**TO BE RETURNED**



**Durham County Council**

**Contract for Supply of Operated Hired Plant and Equipment**

**Dynamic Purchasing System**

**ProContract Reference - DN303423**

**Selection Questionnaire**

**INTRODUCTION AND PRE-SUBMISSION INSTRUCTIONS**

*Please read the information in this section before beginning to complete the Selection Questionnaire. Further post-submission guidance is given at the very end of this document.*

1.1 Introduction to Durham County Council

Durham County Council, the contracting authority undertaking this procurement exercise, is a Unitary local authority, created in April 2009. It is the largest of the twelve local authorities in the North East.

The council’s high level priorities are set out in our Council Plan, which supports the county’s Sustainable Community Strategy and outlines outline a vision to make County Durham the best place to live, work and bring up a family.

In line with this vision, the Council has developed a *Procurement Strategy*, supported by a *Sustainable Procurement and Social Value Policy Statement*. These aim to ensure that we carry out all commissioning and procurement activities collaboratively and in an economic, environmental and socially responsible manner on behalf of the council and its key stakeholders, making sustainable purchasing decisions that promote the long-term interests of the communities we represent. More information on these policies is available at:

<http://www.durham.gov.uk/article/2815/Procurement-policy-and-strategy>

For more general information regarding Durham County Council please visit [www.durham.gov.uk](http://www.durham.gov.uk)

1.2 Introduction to the Proposed Contract

This contract is for the Supply of Operated Hired Plant and Equipment.

This procurement has been issued under an OJEU restricted process.

This Contract shall commence on the Contract Commencement Date and shall be valid for an initial period of seven (7) years.

This Contract is operated as a Dynamic Purchasing System (DPS).

The Lead Officer for this procurement is Helen Holmes

**1.3 Procurement timetable**

The timetable for this procurement is via DPS on the NEPO Portal which is ran on a weekly basis.

**1.4 About Your Organisation**

You should use this section as a guide to how your organisation will need to complete the Selection Questionnaire.

Bidding organisations (“bidders” or “the bidder”) are advised to familiarise themselves with the requirements of this Selection Questionnaire – in particular, any financial and technical requirements – in order to understand how they may need to structure their bid. The Council welcomes bids from organisations in consortium, partnership or other arrangement, where this assists organisations in meeting the minimum financial thresholds and/or enhancing the quality of their responses to technical questions.

Please read the following definitions and instructions carefully to determine how you will need to bid. If you require any further guidance or clarification, you should submit a question through the NEPO Portal, using the “Messaging” facility.

**1.4.1 Sole Bidding Organisations**

You are a sole bidding organisation if you are the only organisation bidding for this contract as part of your submission. You may intend to use subcontractors, consultants or other partner organisations to deliver against the requirements of the contract, but you do not need to identify them in your Selection Questionnaire submission. Your organisation will be liable to the Council for the delivery of the requirements of the contract,

**1.4.2 Consortia, Partnerships and Joint Ventures**

You are a consortium if you are submitting a bid in partnership with another organisation or organisations, with the intention that all named bidders will be jointly awarded the contract. You will be jointly and severally liable to the Council for the delivery of the requirements of the contract, regardless of the value of your contribution in respect of the contract sum, time, volume, quality or any other considerations. You must inform the Council of any withdrawal of members of the consortium, partnership or joint venture during or subsequent to the Selection Questionnaire so that the implications of such a withdrawal may be assessed.

**1.4.3 Special Purpose Vehicles**

You are a special purpose vehicle (“SPV”) if you have formed (or will form) a new legal entity for the purpose of bidding for this contract, with the intention that this organisation will be awarded the contract. The member organisations of the special purpose vehicle will be jointly and severally liable to Council for the delivery of the requirements of the contract, regardless of (i) the value of their contributions in respect of the contract sum, time, volume, quality or any other considerations, or (ii) the future organisational or legal standing of the special purpose vehicle. You must inform the Council of any withdrawal of members of the SPV during or subsequent to the Selection Questionnaire so that the implications of such a withdrawal may be assessed.

**1.4.4 Multiple Bids**

In some cases, organisations may wish to submit bids as both a sole bidding organisation and as part of a consortium or SPV. The Council will handle submissions from such bidding organisations as follows:

1. An organisation may bid as a sole bidding organisation and as a member of no more than one consortium or SPV. In such cases, both Selection Questionnaire submissions need to be fully completed as set out in these instructions.

2. Organisations may not bid as a member of more than one consortium or SPV. The Council reserves the right to disqualify any such bids.

3. Organisations may not submit multiple bids as a sole bidding organisation. The Council reserves the right to disqualify any such bids.

4. Where a bidding organisation chooses to submit multiple bids as described in (1) above, their turnover and financial standing will not be counted towards that of the consortium or SPV. Any consortium or SPV of which they are a member must be able to pass any relevant financial requirements *without* the contribution of the organisation bidding in multiple.

**1.5 Completing the Selection Questionnaire – general notes**

**Terminology**

“You”, “your organisation”, “the bidding organisation” or “potential supplier” means the body completing these questions – *i.e. the legal entity responsible for the information provided.* These terms are intended to cover any economic operator as defined by the Public Contracts Regulations 2015 and could be a registered company, a charitable organisation, voluntary and community sector (VCS) organisation, social enterprise, special purpose vehicle (SPV), a consortium of such operators, or any other form of entity.

**The purpose of this questionnaire**

This Selection Questionnaire has been designed to assess the suitability of bidding organisations to deliver the Council’s requirement(s), to exclude any unsuitable bidders, and to produce a shortlist of those bidders most suited to proceed to the Invitation To Tender (ITT) stage.

If you are successful at this stage of the procurement process, you will proceed to the ITT.

This questionnaire is divided into three parts, explained as follows:

**Part 1: Potential Supplier Information, and Part 2: Exclusion Grounds**

Parts 1 and 2 of the Selection Questionnaire are a self-declaration, made by you (the potential supplier), that you do not meet any of the grounds for exclusion[[1]](#footnote-1). If there are grounds for exclusion, there is an opportunity to explain the background and any measures you have taken to rectify the situation (we call this self-cleaning).

A completed declaration of Part 1 and Part 2 provides a formal statement that the organisation making the declaration has not breached any of the exclusion grounds. Consequently we require all the organisations that you will rely on to meet the selection criteria to provide a completed Part 1 and Part 2. For example these could be parent companies, affiliates, associates, or essential sub-contractors, if they are relied upon to meet the selection criteria. This means that where you are joining in a group of organisations, including joint ventures and partnerships, each organisation in that group must complete Part 1 and Part 2. Sub-contractors that you rely on to meet the selection criteria must also complete a self-declaration (although sub-contractors that are not relied upon do not need to complete the self-declaration).

