
- (ii)** it does not comply in any respect with the requirements of this Invitation Document; or
- (iii)** it contains any significant omissions or qualifications.

## **6.9 Rejection of Tenders**

Any Tenders submitted by any Tenderer in respect of which the Tenderer does any of the following may not be considered for acceptance and may, accordingly, be rejected by the Council and the relevant Tenderer excluded from further participation:

- (i)** submits any Tenders or other supporting documents after the closing date and time; or
- (ii)** submits an abnormally low bid; or
- (iii)** fixes or adjusts the amount, prices, charges and rates shown:
  - a) by or in connection with any agreement or arrangement with any other person; or
  - b) by reference to any other Tenders; or
- (iv)** breaches the terms of:

- a) the certificate of non-collusion, non-canvassing certificate and conflict of interest certificate; and/or;
  - b) the offences certificate.
- (v) communicates to any person other than the Council any information except in accordance with this Invitation Document; or
- (vi) enters into any agreement or arrangement with any other person that such other person shall refrain from submitting a Tender or shall limit or restrict the amounts, prices, charges, and rates to be shown by any other Tenderer in its Tenders and other documents; or
- (vii) offers or agrees to pay or give, or does pay or give, any sum of money, inducement or valuable consideration, directly or indirectly, to any person for doing, or having done, or causing, or having caused, to be done in relation to any other Tenderer, or any other proposed Tenders, or other documents, any act or omission; or
- (viii) fails to use the English language; or
- (ix) fails to state monetary amounts in Pounds Sterling; or
- (x) fails to comply with these Instructions and/or the Negotiation Protocol; or
- (xi) fails to provide any further information that the Council has requested at any point up to the entry into the Service Agreement either as part of this Invitation Document or at Contract award stage; or
- (xii) if the Council becomes aware that the Tenderer did not qualify at the time their SQ or Tender-were submitted or if it no longer qualifies at any point before the formal entry into the Contract.
- 6.10** Such non-acceptance or rejection by the Council shall be without prejudice to any other civil remedies available to the Council in respect thereof or to any criminal liability that such conduct by a Tenderer may attract.

## **7 ACCEPTANCE OF TENDER**

- 7.1** The Council is not bound to accept the lowest or any Tender and reserves to itself the right at its absolute discretion to accept or not accept any Tender.
- 7.2** An acceptance of a Tender by the Council shall be issued to the successful Tenderers via the Council's e-procurement portal, following which the Contract shall then be entered into and become binding. The Tenderer shall at the

request of the Council execute and deliver to the Council the Contract, Bond and Parent Company Guarantee (where applicable).

**7.3** Nothing contained in these Conditions of Tendering or in any other communication between the Council and the Tenderer shall be taken as constituting a contract, agreement or representation between the Council and the Tenderer.

**7.4** The Council reserves the right:

- (i)** To cancel or withdraw from the procurement process at any time prior to the award of the Contract;
- (ii)** To amend the terms and conditions of the procurement process and to amend any of the documents issued with the ITT, including without limitation, these Conditions of Tendering.

## **8 CONFIDENTIALITY**

**8.1** Tenderers must treat this Invitation Document (and all the documents forming part of or appended or scheduled to this Invitation Document) and all other information provided by or on behalf of the Council as private and confidential (and shall ensure that their employees, consultants, subcontractors, advisers, insurers and funders do the same). No Tenderer should disclose that it has been invited to submit a Tender or release details of this Invitation Document (and all the documents forming part of or appended or scheduled to this Invitation Document) other than on a strictly confidential basis and to the extent strictly necessary to such parties as the Tenderer needs to consult in order to submit a Tender.

