



## Part 1 Information

### Contract Reference

**TTDA1918**

### Contract Title

**Claylands Cross Development**

# Contents

1	Availability of the Tender Documents .....	4
2	Procurement Information .....	4
2.1	Background Information .....	4
2.2	Minimum Requirements .....	5
2.3	Contract Period .....	5
2.4	Division of Contract into Lots .....	5
2.5	Contract Price .....	5
2.6	Variant Bids.....	5
2.7	Procurement Timetable .....	5
2.8	Authority Representatives .....	6
2.9	Site Visit .....	6
3	Procurement Process.....	7
3.1	Procurement Procedure .....	7
3.2	Stage One Selection .....	7
3.3	Stage Two Award.....	14
3.4	Scoring Methodology.....	15
4	Tender Requirements.....	18
4.1	Communication.....	18
4.2	Tender Clarification.....	18
4.3	Amendment to Documents .....	19
4.4	Post Tender Clarification.....	19
4.5	The Tender Documents .....	19
4.6	Preparation and Completion of Tenders.....	20
4.7	Submission and Opening of Tenders.....	21
4.8	Rejection of Tenders.....	22
4.9	Abnormally Low Tenders .....	22
4.10	Incomplete Tenders .....	23

For Information

4.11	Evaluation and Award.....	23
4.12	Legal and Contracting Arrangements .....	23
5	Glossary .....	26
5.1	Tender Documents.....	26
5.2	Appendices and Links .....	27
5.3	Definitions .....	28

**The Tender Documents can be made available in other formats. For further information please submit your request through the messaging facility on the Supplying the South West e-Tendering Portal**

## 1 Availability of the Tender Documents

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

In order to access amendable versions of the Documents and to submit a response Applicants must be registered on ProContract. Applicants should then register an interest to access the opportunity, download the Documents for completion and submit a response.

For details on how to register, access an opportunity and submit a response refer to Appendix A ProContract User Guide.

## 2 Procurement Information

### 2.1 Background Information

Claylands is a site of circa 10 acres that is in the ownership of Torbay Council. The site has historically been excavated for the manufacture of clay bricks, in more recent years the land was used as a waste transfer station where inert building materials were sorted prior to being recycled and re-used elsewhere and lastly as landfill. Ground levels in the site have been built up over that period of use. The site is located in a mixed residential and commercial area, approximately 2km from Paignton Town centre. It is surrounded by commercial retail to the North and West, Residential to the North and South, and is adjacent to Paignton Zoo to the East.

The site was originally allocated for leisure uses in the local plan although this was later allocated for employment. Neighbourhood Plans also proposed employment use. The site is surplus to requirements for any known Council use. The site requires new road access, internal road, services infrastructure, ground stabilisation and retaining structures to deal with the different changes to ground levels.

The proposed development is proportionate to the size of the site and the necessities of Torbay Council and all environmental features and constraints of the site have been carefully assessed and taken into account during the design process, so to produce a sustainable development in accordance to all national and Local Planning Policies. TDA are the agent acting on behalf of the Client (Torbay Council) for this scheme. The development of the site will provide much needed high quality, fit for purpose industrial space to meet the needs of growing business and accommodate investment into the area.

Proposals are for Castings Support Systems Ltd to lease the entirety of the first phase of construction at Claylands. The firm is a Paignton based tool making company that

For Information

additionally undertake injection moulding of plastic products. The firm's client base include many household name firms. Existing clients for example include Rolls Royce who they make precision components used in aero engine manufacturing and John Lewis for who they make high volume moulded plastic products used in the company's distribution centres. The firm has outgrown their existing two factories at Whiterock in Paignton and they wish to expand into a single more modern and efficient production premises that will allow Castings to continue to grow.

(TDA is a trading name of **Torbay Economic Development Company Limited**, a company registered in England and Wales No. 7604855 Registered Office Tor Hill House, Union Street, Torquay, Devon TQ2 5QW)

## 2.2 Minimum Requirements

Applicants must be able to demonstrate they will meet any Minimum Requirements set out in Part 3 Specification for the whole term of this Contract.

## 2.3 Contract Period

It is anticipated that the Contract will commence on 23 October 2018 or at date to be agreed for a period of 1 year and may be extended for a period of up to 1 further year or until the end of the allocated budget, subject to termination clauses within Terms and Conditions of Contract and as provided for in *72 Modification of contracts during their term* of the Public Contracts Regulations 2015.

## 2.4 Division of Contract into Lots

This Contract is not being divided into Lots. This is because it is not practical due to the nature of the Contract.