**Part 3: Additional Supplier Selection Questions**

Part 3 contains additional questions, specific to the proposed contract, which you must answer to be considered for selection. If you are bidding on behalf of a group (consortium) or you intend to use sub-contractors, you should complete all of the selection questions on behalf of the consortium and/or any sub-contractors.

If the relevant documentary evidence referred to in the Selection Questionnaire is not provided upon request and without delay, we reserve the right to amend the contract award decision and award to the next compliant bidder.

**Completing the Questionnaire**

Unless submitting an ESPD (see below), the bidding organisation must complete and return their Selection Questionnaire submission using this document - the template issued by the Council. Bidding Organisations must not use any other template(s) and must not alter the page layout or other formatting of the template issued by the Council.

All responses and correspondence must be in English and in typeface Arial, black, font size 11. Bidding organisations must not include any images, charts, logos or other graphics unless explicitly permitted or required to do so by the instructions of a particular question. Any information submitted in this form that has not been so permitted will not be considered.

No other documents, appendices or information (including policies or general marketing literature) should be submitted with the completed Selection Questionnaire response, other than those specifically requested. Any such information will not be considered.

When evaluating Selection Questionnaire responses, the Council will only consider information that is provided in the submission for this Selection Questionnaire. The Council will not cross-reference to previous Selection Questionnaires, tenders or any other submissions previously made to the Council, nor act on any information other than which has been provided as part of the current prequalification process. Information requested by the Council in this Selection Questionnaire must therefore be supplied in your response to this Selection Questionnaire – do not rely on the assumption that the Council is already aware of any information about your organisation, even where the Council has previously dealt with your organisation.

**1.6 Questions and clarifications prior to submission**

You are welcome to submit questions, or other relevant requests for clarification, if you feel this is necessary in helping you to complete the Selection Questionnaire. The Council aims to respond in a timely manner, although may need to request further information in order to respond appropriately. The Council reserves the right not to respond to questions that it considers are unreasonable or irrelevant.

Questions and requests for clarification must be submitted via the “Messaging” facility on the NEPO Portal.

The deadline for the submission of a question or request for clarification for this Selection Questionnaire is as per the timetable above, unless an amendment to this is issued by the procurement officer. In such cases, questions or requests for clarification must then be submitted by no later than the amended date.

The Council will respond via the NEPO Portal to questions or requests for clarification, where a response is deemed necessary. It is the responsibility of bidding organisations to visit the NEPO Portal during the pre-qualification period to access any requests for clarification and responses that have been posted.

The identity of bidding organisations that submit questions or clarification requests will not be disclosed to other bidding organisations. Requests for clarification and responses to requests for clarification will not be treated as confidential by the Council unless this is specifically requested by a bidding organisation. The Council reserves the right not to accept that a question or request for clarification be treated as confidential, and will notify the bidding organisation making such a request where this is the case, in order that the bidding organisation may have the opportunity to withdraw their request. In such circumstances, should the bidder fail to withdraw the request within three working days, the Council reserves the right to publish the request and the Council’s response to it via the NEPO Portal.

**1.7 Submitting your Selection Questionnaire response**

Completed Selection Questionnaires must be returned via the NEPO Portal system no later than the date and time stipulated in the timetable above, unless an extension has been granted by the procurement officer. *Any such extension will apply to all bidding organisations and will be clearly indicated on the NEPO Portal. Completed Selection Questionnaires must then be returned no later than the extended date stipulated.*

**Submissions (including any part thereof) received after the stated deadline will not be accepted.** It is entirely the responsibility of the bidding organisation to ensure that it submits its response in line with the stated deadline date and time.

In the event that a bidding organisation believes that it is unable to submit a Selection Questionnaire through the NEPO Portal and requires technical assistance or further information to do so, bidders must contact the NEPO Portal administrators using the helpline contact details given on the Portal website, ensuring there is adequate time for the administrators to support the bidding organisation to upload their submission by the stated deadline. In such cases, if a bidding organisation’s response is received after the stated deadline the submission will be classed as late and will not be accepted.

In the event that a bidding organisation is unable to submit a Selection Questionnaire through the NEPO Portal system as a result of a problem with the NEPO Portal system, bidders must contact the NEPO Portal administrators to report the issue immediately and prior to the submission deadline. The Council will then take this into consideration if a submission is received after the stated deadline.

**1.8 European Single Procurement Document (ESPD)**

The European Union has introduced a “European Single Procurement Document” (ESPD) with the intention of harmonising certain elements of the qualification process to take part in public procurement procedures across the EU.

If a bidding organisation wishes to submit a completed ESPD at this stage of the procedure, the Council will accept this document - as we are generally required to do under Regulation 59 of the Public Contracts Regulations 2015. However, the ESPD is not a requirement of any Durham County Council procurement process – bidders may simply complete the Council’s Selection Questionnaire document (this document), as the Council’s Selection Questionnaire covers all the required information.

If your organisation does decide to submit an ESPD, the Council will use the information in that document in place of your response to **Part 1** and **Part 2** of the Selection Questionnaire. However, the ESPD does not fully cover the information required for **Part 3** of the questionnaire.

**If submitting an ESPD you must therefore make sure you also answer the questions in Part 3 of this Questionnaire.**

1.9 **Consequences of misrepresentation**

If you seriously misrepresent any factual information in filling in the Selection Questionnaire, and so induce an authority to enter into a contract, there may be significant consequences. You may be excluded from the procurement procedure, and from bidding for other contracts for three years. If a contract has been entered into you may be sued for damages and the contract may be rescinded. If fraud, or fraudulent intent, can be proved, you or your responsible officers may be prosecuted and convicted of the offence of fraud by false representation, and you must be excluded from further procurements for five years.

**Part 1: Potential supplier Information**

Please answer the following questions in full. Note that every organisation that is being relied on to meet the selection must complete and submit the Part 1 and Part 2 self-declaration.