**8.2** Tenderers shall not, without the prior written consent of the Council, at any time make use of such information for its own purposes or disclose such information to any person, except:

- (i)** where the disclosure is required by law or any court, regulatory or government authority competent to require the same; or
- (ii)** to the extent where such information is brought within the public domain, otherwise than by the breach of this paragraph by the relevant Tenderer; or
- (iii)** to the extent that the information becomes available to a party (on a non-confidential basis) otherwise than pursuant to this procurement process; or

- (iv) where such information is disclosed for the purposes of obtaining sign-off from insurers and legal advisers on the Service Agreement, or for obtaining sureties, guarantees or commitments from proposed subcontractors or suppliers and other information required to be submitted with their Tender.
- 8.3** Tenderers shall not at any time release any information concerning the Invitation Document and/or their Tenders and/or any related documents and/or any negotiation and/or discussion with the Council in this connection for publication in the press or on radio, television, screen or any other medium.
- 8.4** This Invitation Document is issued in confidence and remains the property of the Council. The copyright in this Invitation Document is vested in the Council and may not be reproduced, copied or stored on any medium without the prior consent of the Council except in relation to the preparation of Tenders.
- 8.5** The Council may publish the amounts of all tenders and the name of the successful Tenderer, and to publish such other information regarding the Tenders as it may be required to publish in accordance with procurement rules or transparency requirements with which the Council must comply.
- 8.6** The Council may provide Tenderers with a list of the other Tenderers and the tender scores. On this list the Tenderers will not be associated with their respective tender score.

## **9 WARRANTIES**

**9.1** In submitting a Tender, each Tenderer warrants, represents and undertakes to the Council that

- (i)** it has not done any of the acts or matters referred to in paragraphs 8.9 (i) to (iii) (inclusive) of these Instructions and has complied in all respects with these Instructions; and
- (ii)** all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Tenderer, its employees or agents in connection with or arising out of the Tender are true, complete and accurate in all respects; and
- (iii)** it has made its own investigations and research and has satisfied itself in respect of all matters (whether actual or contingent) relating to the Tender documents and has not delivered their Tender and will not have entered into the Contract in reliance on any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council; and

- (iv) it has satisfied itself as to the correctness and sufficiency of the information it has inserted in the Viability Template and included in its Delivery Proposals; and
- (v) it has full power and authority to enter into the Contract and undertake the Project and will if requested produce evidence of that to the Council; and
- (vi) it is of sound financial standing and its officers and employees are not aware of any circumstances (other than as may be disclosed in the audited accounts or other financial statements) which may adversely affect its financial standing in the future; and
- (vii) it has and will have sufficient premises, working capital, skilled personnel, vehicles, plant, goods and materials and other resources (if applicable) available to it to carry out the Project in accordance with the Contract; and
- (viii) it will obtain all necessary consents, licences and permissions to enable it to carry out the Project and will from time to time obtain and maintain all further and other necessary consents, licences and permissions to enable it to continue to do so; and
- (ix) it will not at any time claim or seek to enforce any lien, charge, or other encumbrances over property of whatever nature owned by the Council and that is for the time being in the possession of the Tenderer.

## **10 CONFLICTS OF INTEREST**

**10.1** The Council may exclude any Tenderer where there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

**10.2** 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 and provide details of the conflict. Please note that routine pre-market engagement carried out by the Council should not represent a conflict of interest for a Tenderer, provided that the engagement has been carried out in a transparent manner.

## **11 DATA PROTECTION**

**11.1** Tenderers shall at all times:

- (i) comply with the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR);
- (ii) maintain the confidentiality of personal data to which they have authorised access pursuant to this Invitation Document;
- (iii) indemnify the Council and keep the Council indemnified against loss, destruction or procuring of data contrary to the GDPR by the Tenderer, its servants or agents;
- (iv) process any personal data supplied to the Tenderer by the Council only in accordance with the Council's written instructions; and
- (v) comply with obligations equivalent to those imposed by a data controller by the GDPR.

## **12 FREEDOM OF INFORMATION ACT**

**12.1** Tenderers are to note that the Council is subject to the Freedom of Information Act 2000 (the FOIA) and Code of Practice, the Environmental Information Regulations 2004 (EIR), Aarhus Convention and Audit Commission Act 1998. Under the FOIA and EIR, members of the public or any interested party may make a request for information held by the Council at the time of the request.