## 2.5 Contract Price

The price offered by the Applicant in Part 5 Pricing must be firm and fixed for the duration of the Contract. The schedule in Part 5 Pricing has been structured to enable pricing to be provided for the whole life of the Contract. Therefore no further price reviews will be available.

## 2.6 Variant Bids

The Authority will not consider variant bids.

## 2.7 Procurement Timetable

The Authority proposes the following timetable for the award of the Contract:

Procurement Stage	Dates
OJEU Notice Published	Wednesday 04 July 2018
Tender Documents Published	Friday 6 July 2018

Clarification Questions to be submitted by	Wednesday 18 July 2018
Clarification Responses to be issued by	Within 5 working days
Stage 1 Tender Submission Date & Time	Monday 06 August 2018 at 12:00 noon
Invitation to Tender Documents Published	Monday 13 August 2018
Site Visits	16 and 17 August 2018
Clarification Questions to be submitted by	Friday 31 August 2018
Clarification Responses to be issued by	Within 5 working days
Stage 2 Tender Submission Date & Time	Friday 14 September 2018 at 12:00 noon
Stage Two Tender Evaluation Period	19 September – 11 October 2018
Interview	27 or 28/09/2018
Contract Award	Friday 12/10/2018
Standstill Period	10 days to 22/10/2018
Mobilisation Starts	Tuesday 23/10/2018

The Authority reserves the right to change the above timetable and Applicants will be notified accordingly if there is a change.

## 2.8 Authority Representatives

Applicants are advised that the Authority Representatives will only respond to queries or questions in relation to this Tender opportunity through ProContract and are unable to respond to any questions raised verbally or by email.

### **Authority Authorised Representative:**

Marc Jones, Project Manager, TDA

### **Procurement Representative:**

Joanna Pascoe, Procurement Category Lead

## 2.9 Site Visits – FOR STAGE 2 ONLY

Applicants may visit the sites prior to completing their offer to ensure they are fully familiar

with the site locations. Claims on the grounds of lack of knowledge of site locations/conditions will not be accepted by the Authority. The 16<sup>th</sup> and 17<sup>th</sup> August 2018 have been allocated to site visits and Applicants are requested to attend site on either of these days. Only Applicants who have been invited to Tender at Stage 2 will be asked to register interest in attending the site visits with the Authority.

## 3 Procurement Process

### 3.1 Procurement Procedure

The Authority is inviting expressions of interest and Bids from Applicants in response to the OJEU Contract Notice identification number 2018/S 128-290792 dated 04/07/2018. This Procurement is being undertaken following the 'Restricted Procedure' as outlined within the Directive (2014/24/EU) and implemented in the United Kingdom by The Public Contracts Regulations 2015 (SI 2015/102).

A restricted procedure is a 2 stage process, meaning that at Stage One the Authority is able to limit the number of suitable Applicants invited to Stage Two Tender.

For this Tender process, the maximum number of Applicants who will be invited to Stage Two will be 5. If more than one Applicant is at 5<sup>th</sup> place, then all such Applicants will be invited to Tender.

### 3.2 Stage One Selection

The Authority will use a Qualitative Selection process to establish a shortlist of up to 5 Applicants who will be invited to participate in Stage Two of the procurement process. The Authority reserves the right to proceed with fewer than 5 Applicants.

The Selection stage will test Applicants' previous experience, existing capacity, compliance with relevant legislation and their ability to demonstrate that there are no formal grounds for exclusion.

The Selection Questionnaire can be found in Part 3 Selection Questionnaire (SQ)\_PAS91.

The Applicant's response will be evaluated in accordance with the scoring methodology set out in section 0 below.

**In order to pass this section Applicants must achieve a minimum score of 50% for each Project Specific Question. Failure to achieve the minimum score of 50% for any one or more of the Project Specific Questions will mean the Applicant will be deemed to have failed this section and they will be notified accordingly.**

Applicants will need to satisfy the requirements of Stage One in order to receive a formal Invitation to Tender and proceed to Stage Two.

**Please Note:** Applicants should submit responses to Part 3 Selection Questionnaire (SQ)\_PAS91 and Part 6 Certificates and Declarations only. All other tender information provided is for **information only** and Applicants will be contacted after the evaluation of Stage One to advise them whether or not they will be invited to proceed to Stage Two.

For Information

### **3.2.1 Online Questionnaire**

Applicants should note they may be required to respond to some of the Selection Questions on-line, where this is required details can be found in Part 3 Selection Questionnaire.