|  |  |  |
| --- | --- | --- |
| Section 1 | Potential supplier information | |
| Question number | Question | Response |
| 1.1(a) | Full name of the potential supplier submitting the information |  |
| 1.1(b) – (i) | Registered office address (if applicable) |  |
| 1.1(b) – (ii) | Registered website address (if applicable) |  |
| 1.1(c) | Trading status   1. public limited company 2. limited company 3. limited liability partnership 4. other partnership 5. sole trader 6. third sector 7. other (please specify your trading status) |  |
| 1.1(d) | Date of registration in country of origin |  |
| 1.1(e) | Company registration number (if applicable) |  |
| 1.1(f) | Charity registration number (if applicable) |  |
| 1.1(g) | Head office DUNS number (if applicable) |  |
| 1.1(h) | Registered VAT number |  |
| 1.1(i) - (i) | If applicable, is your organisation registered with the appropriate professional or trade register(s) in the member state where it is established? | Yes  No  N/A |
| 1.1(i) - (ii) | If you responded yes to 1.1(i) - (i), please provide the relevant details, including the registration number(s). |  |
| 1.1(j) - (i) | Is it a legal requirement in the state where you are established for you to possess a particular authorisation, or be a member of a particular organisation in order to provide the services specified in this procurement? | Yes  No |
| 1.1(j) - (ii) | If you responded yes to 1.1(j) - (i), please provide additional details of what is required and confirmation that you have complied with this. |  |
| 1.1(k) | Trading name(s) that will be used if successful in this procurement |  |
| 1.1(l) | Relevant classifications (state whether you fall within one of these, and if so which one)   1. Voluntary Community Social Enterprise (VCSE) 2. Sheltered Workshop 3. Public service mutual |  |
| 1.1(m) | Are you a Small, Medium or Micro Enterprise (SME)[[2]](#footnote-2)? | Yes  No |
| 1.1(n) | Details of Persons of Significant Control (PSC), where appropriate: [[3]](#footnote-3)  - Name;  - Date of birth;  - Nationality;  - Country, state or part of the UK where the PSC usually lives;  - Service address;  - The date he or she became a PSC in relation to the company (for existing companies the 6 April 2016 should be used);  - Which conditions for being a PSC are met;  - Over 25% up to (and including) 50%,  - More than 50% and less than 75%,  - 75% or more. [[4]](#footnote-4)  (Please enter N/A if not applicable) |  |
| 1.1(o) | Details of immediate parent company:    - Full name of the immediate parent company  - Registered office address (if applicable)  - Registration number (if applicable)  - Head office DUNS number (if applicable)  - Head office VAT number (if applicable)  (Please enter N/A if not applicable) |  |
| 1.1(p) | Details of ultimate parent company:  - Full name of the ultimate parent company  - Registered office address (if applicable)  - Registration number (if applicable)  - Head office DUNS number (if applicable)  - Head office VAT number (if applicable)  (Please enter N/A if not applicable) |  |

**Please note:** A criminal record check for relevant convictions may be undertaken for the preferred suppliers and the persons of significant in control of them.

Please provide the following information about your approach to this procurement:

|  |  |  |
| --- | --- | --- |
| Section 1 | Bidding model | |
| Question number | Question | Response |
| 1.2(a) - (i) | Are you bidding as the lead contact for a group of economic operators? | Yes  No  If yes, please provide details listed in questions 1.2(a) (ii), (a) (iii) and to 1.2(b) (i), (b) (ii), 1.3, Section 2 and 3.  If no, and you are a supporting bidder please provide the name of your group at 1.2(a) (ii) for reference purposes, and complete 1.3, Section 2 and 3. |
| 1.2(a) - (ii) | Name of group of economic operators (if applicable) |  |
| 1.2(a) - (iii) | Proposed legal structure if the group of economic operators intends to form a named single legal entity prior to signing a contract, if awarded. If you do not propose to form a single legal entity, please explain the legal structure. |  |
| 1.2(b) - (i) | Are you or, if applicable, the group of economic operators proposing to use sub-contractors? | Yes  No |
| 1.2(b) - (ii) | If you responded yes to 1.2(b)-(i) please provide additional details for each sub-contractor in the following table: we may ask them to complete this form as well.   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | Name |  |  |  |  |  | | Registered address |  |  |  |  |  | | Trading status |  |  |  |  |  | | Company registration number |  |  |  |  |  | | Head Office DUNS number (if applicable) |  |  |  |  |  | | Registered VAT number |  |  |  |  |  | | Type of organisation |  |  |  |  |  | | SME (Yes/No) |  |  |  |  |  | | The role each sub-contractor will take in providing the works and /or supplies e.g. key deliverables |  |  |  |  |  | | The approximate % of contractual obligations assigned to each sub-contractor |  |  |  |  |  | | |

**Contact details and declaration**

I declare that to the best of my knowledge the answers submitted and information contained in this document are correct and accurate.

I declare that, upon request and without delay I will provide the certificates or documentary evidence referred to in this document.

I understand that the information will be used in the selection process to assess my organisation’s suitability to be invited to participate further in this procurement.

I understand that the authority may reject this submission in its entirety if there is a failure to answer all the relevant questions fully, or if false/misleading information or content is provided in any section.

I am aware of the consequences of serious misrepresentation.

|  |  |  |
| --- | --- | --- |
| Section 1 | Contact details and declaration | |
| Question number | Question | Response |
| 1.3(a) | Contact name |  |
| 1.3(b) | Name of organisation |  |
| 1.3(c) | Role in organisation |  |
| 1.3(d) | Phone number |  |
| 1.3(e) | E-mail address |  |
| 1.3(f) | Postal address |  |
| 1.3(g) | Signature (electronic is acceptable) |  |
| 1.3(h) | Date |  |

**Part 2: Exclusion Grounds**

Please answer the following questions in full. Note that every organisation that is being relied on to meet the selection must complete and submit the Part 1 and Part 2 self-declaration.

|  |  |  |
| --- | --- | --- |
| Section 2 | Grounds for mandatory exclusion | |
| Question number | Question | Response |
| 2.1(a) | **Regulations 57(1) and (2)**  The detailed grounds for mandatory exclusion of an organisation are set out on this [webpage](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf), which should be referred to before completing these questions.  Please indicate if, within the past five years you, your organisation or any other person who has powers of representation, decision or control in the organisation been convicted anywhere in the world of any of the offences within the summary below and listed on the [webpage](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf). | |
|  | Participation in a criminal organisation. | Yes  No  If Yes please provide details at 2.1(b) |
|  | Corruption. | Yes  No  If Yes please provide details at 2.1(b) |
|  | Fraud. | Yes  No  If Yes please provide details at 2.1(b) |
|  | Terrorist offences or offences linked to terrorist activities | Yes  No  If Yes please provide details at 2.1(b) |
|  | Money laundering or terrorist financing | Yes  No  If Yes please provide details at 2.1(b) |
|  | Child labour and other forms of trafficking in human beings | Yes  No  If Yes please provide details at 2.1(b) |
| 2.1(b) | If you have answered yes to question 2.1(a), please provide further details.  Date of conviction, specify which of the grounds listed the conviction was for, and the reasons for conviction,  Identity of who has been convicted  If the relevant documentation is available electronically please provide the web address, issuing authority, precise reference of the documents. |  |
| 2.2 | If you have answered Yes to any of the points above have measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning) | Yes  No |
| 2.3(a) | **Regulation 57(3)**  Has it been established, for your organisation by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related to the payment of tax or social security contributions? | Yes  No |
| 2.3(b) | If you have answered yes to question 2.3(a), please provide further details. Please also confirm you have paid, or have entered into a binding arrangement with a view to paying, the outstanding sum including where applicable any accrued interest and/or fines. |  |

**Please Note:** The authority reserves the right to use its discretion to exclude a potential supplier where it can demonstrate by any appropriate means that the potential supplier is in breach of its obligations relating to the non-payment of taxes or social security contributions.