**12.2** Following such request, the Council will consider the disclosure of any information, including price quotes, contained in Tenders both successful and unsuccessful, subject to the exemptions of the FOIA. Tenderers should be aware that attaching a blanket label of 'private and confidential', 'commercially confidential' or similar to Tenders may not exempt those Tenders from disclosure under the FOIA.

**12.3** If a Tenderer considers that all or any part of its Tender and/or any specific information contained therein constitute a "trade secret", or that the Tender or information is commercially sensitive information disclosure of which would be likely to prejudice the commercial interests of any party, believes that a duty of confidentiality applies or otherwise considers that such documents and/or information falls within any other exemption set out in the FOIA, the Tenderer should:

- (i) attach information it considers to be commercially sensitive e.g. costing or trade secrets in a separate schedule marked 'commercially sensitive information' or 'trade secret' and include a time limit for the sensitivity of the information; and



- (ii) in respect of such schedule and/or specific information, identify the particular FOIA exemption that the Tenderer claims applies in the particular circumstances. Tenderers should do so in full knowledge of the relevant terms of the Lord Chancellor's Code of Practice (the Code) under Section 45 of the FOIA, giving advice to public authorities on the handling of requests under the FOIA. This will enable Tenderers to make such claims based on reasons that address the requirements of the Code. Further information about the FOIA and a copy of the Code is available from the Department of Constitutional Affairs' website at:

<https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>

- 12.4 Tenderers should be aware that, even when they have scheduled or identified relevant documents and/or information and claimed exemption pursuant to this paragraph 14 of these Instructions, the Council will have complete discretion in deciding whether such documents and/or information should be disclosed under the FOIA.
- 12.5 The Council shall not be liable for any loss or other detriment caused by the disclosure of any information.

### **13 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE") AND PENSIONS**

- 13.1 Tenderers are strongly advised to take their own legal advice about the applicability or otherwise of the Regulations to this Tender.
- 13.2 TUPE information can be accessed by completing the document Section 10 – Confidentiality Undertaking. All tenderers are required to complete a TUPE Confidentiality Agreement in order for the TUPE information to be released to them. Tenderers are advised to complete and return the Confidentiality Undertaking via the messaging centre of ProContract as a matter of urgency to allow themselves sufficient time to review the information. This information must be treated on a confidential basis and is released to the Tenderer on the understanding that they will not copy or use the material except for the purposes of preparing a bid and that the Tenderer will return it and any copies of it should they be unsuccessful in this competitive process.
- 13.3 The TUPE Information – has been obtained from the providers presently undertaking this service. Whilst the Council has obtained this information in good faith, the Council gives no guarantee or assurance as to the accuracy of this information and cannot be held responsible for errors or omissions contained therein. It remains the Tenderers' responsibility to ensure that their

submissions take full account of all the relevant circumstances. Where the existing provider has indicated that TUPE is not applicable, this information has been indicated.

## **14 SMALL BUSINESS ENTERPRISE AND EMPLOYMENT ACT 2015**

- 14.1** Tenderers are to note that the Council is subject to the Small Business Enterprise and Employment Act 2015 (SBEEA). Under SBEEA, the Government's Mystery Shopper service is empowered to investigate concerns raised on the Mystery Shopper website about public sector procurement exercises. Contracting authorities are required to assist all investigations and to provide relevant information and/or documents within 30 calendar days of a formal notice. This may require the Council to disclose any information contained in any Tenders submitted by Tenderers.
- 14.2** By submitting a Tender, the Tenderer acknowledges and agrees that the Council has complete discretion in deciding whether such documents and/or information should be disclosed under SBEEA (even where Tenderers have identified certain information in their submissions as confidential) and the Tenderer agrees to waive any contractual or other confidentiality rights and obligations associated with the disclosure of information under SBEEA.