### **3.2.2 European Single Procurement Document**

In accordance with Regulation 59 of the UK Public Contract Regulations 2015 and EU Implementing Regulation 2016/7 Applicants may submit an XML version of the ESPD in place of Parts 1 and 2 of Part 3 Selection Questionnaire, but must complete and submit Part 3 of Part 3 Selection Questionnaire.



For Information

### 3.2.3 Selection Criteria

Applicants are advised to ensure they have read and fully understand the criteria below, which will be used in the evaluation process:

Stage One Selection	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
<b>Part 3 Selection Questionnaire</b>		<b>Pass</b>		<b>Pass</b>
<b>Part 1 Potential Supplier Information, comprising:</b>	<b>The Authority may exclude any Applicant who fails part or all of this section.</b>			
Section 1 Potential Supplier Information	This will be assessed on the basis of pass or fail. In order for the response to be considered a pass it must be fully completed by the Applicant and the Applicant must demonstrate that they meet the requirements of this section.		Pass	Pass
Section 1 Bidding Model	This section will be assessed on the basis of pass or fail. The Applicant must demonstrate that the Bidding Model proposed meets the requirements of the tender to pass.		Pass	Pass
Section 1 Contact Details and Declaration	This section will be assessed on the basis of pass or fail. The Applicant must fully complete this section.		Pass	Pass
<b>Part 2 Exclusion Grounds:</b>	<b>The Authority may exclude any Applicant who fails this section.</b>			
Section 2 Grounds for Mandatory Exclusion	<p>This will be assessed on the basis of pass or fail. The Authority may exclude any Applicant who answers 'Yes' in any of the situations set out in this section.</p> <p>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.</p>		Pass	Pass

Stage One Selection	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
Section 3 Grounds for Discretionary Exclusion	This will be assessed on the basis of pass or fail. The Authority may exclude any Applicant who answers 'Yes' in any of the following situations set out in this section.		Pass	Pass
<b>Part 3 Selection Questions</b>	<b>The Authority may exclude any Applicant who fails part or all of this section.</b>			
Section 4 Economic and Financial Standing	<p>This will be assessed on the basis of pass or fail. The Applicant must demonstrate that they meet the requirements of this section in order to pass it in its entirety.</p> <p><b>Assessment of Suitable Financial Standing</b></p> <p>In order to demonstrate they have suitable financial standing to meet the following minimum requirements:</p> <ul style="list-style-type: none"> <li>• The Applicant's annual turnover, for the previous 2 financial years, must be a minimum of twice the Annual Contract Value of £8m]<sup>1</sup>; and</li> <li>• The Applicant must yield a Failure Score of 50 or more on the financial check which the Authority will undertake through Dun and Bradstreet's Credit Reporter system. The credit check relates to the D&amp;B Risk of Bad Debt Write Off Score (also known as the Failure Score) which identifies the level of risk of a business failing. <b>Please Note:</b> Unless the Applicant states otherwise the credit check will be carried out using the company registration number given at 1.1(e) of Section 1 Potential Supplier Information.</li> </ul>		Pass	Pass

---

<sup>1</sup> The annual contract value is defined as the minimum anticipated spend over the life of the contract divided by the length of the contract, including any extensions.

Stage One Selection	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
	<p><b>Please Note:</b></p> <ul style="list-style-type: none"> <li>• In responding 'Yes' to question 4.2(a) the Applicant is making a self-declaration that they meet the Authority's annual turnover requirement<sup>*2</sup> and giving permission for the financial check to be undertaken.</li> <li>• Where the Applicant responds 'No' to question 4.2(a) they must provide details at 4.2(b) or they will be deemed to have failed this section in its entirety.</li> </ul> <p>Submissions will be assessed as follows:</p> <ol style="list-style-type: none"> <li>1. Where the Applicant refuses permission for the credit check to be undertaken they will be deemed to have failed this section in its entirety, their submission will not be evaluated further and they will be notified accordingly.</li> <li>2. Where the Applicant fails the turnover requirement and the credit check yields a Failure Score of below 30 they will be deemed to have failed this section in its entirety, their submission will not be evaluated further and they will be notified accordingly.</li> <li>3. Where:               <ol style="list-style-type: none"> <li>a) the Applicant fails the turnover requirement and the credit check yields a Failure Score between 30 and 49; or</li> <li>b) the Applicant passes the turnover requirement and the credit check yields a Failure Score of below 50; or</li> </ol> </li> </ol>			

---

<sup>2</sup> The successful Applicant may be required to evidence that they meet the turnover requirement.