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| --- | --- | --- |
| Section 3 | Grounds for discretionary exclusion | |
|  | Question | Response |
| 3.1 | **Regulation 57 (8)**  The detailed grounds for discretionary exclusion of an organisation are set out on this [webpage](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf), which should be referred to before completing these questions.  Please indicate if, within the past three years, anywhere in the world any of the following situations have applied to you, your organisation or any other person who has powers of representation, decision or control in the organisation. | |
| 3.1(a) | Breach of environmental obligations? | Yes  No  If yes please provide details at 3.2 |
| 3.1 (b) | Breach of social obligations? | Yes  No  If yes please provide details at 3.2 |
| 3.1 (c) | Breach of labour law obligations? | Yes  No  If yes please provide details at 3.2 |
| 3.1(d) | Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation’s assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State? | Yes  No  If yes please provide details at 3.2 |
| 3.1(e) | Guilty of grave professional misconduct? | Yes  No  If yes please provide details at 3.2 |
| 3.1(f) | Entered into agreements with other economic operators aimed at distorting competition? | Yes  No  If yes please provide details at 3.2 |
| 3.1(g) | Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure? | Yes  No  If yes please provide details at 3.2 |
| 3.1(h) | Been involved in the preparation of the procurement procedure? | Yes  No  If yes please provide details at 3.2 |
| 3.1(i) | Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions? | Yes  No  If yes please provide details at 3.2 |
| 3.1(j)  3.1(j) - (i)  3.1(j) - (ii)  3.1(j) –(iii)  3.1(j)-(iv) | Please answer the following statements  The organisation is guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria.  The organisation has withheld such information.  The organisation is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015.  The organisation has influenced the decision-making process of the contracting authority to obtain confidential information that may confer upon the organisation undue advantages in the procurement procedure, or to negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award. | Yes  No  If Yes please provide details at 3.2  Yes  No  If Yes please provide details at 3.2  Yes  No  If Yes please provide details at 3.2  Yes  No  If Yes please provide details at 3.2 |

|  |  |  |
| --- | --- | --- |
| 3.2 | If you have answered Yes to any of the above, explain what measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning) |  |

**Evaluation Criteria**

Part 2 is evaluated on a pass/fail basis. Bidders who fail will be disqualified from the procurement process.

| **Grounds for**  **Exclusion Evaluation Criteria** | **Fail** | **Pass** |
| --- | --- | --- |
| Identified grounds for exclusion under regulation 57 of the Public Contracts Regulations 2015. | No grounds for exclusion identified under regulation 57 of the Public Contracts Regulations 2015 |

**Important note:** The Council may, at its discretion and in consideration of any additional information provided or mitigating circumstances, disregard any grounds for exclusion if it is satisfied that there are overriding requirements in the general interest that justify doing so – see the note on “Self-Cleaning” below.

ADDITIONAL NOTE 1 – CONFLICTS OF INTEREST

In accordance with the relevant question above, the Council may exclude the bidding organisation if 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.

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

ADDITIONAL NOTE 2 – TAKING ACCOUNT OF BIDDERS’ PAST PERFORMANCE

In accordance with the relevant question above, the Council may assess the past performance of a bidding organisation. The Council may take into account any failure to discharge obligations under previous relevant contracts of the bidding organisation completing this Selection Questionnaire. This may include deficiencies in contracts with other public contracting authorities – not just contracts involving the Council.

In addition, the Council may re-assess reliability based on past performance at key stages in the procurement process (i.e. supplier selection, tender evaluation, contract award stage etc.). Bidding organisations may also be asked to update the evidence they provide in this section to reflect more recent performance on new or existing contracts (or to confirm that nothing has changed).

ADDITONAL NOTE 3 - SELF-CLEANING

Any Bidding Organisation that answers “yes” to any of the questions in Part 2 should provide sufficient evidence that provides a summary of the circumstances and any remedial action that has taken place subsequently, which may effectively “self-clean” the situation referred to. The bidding organisation must demonstrate that it has taken such remedial action, to the satisfaction of the Council in each case.

If such evidence is considered by the Council (whose decision will be final) as sufficient, the bidding organisation concerned shall be allowed to continue in the procurement process.

In order for the evidence referred to above to be sufficient, the bidding organisation shall, as a minimum, prove that it has:

* paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;
* clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
* taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the bidding organisation shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered by the Council to be insufficient, the bidding organisation shall be given a statement of reasons for that decision.

**Part 3: Selection Questions**

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| --- | --- |
| **Section 4** | **Economic and Financial Standing** |
| **4.0** | **Please note: An evaluation of financial standing is not included as part of this procurement exercise. No financial information is required from bidding organisations on this occasion.** |

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| --- | --- | --- |
| **Section 5** | **If you have indicated in the Selection Questionnaire question 1.2 that you are part of a wider group, please provide further details below:** | |
| **Name of organisation:** | |  |
| **Relationship to the Supplier completing these questions:** | |  |

|  |  |  |
| --- | --- | --- |
| **5.1** | Are you able to provide parent company accounts if requested to at a later stage? | Yes  No |
| **5.2** | If yes, will your parent company provide a financial guarantee on your behalf? | Yes  No |
| **5.3** | If no, will another organisation (e.g. a bank) act as your guarantor? | Yes  No  If “Yes” please state the name of the Guarantor organisation: |

**Evaluation Criteria for Sections 4 and 5**

These sections are evaluated on a pass/fail basis. Bidders who fail will be disqualified from the procurement process.

| **Finance: Evaluation Criteria** | **Fail** | **Pass** |
| --- | --- | --- |
| Failure by the bidding organisation to confirm that it meets the minimum level of financial standing (where any are stated in 4.2),  And:  Being unable to meet the required level of financial standing itself, the bidder is not in a position to provide a Guarantor. | The bidding organisation confirms that it meets the minimum level of financial standing,  Or:  The bidding organisation does not itself meet the minimum level of financial standing but has undertaken to provide a Guarantor, AND this Guarantor meets the minimum level of financial standing,  Or:  No financial assessment is applied to this procurement exercise. |

**If You Require a Guarantor**

If your organisation is unable to meet the minimum financial thresholds for the contract you may still submit a bid as long as this is backed by a financial guarantor or guarantors. The guarantor must meet the stated level of financial standing in your place. Where a bidding organisation provides more than one guarantor, the guarantors must collectively meet the turnover threshold, and individually meet any other thresholds.

You will be required to provide full financial information from the guarantor if selected to proceed to Invitation To Tender stage. If the bidding organisation is awarded a contract, the Council will not finalise the award or place any orders under the contract until the relevant guarantor has entered into a deed of guarantee addressed to the Council on terms which are no more onerous to the guarantor than those indicated in Appendix 1 – Terms of Deed. If more than one guarantor is required, then these instructions apply to each guarantor required.

|  |  |  |
| --- | --- | --- |
| **Section 6** | **Modern Slavery Act 2015:** **Requirements under Modern Slavery Act 2015** | |
| **6.1** | Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")? | Yes  No |
| **6.2** | If you have answered “yes” to question 6.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015? | Yes  Please provide the relevant URL in the box below.  No  Please provide an explanation in the box below. |
| Supplementary information to 6.2: | | |

**Evaluation Criteria for Section 6**

This section is evaluated on a pass/fail basis. Bidders who fail will be disqualified from the procurement process.

| **Modern Slavery:**  **Evaluation Criteria** | **Fail** | **Pass** |
| --- | --- | --- |
| The bidding organisation is an relevant commercial organisation as defined by the Act, but does not, or cannot confirm that it complies with the annual reporting requirements. | The bidding organisation is an relevant commercial organisation as defined by the Act, and it has demonstrated that it complies with the annual reporting requirements,  Or:  The bidding organisation is not a relevant commercial organisation as defined by the Act. |

**7. Additional Pass / Fail Questions**

Suppliers who self-certify that they meet the requirements to these additional questions will be required to provide evidence of this if they are successful at contract award stage.

**7.1: Insurance**

|  |  |  |
| --- | --- | --- |
| **Section 7.1** | **Insurance** | **Response** |
|  | Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below:  Employer’s (Compulsory\*) Liability Insurance = **£5 million**  Public Liability Insurance = **£5 million**  Motor Vehicle Insurance - third party cover required as a minimum = **£5 million**  \* It is a legal requirement that all companies hold Employer’s (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders. | Yes  No |

ADDITIONAL NOTE for CONSORTIA and SPV bidders:

**Consortia, partnerships and joint ventures**

Consortia must confirm that the consortium collectively has the required levels of insurance, except for employer’s liability – each consortium member that employs staff must have an individual policy at the required level for this.

**Special Purpose Vehicles**

Special purpose vehicles must confirm that either the vehicle itself, or one of the members of the vehicle, where the policy specifically extends cover to the vehicle, has the required levels of insurance.

**Evaluation Criteria for Section 7.1**

This section is evaluated on a pass/fail basis. Bidders who fail will be disqualified from the procurement process.

| **Insurance Evaluation Criteria** | **Fail** | **Pass** |
| --- | --- | --- |
| Failure by the bidding organisation to confirm that it has or, if successful, will buy the specified minimum levels of insurance. | The bidding organisation confirms that it has or, if successful, will buy the specified minimum levels of insurance. |

**7.2: Health & Safety**

The following applies to organisations that are bidding for work to be undertaken in the UK.

The bidding organisation must:

* Ensure that its entire workforce and subcontractors will comply with all relevant health and safety legislation as well as any requirements or instructions from the Council.
* Have appointed a competent person with overall responsibility for health and safety that is duly authorised in the organisation.
* Have processes in place for the identification of training needs and delivery of training to its workforce appropriate to the work for which it is bidding.
* Have processes in place for the development of risk assessments and method statements relevant to the nature of the work for which it is bidding that will identify, manage and mitigate associated risks and hazards.
* *(If it is an organisation with five or more employees)* have in place a written health and safety policy as required by Section 2(3) of the Health and Safety at Work etc Act 1974 and issue any codes of safe working practices to your workforce. This policy must provide details of the competent person or persons that have been appointed on behalf of the organisation to undertake the measures needed to comply with the requirements and prohibitions of the Management of Health and Safety at Work Regulations 1999.

The Council may verify your compliance with the above requirements at any stage of the procurement process or during the life of the contract, by means of policy checking, validation of accreditations, site audits or any other method it deems appropriate.

For further information on employers’ health and safety obligations, please visit the Health and Safety Executive website at: <http://www.hse.gov.uk/simple-health-safety/index.htm>.

Specific guidance on how to write a policy and risk assessment is available at <http://www.hse.gov.uk/simple-health-safety/write.htm>.

|  |  |  |
| --- | --- | --- |
| **Section 7.2** | **Health & Safety** | **Response** |
|  | I confirm that the bidding organisation understands and agrees to the undertakings as described above. | Yes  No |

ADDITIONAL NOTE for CONSORTIA and SPV bidders:

**Consortia, partnerships and joint ventures**

The lead consortium member must ensure that the information in this section regarding Health & Safety is effectively communicated to all consortium members. The lead consortium member must provide assurance that all consortium members understand, and have the ability to fulfil all health and safety requirements relating to the work being undertaken.

**Special Purpose Vehicles**

The lead SPV member must ensure that the information in this section regarding Health & Safety is effectively communicated to all of the organisations represented by the SPV. The lead SPV member must provide assurance that all SPV members understand, and have the ability to fulfil, all health and safety requirements relating to the work being undertaken.

**Evaluation Criteria**

This section is evaluated on a pass/fail basis. Bidders who fail will be disqualified from the procurement process.

**Evaluation Criteria for Section 7.2**

| **Health & Safety** | **Fail** | **Pass** |
| --- | --- | --- |
| Failure by the bidding organisation to confirm they agree to the Health & Safety undertakings as described. | The bidding organisation confirms they agree to the Health & Safety undertakings as described. |

**7.3: Equality & Diversity**

|  |  |
| --- | --- |
| **Section 7.3.1**  **Does the bidding organisation comply with its legal obligations under the Equality Act 2010, relating to the following?** | |
| ***Confirm as appropriate*** | |
| Age | Yes  No |
| Disability | Yes  No |
| Gender reassignment | Yes  No |
| Marriage and civil partnership | Yes  No |
| Pregnancy and maternity | Yes  No |
| Race | Yes  No |
| Religion or belief | Yes  No |
| Sex | Yes  No |
| Sexual orientation | Yes  No |
| ***NOTE TO ORGANISATION:***  ***It is the responsibility of the bidding organisation to keep up to date with relevant legislation and ensure it has a current understanding.*** | |

|  |  |  |
| --- | --- | --- |
| **Section 7.3.2** | **Unlawful Discrimination at Tribunal** | **Response** |
|  | In the last three years has any finding of unlawful discrimination been made against the bidding organisation by any court or industrial or employment tribunal? | Yes  No |

|  |  |  |
| --- | --- | --- |
| **Section 7.3.3** | **Unlawful Discrimination at Statutory Investigation** | **Response** |
|  | In the last three years has any finding of unlawful discrimination been made against the bidding organisation as a result of a formal investigation by the Equality and Human Rights Commission (EHRC) or any relevant statutory European Body? | Yes  No |

|  |  |  |
| --- | --- | --- |
| **Section 7.3.4** | **Taking Remedial Action** | **Response** |
|  | ONLY complete this section if you answered “YES” to 7.3.2 and/or 7.3.3:  If the bidding organisation was required to take action, did the action taken satisfy the relevant  organisation? | Yes  No |
|  | Outline what action the bidding organisation was required to take: |  |
|  | Outline what action the bidding organisation actually took. If the required action was not taken, explain why not: |  |

|  |  |  |
| --- | --- | --- |
| **Section 7.3.5** | **Sub-Contractors** | **Response** |
|  | If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations? | Yes  No  Do not use any sub-contractors |