Stage One Selection	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
	<p>c) the credit check does not yield a Failure Score and the Applicant either passes or fails the turnover requirement;</p> <p>The financial information will be referred to the Authority's Finance Department for further investigation. The Finance Department will make a decision on whether the Applicant's financial standing is deemed suitable to meet the Authority's minimum requirements or not. Applicants may be contacted to provide the additional financial information stated in question 4.1.</p> <p>Where the Finance Department considers the Applicant's financial standing to be suitable they will be deemed to have passed this section.</p> <p>Where the Finance Department considers the Applicant's financial standing is not suitable they will be deemed to have failed this section in its entirety, their submission will not be evaluated further and they will be notified accordingly.</p> <p><b>Please Note: The Finance Department's decision is final.</b></p>			
Section 5 Further Details in Relation to Applicants who are Part of a Wider Group	This section is for information purposes and will not be assessed, other than for checking that it has been completed where applicable.		N/A	N/A
Section 6 Technical and Professional Ability – Relevant Experience and Contract Examples	This section will be assessed on the basis of pass or fail. The Applicant must demonstrate they have relevant experience in delivering similar requirements, or are able to explain why they are unable to provide a minimum of one example.		Pass	Pass

For Information

Stage One Selection	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
Section 7 Requirements under the Modern Slavery Act 2015	This section will be assessed on the basis of pass or fail. The Applicant must demonstrate they meet the requirements, if applicable.		Pass	Pass
Section 8 Insurance	This section will be assessed on the basis of pass or fail. The Applicant must demonstrate they meet all the requirements.		Pass	Pass
Section 8 Project Specific Questions to Assess Technical and Professional Ability – Short Listing Questions	<p>This section will be scored in accordance with the scoring system set out at 3.4.2 below.</p> <p>Specific and relevant skills - 35%</p> <p>Working on highways/junction works along with brownfield site developments - 35%</p> <p>Experience of providing cost and programme certainty - 30%</p>	100%	100%	<b>Minimum score of 50% for each question</b>

**Please Note:** The Applicant must submit a completed SQ Part 1 and 2 Declaration for each organisation that it relies on to meet the selection criteria (including parent companies, affiliates, associates, or essential subcontractors). SQ Part 1 and Part 2 Declarations will be assessed in accordance with the criteria above.

### 3.3 Stage Two Award

The Authority will invite those Applicants shortlisted at Stage One Selection to submit their tender proposals.

Applicants are required to complete and submit Part 4 Award Questionnaire, Part 5 Pricing and Part 6 Certificates and Declarations.

The Applicant's response will be evaluated in accordance with the scoring methodology set out in section 3.4.20 below. **In order to proceed further in this process the Applicant must score a minimum of 5/10 for each Question.**

#### 3.3.1 Award Evaluation

The Award criteria have been designed to assess the Most Economically Advantageous Tender (MEAT) and the top scoring Applicant will be considered to have been successful.

Applicants are advised to ensure they have read and fully understand the criteria below, which will be used in the evaluation process:

Stage Two Award	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
<b>Part 4 Award Questionnaire and Part 5 Pricing Submission</b>		<b>100%</b>		<b>%</b>
Technical Question - Personnel	The questions within this section will be assessed on a scoring basis.		10%	<b>Minimum score of 5/10</b>
Technical Question - Programme	The questions within this section will be assessed on a scoring basis.		10%	<b>Minimum score of 5/10</b>
Interview	Applicants must be available for the timescales indicated within the procurement timetable at section 2.7.  Applicants will be contacted via the Supplying the South West e-tendering portal during the evaluation period. The invite will detail the date, time and location and the required content of		N/A	N/A

For Information

Stage Two Award	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
	<p>the interview, which will include any specific questions/topics to be covered and the scoring system.</p> <p>The interview will be used for clarification purposes and will not be scored. Applicants should note their Method Statement and/or Technical Question scores may be amended following the interview.</p>			
Pricing	<p>Applicants are required to complete both Part 5 Pricing Submission and Part 5 Claylands Prelims Workbook in full. The figure that will be used for evaluation purposes is that in Part 5 Pricing, Contract Sum tab, Cell C13.</p> <p>Applicants with the lowest price will score maximum marks out of a possible 100 and Applicants submitting higher prices will be awarded marks proportionate to their distance from the lowest price.</p>		80%	N/A

**Please Note:** Part 4 Award Questionnaire and Part 5 Pricing will be issued in PDF format at Stage One and will be re-issued in Word/Excel format to short-listed Applicants at Stage Two to complete and submit.