**Evaluation Criteria for Section 7.3**

This section is evaluated on a pass/fail basis. Bidders who fail will be disqualified from the procurement process.

| **Equality and Diversity Evaluation Criteria** | **Fail** | **Pass** |
| --- | --- | --- |
| Failure to confirm that the bidding organisation complies with any of its legal obligations as outlined  OR  Evidence of findings of unlawful discrimination by any court or industrial or employment tribunal or formal investigation and no evidence of adequate steps (or evidence of inadequate steps) taken as a consequence of any findings. | The bidding organisation confirms that it complies with all of its legal obligations as outlined  AND  No evidence of findings of unlawful discrimination by any court or industrial or employment tribunal or formal investigation; OR evidence of findings of unlawful discrimination by a court, tribunal, or formal investigation but evidence is provided of adequate steps taken as a consequence. |

**7.4: Environmental Management**

|  |  |  |
| --- | --- | --- |
| **Section 7.4.1** | **Breach of Environmental Legislation** | **Response** |
|  | In the last three years, has your organisation been convicted of breaching environmental legislation, or had any formal notice served upon it, by any environmental regulator or authority (including local authority), either in the UK or any other EU member state? | Yes  No |
|  | If “YES” please give details of the conviction or notice, including any action taken to resolve the situation: | |

|  |  |  |
| --- | --- | --- |
| **Section 7.4.2** | **Sub-Contractors** | **Response** |
|  | If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations? | Yes  No  Do not use any sub-contractors |

**Evaluation Criteria for Section 7.4**

This section is evaluated on a pass/fail basis. Bidders who fail will be disqualified from the procurement process.

| **Environmental Management - Evaluation Criteria** | **Fail** | **Pass** |
| --- | --- | --- |
| A relevant and material prosecution, notice or sanction has been made against the bidding organisation and there is insufficient evidence of adequate steps (or evidence of inadequate steps) taken as a consequence of any findings. | No evidence of relevant prosecution, notice or sanction having been made against the bidding organisation  **Or:**  Evidence of a relevant prosecution, notice or sanction having been made, but evidence is provided of adequate steps taken as a consequence of any findings. |

**7.5 ADDITIONAL ESSENTIAL CRITERIA (PASS / FAIL) QUESTIONS**

|  |  |  |
| --- | --- | --- |
| **Section 7.5.1** | **Operator Licences** | **Response** |
|  | The bidding organisation agrees that it has or, if successful, will have in place by time of contract commencement that it will hold the required, valid Operator licence at Standard National level as a minimum unless covered by exemption. | Yes  No |

**You will be asked to provide the evidence in the form of copies of Operator Licences unless covered by exemption, should you be awarded a place on the Contract. This will be supplied to the Council prior to the commencement of the Contract.**

|  |  |  |
| --- | --- | --- |
| **Section 7.5.2** | **Operators** | **Response** |
|  | The bidding organisation if requested, can demonstrate that every operator employed for the execution of this contract is adequately trained, licensed (by licence category & Certificate of Professional Competence (CPC) unless covered by CPC exemption) and insured in accordance with statutory and safety legislation at the time of hire. | Yes  No |

**Bidders may be required to provide evidence in the form of copies of relevant certificates, should they be awarded a place on the Contract. This can be requested at any time as the discretion of the Council.**

|  |  |  |
| --- | --- | --- |
| **Section 7.5.3** | **Plant operated on public highways** | **Response** |
|  | The bidding organisation if requested, can demonstrate that every operator employed for the execution of this contract is adequately trained, licensed (by licence category & Certificate of Professional Competence (CPC) unless covered by CPC exemption) and insured in accordance with statutory and safety legislation at the time of hire. | Yes  No |

**Bidders may be required to provide evidence in the form of copies of relevant certificates, should they be awarded a place on the Contract. This can be requested at any time as the discretion of the Council**.

**Evaluation Criteria for Section 7.5**

This section is evaluated on a pass/fail basis. Bidders who fail will be disqualified from the procurement process.

| **Evaluation Criteria Question 7.5** | **Fail** | **Pass** |
| --- | --- | --- |
| The bidding organisation confirms it cannot meet the essential criteria requirement. | The bidding organisation confirms it can meet the essential criteria requirement. |

**POST-SUBMISSION GUIDANCE, CONFIDENTIALITY, FURTHER GENERAL INFORMATION**

**Requests for Clarification after Submission**

The Council may seek clarification of any information contained in responses to the Selection Questionnaire from bidding organisations during the evaluation period. For example, this may include, where relevant, requests for the organisations audited financial statements, where a financial check forms part of the Selection Questionnaire.

Requests for clarification after submission will be made via the NEPO Portal. Bidders must ensure that they have access to and monitor the system during the evaluation period.

It is the responsibility of the bidding organisation from which clarification is sought to provide the requested information within the time specified by the Council. If an organisation does not supply the requested information, within the time specified, this may have the following results:

* The Council may be forced to disqualify the organisation’s bid; for example, in such cases where the information requested by clarification is necessary to determine the organisation’s eligibility for selection; or
* The bid may be otherwise disadvantaged; for example, in such instances where the information requested by clarification is necessary to determine the organisation’s score for a response to a technical question, failure to clarify is likely to lead to a lower score being assigned.

**Confidentiality**

When providing details of previous contracts, in answering any Selection Questionnaire questions requiring case studies, or references from previous customers, the bidding organisation agrees to waive any contractual or other confidentiality rights and obligations associated with these contracts.

The Council reserves the right to contact any customers or clients named by the bidding organisation, to verify any statements made by the bidding organisation. The named customer or client does not owe the Council any duty of care or have any legal liability, except for any deceitful or maliciously false statements of fact.

The Council confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer or client contact, other than where it is necessary to disclose this to the Cabinet Office and/or other contracting authorities as defined by the Public Contracts Regulations 2015.

**Freedom of Information**

The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 impose duties of openness on the Council which determine how we treat any information provided by bidding organisations as part of the Selection Questionnaire process, whether or not this would generally be considered confidential or you have requested that it be treated as confidential.

Further information on the Act and Regulations and on how the Council will treat any information provided by organisations may be found at:

<http://www.durham.gov.uk> (search for ‘Freedom of Information’)

Bidding organisations must satisfy themselves that they understand and accept the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

**Use of this Document and Accompanying Documents**

This document, the Selection Questionnaire it has been issued with and any accompanying documents are for use by organisations which wish to be considered for the award of this contract, their professional advisers and other parties contributing to responses to the Selection Questionnaire. The Council authorises the use of these documents for this purpose only. They must not be used for any other purpose.

The Council has issued these documents, the accompanying Selection Questionnaire and any other documentation that it issues for this tender process on the basis that they remain the property of the Council and you must treat the contents as confidential. You must not share the contents, in part or whole, of any documents issued with any organisations or individuals that are not directly supporting your organisation in the tender process. Any organisations or individuals with whom you share the contents, in part of whole, of any documents issued will also be bound by the full terms and conditions found within. If you are unable or unwilling to comply with this you must:

* + destroy this document, the accompanying Selection Questionnaire and all associated documents at once; and
  + not keep any electronic or physical copies.

This Selection Questionnaire is made available in good faith. The Council gives no warranty as to the accuracy or completeness of the information contained in it, and disclaims any liability for any inaccuracy or omission.

The Council reserves the right to cancel this procurement process at any point. The Council is not liable for any costs or other losses resulting from the cancellation of this process, nor for any costs incurred by organisations by taking part in the procurement process.

**Canvassing**

The Council reserves the right to disqualify (without limiting the remedies the Council may seek, or the other action the Council may take) any bidding organisation which:

* offers any inducement, fee or reward to any member or officer of the Council or any person acting as an adviser for the Council in connection with this Selection Questionnaire;
* does anything which would constitute a breach of the Prevention of Corruption Acts 1889 to 1916;
* canvasses any member or officer of the Council in connection with this Selection Questionnaire; or
* contacts any member or officer of the Council prior to contract signature about any aspect of this Selection Questionnaire in a manner not permitted under the terms of this Selection Questionnaire.
* 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 any act or omission in relation to any other tender.

**Appendix 1 - Terms of Deed**

*This template deed shall be used where a bidding organisation is providing a guarantor in order to satisfy the requirements of the Financial Assessment.*