### 3.4 Scoring Methodology

Responses will be assessed on the following basis:

#### 3.4.1 Pass/Fail

Where evaluation criteria are being assessed as either a pass/fail, the response will be assessed as either a pass or a fail. Guidance as to the Authority's minimum requirements in relation to what constitutes a pass or a fail can be found within each question.

Should an Applicant fail one or more questions, they will be considered to have failed the Tender process in its entirety and shall be

For Information

deselected from participating further in this process and will be notified accordingly.



For Information

### 3.4.2 One to Ten Scoring

Where evaluation criteria are being assessed on a scoring basis, a one to ten scoring system will be used in accordance with the guidelines in the table below. The scoring system awards the highest marks to Applicants who show innovation, creativity, further relevant details and information that could potentially enhance the Applicant's proposal. It should be noted that to achieve the highest marks available for the questions you should not only meet but exceed the requirements of the specification.

0	No response	No response	
1	Extremely Weak	Very poor proposal/response; does not cover the associated requirements, major deficiencies in thinking or detail, significant detail missing, unrealistic or impossible to implement and manage	Weak
2	Very Weak	Poor proposal/response, only partially covers the requirements, deficiencies in thinking or detail apparent, difficult to implement and manage	
3	Weak	Mediocre proposal/response, moderate coverage of the requirements, minor deficiencies either in thinking or detail, problematic to implement and manage	
4	Fair - Below Average	Proposal/response partially satisfies the requirements, with small deficiencies apparent, needs some work to fully understand it	Fair - Good
5	Fair – Average	Satisfactory proposal/response, would work to deliver all of the Authority's requirements to the minimum level	
6	Fair - Above Average	Satisfactory proposal/response, would work to deliver the majority of the Authority's requirements to the minimum level with some evidence of where the Applicant could exceed the minimum requirements	
7	Good	Good proposal/response that convinces the Authority of its suitability, response slightly exceeds the minimum requirements with a reasonable level of detail	Strong - Excellent
8	Strong	Robust proposal/response, exceeds minimum requirements, including a level of detail or evidence of original thinking which adds value to the bid and provides a great deal of detail	
9	Very Strong	Proposal/response well in excess of expectations, with a comprehensive level of detail given including a full description of techniques and measurements employed	
10	Outstanding/Excellent	Fully thought through proposal/response, which is innovative and provides the reader with confidence of the suitability of the approach to be adopted due to the complete level of detail provided	

## 4 Tender Requirements

### 4.1 Communication

All communication between the Authority and Applicants will take place through ProContract, this includes but is not limited to:

- (a) clarification questions;
- (b) submission of Confidentiality Agreements and issue of confidential Documents;
- (c) requests to participate in site visits;
- (d) suggestions and queries in relation to the Terms and Conditions;
- (e) post tender clarification questions;
- (f) invitations to demonstrations, interviews or presentations;
- (g) outcome notification letters.

**Please Note:** Applicants are responsible, at all times during the Tender process, for checking whether any messages or amendments have been issued and should not rely solely upon automatic notification from ProContract.

### 4.2 Tender Clarification

**Please Note:** The Authority will only accept clarification questions, including queries or suggestions on the Terms and Conditions, during the clarification period stated in the Procurement Timetable, unless the question is directly related to a response issued by the Authority on or after the deadline for submission of questions.

Where the Tender is being run as a 2 stage process queries or suggestions on the Terms and Conditions may only be raised during Stage One.

The Authority will not negotiate on or any of the substantive terms of the Documents.

Responses to clarification questions will be provided to all Applicants except where the question:

- (a) is innovation based, in which case the response will only be provided to the Applicant who raised the question; or
- (b) relates to confidential Documents, in which case the response will only be provided to Applicants who have submitted a Confidentiality Agreement.

The Authority will endeavour to respond to clarification questions within 5 working days of the date the question is submitted, or the next working day if the question is submitted on a non-working day.

The identity of Applicants raising questions will remain confidential.

Applicants are responsible for ensuring they read and understand all of the responses to questions that have been raised.

Applicants will need to register an interest in the Tender on ProContract in order to access responses to clarification questions or receive communications from the Authority regarding amendments to the Documents.

### 4.3 Amendment to Documents

Amended Documents will be made available in both the publicly accessible opportunities area of ProContract and within the tender opportunity itself, except where the amendment relates to a confidential Document. Where necessary the Tender Submission deadline will be extended to enable Applicants time to take these changes into account.

Where the amendment relates to a confidential Document the amended Document will only be shared with those Applicants who have submitted a Confidentiality Agreement.

Amended Documents will form part of the resultant Contract.

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

### 4.4 Post Tender Clarification

Post tender clarification will be for the purposes of clarifying or supplementing the content of an Applicant's submission or the Authority's requirements where this would not be discriminatory to other Applicants. Questions may be issued to one, some or all Applicants as appropriate.

Where post tender clarification results in substantial modification to the Contract the Authority reserves the right to restart or abandon the Tender process.

**Please Note:** Failure to respond to post tender clarification questions in a timely manner may result in the Applicant's Tender being rejected.

### 4.5 The Tender Documents

The Documents are and shall remain the intellectual property of the Authority. Applicants may only copy or reproduce the Documents for the purposes of their response. If no response is submitted the Applicant shall delete any documents downloaded.

Where an Applicant identifies an error or omission within the Documents they should immediately notify the Authority through ProContract. The Authority will then rectify the error or omission and issue any amended Documents.

Some tenders will include confidential Documents and the tender documents will then include a separate Confidentiality Agreement appendix. Any Documents considered by the Authority to be of a confidential nature will not be made publicly available. Applicants are responsible for ensuring that confidential Documents are treated as such, are used only for the purposes of this tender and are not disclosed in whole or part to any 3<sup>rd</sup> party without the Authority's prior written consent.

Applicants can access confidential Documents by completing and submitting the Confidentiality Agreement through the ProContract Messaging Facility.

**Please Note:** Some confidential Documents may not be made available until Stage Two of the process.

The Authority may reproduce the whole or any portion of submitted Tenders for the purpose

---

of tender evaluation.

## 4.6 Preparation and Completion of Tenders

Applicants are responsible for ensuring they fully understand the requirements and have all the information they need to enable them to submit a response, within the time required. The Authority will not accept any claims related to an Applicant's failure to read and understand the Documents.

Applicants are responsible for meeting any costs, expenses or liabilities incurred in connection with this process, including if it is terminated or amended by the Authority. The Authority will not be responsible, nor will they pay for any expense or loss which may be incurred by Applicants in the preparation of their Tenders, or any other aspect of the Tender process.

Applicants are advised to note the following when completing their response:

- (a) all entries including responses to questions, rates, price totals or any other endorsements must be typewritten in English and in £ sterling. Handwritten responses will not be accepted;
- (b) responses must be submitted in the documents as provided or on-line where required;
- (c) the format and layout of the response documents must not be altered;
- (d) 6 Certificates and Declarations may be submitted in pdf format, but all other response documents must be submitted in the format issued;
- (e) responses should be made in full and should not refer to information provided elsewhere in the Submission;
- (f) where a word or page limit has been set any portion of the response which exceeds that limit will not be evaluated;
- (g) supporting documents / appendices will only be evaluated where these have been permitted within the response;
- (h) appendices, where permitted, must be clearly referenced within the response;
- (i) where a question does not apply to an Applicant they should clearly state N/A in the response section;
- (j) individual evaluators may not evaluate the entire response and the evaluation panel may include other stakeholders, such as partner organisations or people who use Council services;
- (k) do not make any assumptions about your past or current supplier relationship with the Authority or to assume that such prior relationships will be taken into account in the evaluation procedure;
- (l) all Documents must be completed in full and signed where required.

**Please Note:** Failure to complete or submit any of the Documents in accordance with the Authority's requirements may result in the Tender being rejected.

As arrangements relating to consortium bids or sub-contracting may change Applicants should respond on the basis of the arrangements envisaged at the time the Tender is submitted. The Authority must be notified immediately of any changes or proposed changes in relation to the bidding model, so that a further assessment against the selection criteria

can be made. The Authority reserves the right to deselect the Applicant prior to any award of contract, based on an assessment of the updated information.

Where the Applicant is relying on the capacity of a consortium member or sub-contractor and that organisation does not meet any relevant selection criteria the Authority reserves the right to require the Applicant to replace the organisation with an alternative.

Before submitting any documentation, Applicants need to understand the nature of the Authority's transparency commitments for tenders and contracts and the scope of the Authority's ability to withhold material. What will be disclosed does not differ from that currently disclosable under Freedom of Information legislation, but Applicants must ensure they understand the limitations on Freedom of Information exemptions for confidentiality and commercially sensitive information. **Please Note:** Applicants are requested to clearly identify any documents they consider to be commercially sensitive either during the tender process or after conclusion of the Contract.