|  |  |
| --- | --- |
| Definitions and interpretation | |
| This Deed shall be interpreted in accordance with the rules of interpretation indicated in the Services Agreement. | |
| If there are two (2) or more parties named as the Guarantor, their obligations under this Deed shall be joint and several. | |
| Except to the extent otherwise stated in this Deed or except to the extent the context otherwise permits or requires, words and expressions in this Deed shall have the same meanings as is attributed to them in the Services Agreement. | |
| The following words and expressions shall be given the meaning ascribed to them respectively below, except to the extent the context requires: | |
| Demand | Has the meaning given in clause 2(a). |
| Permitted Claimant | The Council or such other third parties with rights under the Services Agreement or any of them collectively. |
| Provider | The party identified as such in the Summary, including its successors and assigns. |
| Provider Obligations | Any and all of the actual or contingent obligations (including without limitation, the obligation to pay money, whether as compensation for breach of the Services Agreement or otherwise), duties, liabilities, restrictions and prohibitions of the Provider arising under or in connection with the Services Agreement and owed to any relevant Permitted Claimant, whether owed in tort, contract, under statute or otherwise. |
| Services Agreement | The Services Agreement indicated as such in the Summary, including any extensions or modifications to it, and (if the Services Agreement) any individual contract for orders entered under or pursuant to it. |
| Guarantee | |
| In consideration of the Permitted Claimant agreeing to the Guarantor’s request to enter into the Services Agreement with the Provider instead of with the Guarantor (which the Guarantor acknowledges to be reasonable consideration), the Guarantor in accordance with and subject to the other provisions of this Deed hereby unconditionally and irrevocably undertakes to each Permitted Claimant that the Guarantor will by the deadline indicated in paragraph (b) of its receipt of a written demand (‘Demand’) issued by the relevant Permitted Claimant in accordance with this Deed (having particular regard to clause 4(a)) and without requiring proof or setting conditions and irrespective of whether there is any dispute raised by the Provider or any other person with rights and obligations under the Services Agreement pay to the relevant Permitted Claimant who issued the Demand in full and without exercising any rights of set off or making any deductions or withholdings whatsoever the amount indicated in the Demand. | |
| The Guarantor is required to pay the amount indicated in paragraph (a) within seven (7) days of it being given the Demand. | |
| The obligations of the Guarantor under this Deed are primary and not only by way of surety. Without limiting this, nothing in this Deed shall require the Permitted Claimant to have exhausted any or all rights and remedies (or to exercise any of them at all) against the Provider in relation to any particular Provider Obligation before issuing a Demand against the Guarantor in relation to that Provider Obligation. | |
| To the fullest extent permitted by law, the Guarantor irrevocably and unconditionally waives any right it may otherwise have under or by the operation of any applicable law to have its obligations under this Deed discharged in part or full before full payment under paragraph (a). | |
| To avoid doubt and without limiting the Guarantor’s liability, the Guarantor shall not in any way be discharged or otherwise released from any liability under this Deed by any one or more the following: | |
| Any invalidity, illegality or unenforceability of the Services Agreement. | |
| The reorganisation of the relevant Permitted Claimant or any change in its status, function or control. | |
| The making of any outstanding court order or the passing of any resolution requiring the Provider to be dissolved or wound up, or the appointment to the Provider of a liquidator, provisional liquidator, trustee, administrator, controller, receiver, or receiver and manager (or equivalent to any of these in the relevant jurisdiction). | |
| If the Provider is a natural person, his/her death or permanent disability. | |
| Any other act, event or circumstance which otherwise operates to discharge, impair or otherwise adversely (from the Permitted Claimant’s perspective) affect the obligations of the Guarantor under this Deed or any of the rights, powers or remedies of the Permitted Claimant under this Deed or otherwise by law. | |
| If from time to time there is any overdue debt owed by the Guarantor to a relevant Permitted Claimant arising under or in connection with this Deed, the Guarantor shall (in addition to the overdue principal and if included in any further Demand issued by the Permitted Claimant) pay the Permitted Claimant interest in accordance with this paragraph. The Permitted Claimant may charge the Guarantor interest on the overdue amount and on any reasonable costs incurred by the Permitted Claimant in collecting that overdue amount, including reasonable legal costs. Interest may be charged by the Permitted Claimant at a rate not exceeding that indicated in the Summary, provided that if that rate exceeds the maximum rate permitted by law from time to time, the maximum rate permitted by law shall instead apply in those circumstances. Such interest shall compound monthly commencing from the relevant due date until the date of actual payment, whether before judgement or otherwise. | |
| Nothing in this Deed shall in itself be read to relieve the Provider in relation to any Provider Obligation to which a Demand relates to the extent any amount referred to in that Demand remains unpaid by the Guarantor. | |
| Use voting powers etc | |
| If and to the extent the Guarantor has any voting or similar powers to vote or otherwise direct matters relating to the Provider, the Guarantor shall not use such voting or similar powers to deliberately or recklessly cause the Provider to breach the Services Agreement from time to time. | |
| Demand | |
| The Permitted Claimant shall not be permitted to issue the Guarantor a Demand except in relation to any breach by the Provider of any Provider Obligation from time to time. | |
| Nothing in this Deed shall in itself limit the number of Demands the Permitted Claimant is permitted to issue from time to time under this Deed. | |
| Any Demand issued by the Permitted Claimant from time to time must, in order to be valid, be substantially in the form set out in Schedule 1 to this Deed and must be served on the Guarantor at the address given in the Summary or such other address as notified from time to time no less than fourteen (14) days beforehand by the Guarantor to the Permitted Claimant. | |
| Warranties | |
| The Guarantor hereby warrants each of the following subject to any written disclosures made to the Permitted Claimant before the date of this Deed, each such warranty to be read independently of each other and for the separate benefit of each Permitted Claimant: | |
| The claims the Guarantor has made about itself about its financial status in any documents supplied to the Council in connection with this Deed (including any tender response, brochure or the like issued by the Provider in connection with the Services Agreement) are, to the best of the Guarantor’s knowledge having made proper inquiry, materially true and are not reasonably likely to mislead the Council by omission. | |
| The Guarantor has validly executed this Deed and its obligations under it are valid and binding upon it. | |
| There are no material facts about itself which the Guarantor has negligently or deliberately withheld from the Council which, if disclosed, would be likely to materially affect the decision of the Council (acting reasonably in the circumstances on its own behalf and on behalf of each and any other Permitted Claimant) to enter this Deed or the Services Agreement on their respective terms. | |
| The Guarantor validly exists under the law of the place where it was incorporated or otherwise constituted, it has the power under its constituent document and has obtained the relevant resolutions and taken the required corporate action to enter the Deed and to carry out its obligations under it. | |
| The Guarantor is able to pay its debts when they fall due. | |
| By entering into, and carrying out its obligations under this Deed, the Guarantor has obtained all necessary third party consents, and (to the best of its knowledge having made due inquiries), it will not breach any other duties (including contractual, fiduciary or statutory duties) it owes to third parties, nor will it breach any stock exchange rule or the terms of any permit or any other law in doing so. | |
| Release | |
| This Deed is to continue for the benefit of, each respective Permitted Claimant and may be assigned by it from time to time without requiring the prior consent of the Guarantor. | |
| Partial invalidity | |
| If from time to time any provision of this Deed is held by any court or similar body of competent jurisdiction in to be invalid or unenforceable for any reason, or if from time to time a relevant Permitted Claimant receives a written opinion from a barrister or solicitor admitted in England for not less than ten (10) years that any provision of this Deed is invalid or unenforceable for any reason, the following shall apply for the purposes only of each affected jurisdiction: | |
| If legally possible, that provision shall be modified by removing or altering those parts of that provision that create the invalidity or unenforceability, such removal or alteration to be to the minimum extent necessary to allow the provision to be held to be valid and enforceable, having regard to the purpose of the offending provision. | |
| If the preceding paragraph is not legally possible, the entire provision shall (unless it alters the fundamental nature of this Agreement or is otherwise against public policy) be severed from this Deed, and the remaining provisions shall remain in full force and effect. | |
| Notices | |
| To be valid for the purposes of this Agreement, a notice (for which purpose shall include any relevant Demand) given by a party to the other for the purposes of this Deed must be in writing, reasonably legible, in English, in the case of a Demand compliant with other requirements under this Deed, and must be marked to the attention of the relevant person indicated in the Summary or his/her replacement as notified by the intended recipient in writing from time to time not less than fourteen (14) days beforehand. | |
| To be validly given, a notice given by a party for the purposes of this Deed must be given in at least one of the following ways: | |
| By hand delivery to the individual to whose attention the notice is marked. A notice given in this manner shall be deemed to have been given immediately on delivery. | |
| By sending the notice to the address of the intended recipient indicated in the Summary (or such other address as notified by the intended recipient in writing from time to time not less than fourteen (14) days beforehand) by recorded mail or by a reputable courier. A notice given in this manner shall be deemed to have been given (except if returned to the sender undelivered) two (2) business days after the date it is sent. For the purpose of this Deed, a business day shall be any day other than a Saturday, Sunday or any other bank or public holiday in England. | |
| By fax to the intended recipient to the fax number of the intended recipient indicated in the Summary or such other fax number as advised by the intended recipient from time to time not less than fourteen (14) days beforehand. The notice given in this manner shall be deemed to have been given when the last page of the notice is successfully transmitted, except that if such time is outside the hours of 9.00 am and 5.00 pm on a business day, that notice shall be deemed to have been given at 9.00 am on the next business day. If the Guarantor is not based in England, times indicated in this paragraph shall refer to times in England. | |
| To avoid doubt, notices purportedly given by e-mail are deemed not to be valid for the purposes of this Agreement. | |
| Notices intended for any Permitted Claimant other than the Council shall be issued to the Council on that Permitted Claimant’s behalf. | |
| Law | |
| This Deed shall be interpreted according to the law of England. The parties to this Deed shall submit to the exclusive jurisdiction of the courts of England. | |

**SCHEDULE 1 – FORM OF DEMAND**

*[On Permitted Claimant’s headed notepaper]*

To *[*Name and address of Guarantor*]*

Attention: *[* *]*

*[Details of Provider and Services Agreement]*

*Deed of Guarantee dated [ ] (‘Deed of Guarantee’)*

The person indicated below, as a properly authorised officer of *[name of Permitted Claimant]*, hereby certifies that the *[name of Provider]* is in breach of the Services Agreement referred to above and as defined under the Deed of Guarantee referred to above.

*[Name of Permitted Claimant]* hereby demands payment under the Deed of Guarantee of *[* *]* *[in words and figures]* being the sum which *[name of Permitted Claimant]* claims to be entitled to.

Please make payment of this sum to the account of *[details and account number]*.

Yours faithfully

………………………………………..

for and on behalf of *[name of Permitted Claimant]*

1. For the list of exclusion please see: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf> [↑](#footnote-ref-1)
2. See EU definition of SME <https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en> [↑](#footnote-ref-2)
3. UK companies, Societates European (SEs) and limited liability partnerships (LLPs) will be required to identify and record the people who own or control their company. Companies, SEs and LLPs will need to keep a PSC register, and must file the PSC information with the central public register at Companies House. [See PSC guidance](https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships). [↑](#footnote-ref-3)
4. Central Government contracting authorities should use this information to have the PSC information for the preferred supplier checked before award. [↑](#footnote-ref-4)