**Please Note:** Applicants are expected to read, understand and confirm their acceptance of the Terms and Conditions before submitting their Tender. Applicants cannot reserve the right to comment or negotiate on them at a later date.

## 4.7 Submission and Opening of Tenders

Applicants should submit all documentation electronically through ProContract ([www.supplyingthesouthwest.org.uk](http://www.supplyingthesouthwest.org.uk)) using the Response Wizard as directed in the 'Supplier Guide' located in the help section or in Appendix A ProContract User Guide.

Applicants are responsible for ensuring:

- (a) they have submitted all of the required documents in the correct format;
- (b) their response is submitted by the deadline. **Please Note:** any submissions classified by ProContract as late will be rejected.

In the event the Authority is made aware of any technical issues with ProContract, which may prevent Applicants from meeting the submission deadline, the deadline may be extended. However Applicants are strongly advised to submit their Tender in good time.

Where an Applicant decides not to submit a Tender the Authority requests that the Applicant formally 'Opts Out' through ProContract, giving the reasons for non-submission. The Authority may contact Applicants who have expressed an interest but have not submitted a Tender, in order to understand their reasons for non-submission.

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

### Technical Support

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

[\*\*ProContractSuppliers@proactis.com\*\*](mailto:ProContractSuppliers@proactis.com)

Or click on the Help link at the bottom of the web page.

**Please Note:** If your issue is time sensitive call:

**0330 005 0352**

This line is available 09:00 to 17:30 Monday to Friday (excluding English bank and public holidays).

All Tenders will remain electronically sealed until the Submission deadline, when they will be unsealed at Stage One by a member of the Procurement Team and at Stage Two by an independent Verifier in the presence of a member of the Procurement Team.

## **4.8 Rejection of Tenders**

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

The Authority will reject any Tender where:

- (a) submission was made after the date and time specified on the documents;
- (b) submission was not made through ProContract;
- (c) the Applicant's price exceeds the Authority's declared budget;
- (d) the Applicant has not accepted the Authority's Terms and Conditions. **Please Note:** the Authority will seek clarification from the Applicant prior to rejecting the Tender;
- (e) the Applicant acts in any way improperly, including but not limited to canvassing, price fixing or inducements (which relate to offences under the Bribery Act 2010, Section 117 of the Local Government Act 1972 or any future legislation); or
- (f) the Authority has become aware at any point that the Applicant has been afforded a competitive advantage or has a conflict of interest that cannot be rectified.

The Authority may at its absolute discretion reject any Tender where:

- (a) the price has been assessed as being abnormally low (see 4.9);
- (b) it is considered by the Authority to be incomplete (see 4.10) or vague;
- (c) it is not in accordance with the required format;
- (d) the Applicant alters the Documents in any way or misrepresents itself in terms of any previous information provided;
- (e) the Applicant does not respond to post tender clarification questions in a timely manner;
- (f) the tender has been qualified in any way; or
- (g) it is in breach of any condition contained within it.

## **4.9 Abnormally Low Tenders**

Where an Applicant's price has been assessed as being abnormally low the Authority will require the Applicant to explain the price proposed and will assess the explanation in accordance with the guidance set out in the Public Contracts Regulations 2015. The Tender will only be rejected where the evidence provided does not satisfactorily account for the low price or where the Applicant has obtained State Aid that has resulted in a distortion in

For Information

competition.

Advice in assessing the explanation may be sought from the Authority's Corporate Finance section.

#### **4.10 Incomplete Tenders**

Tenders will be considered incomplete where the Applicant has not:

- (a) submitted all of the required documents, including any supporting information requested;
- (b) fully completed all of the Documents required;
- (c) responded to all of the questions; or
- (d) submitted the Documents in the required format.

#### **4.11 Evaluation and Award**

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

The Authority will only complete a full evaluation of accepted Tenders which meet all of the mandatory requirements as set out within the Documents.

The evaluation will be carried out by an Evaluation Panel and will be moderated by a member of the Procurement Team.

**Please Note:** Not all Panel members may assess every question, but all Tenders will be evaluated in the same manner and by the same Panel. Evaluation Panels may not comprise solely of the Authority's Officers, but may also include other key stakeholders, such as partner organisations and people who use Council services.

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

The Authority is not bound to make any award of Contract. If the Contract is awarded it will be on the basis of the most economically advantageous tender, which may not be the lowest price offered.

All Applicants will be notified of the Tender outcome at the same time, whether this is to award or not to award the Contract. Notification will be through ProContract.

**Please Note:** Applicants will be advised through ProContract of any changes to the decision date.

The Authority will comply with the requirements of *Regulation 87 Standstill period* of the Public Contracts Regulations 2015.

#### **4.12 Legal and Contracting Arrangements**

Information supplied by the Authority as part of the tender process is supplied in good faith and Applicants must satisfy themselves as to the accuracy of such information. The Authority accepts no responsibility for any loss or damage arising from the use by Applicants of such information. All information issued to Applicants must be treated as



For Information

confidential.

Applicants must ensure that they are fully familiar with the nature and extent of the obligations that they will take on if their Tender is accepted.

This Tender will be run in accordance with the requirements of regulations *24 Conflicts of interest* and *41 Prior involvement of candidates or tenderers* of the Public Contracts Regulations 2015.

Where the successful Tender is on behalf of a consortium the Authority may require the consortium to assume a specific legal form or require joint liability for the execution of the Contract, where this is considered necessary for the satisfactory performance of the Contract.

The information provided by Applicants will be relied upon to be true and accurate and will form part of the Contract with the successful Applicant. **Please Note:** If any of the information provided by an Applicant is found to be inaccurate the Applicant may be excluded from further participation in this or any future Tender issued by the Authority and could lead to termination of any resultant Contract.

In submitting a response Applicants will be confirming to the Authority that:

- (a) they have satisfied themselves of the accuracy and viability of all prices or rates stated within their response;
- (b) all prices or rates quoted will (unless otherwise provided for in the Contract) cover all of the Applicant's obligations under the Contract;
- (c) they have obtained all of the necessary information in relation to risks, contingencies or any other circumstances which reasonably influence or affect their bid;
- (d) their Tender is accurate and sufficient.

The Authority may, at its absolute discretion, extend the closing dates and times by amending the Tender on ProContract. Prospective Applicants will receive notification of the change of submission date and time. Unless any such extension has been granted, Tenders submitted after the submission dates and times will not be considered.

The Authority may, at its sole discretion, terminate the tendering procedure at any time. If such action is taken, Applicants will be notified through ProContract.

The Authority reserves the right to restart or abandon the Tender process where the lowest price submitted exceeds its estimate or available budget.

The Applicant's offer shall remain open for acceptance for a period of [6 months] from the closing date and may be extended by mutual agreement.

**Please Note:** if the successful Applicant does not accept the Terms and Conditions as drafted the Authority reserves the right to withdraw the Contract award and class the submission as non-compliant.

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

Prior to issuing the Contract the Authority will require the successful Applicant to provide evidence of compliance with any Contractual requirements, such as insurances, disclosure



For Information

and barring service checks and policies and procedures. **Please Note:** If the successful Applicant is unable to provide this evidence the Authority reserves the right to withdraw the Contract award and class the submission as non-compliant.

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

## 5 Glossary

### 5.1 Tender Documents

The following documents, together with the Appendices and Links at 5.2 below, form the tender documents:

Document	Purpose	For Completion and Submission
Part 1 Information	Contains information on the procurement process and instructions on how it will be conducted.	No
Part 2 Specification	Contains Authority's requirements in relation to the goods, services or works being procured.	No
Part 3 Selection Questionnaire (SQ)_PAS91	Contains the Selection Questions and may include the requirement for Applicants to provide some on-line responses.	Yes to be completed and submitted at Stage One
SQ Part 1 and 2 Declaration	Contains the Part 1 and Part 2 of the Selection Questionnaire, which must be completed by any organisations the Applicant relies on to meet the selection criteria. This document must be submitted by the Applicant on their behalf.	Yes, if applicable to be completed and submitted at Stage One
Part 4 Award Questionnaire	Contains the Award Questions and may include mandatory requirements, method statements and/or technical questions.	Yes to be completed and submitted at Stage Two
Part 5 Pricing	Contains the Applicant's pricing proposals for this Tender.	Yes to be completed and submitted at Stage Two
Part 6 Certificates and Declarations	Contains the Certificates and Declarations to which all Applicants must conform.	Yes at Stage One and at Stage Two

Document	Purpose	For Completion and Submission
Terms and Conditions of Contract	Contains the terms and conditions under which the resultant Contract will operate	No  Applicants are required to confirm acceptance as part of their response

## 5.2 Appendices and Links

5.2.1 Appendix A Interview Requirements – to follow

5.2.2 Selection Questionnaire (SQ)\_PAS91 – List of Mandatory and Discretionary Exclusions:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/551130/List\\_of\\_Mandatory\\_and\\_Discretionary\\_Exclusions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf)

5.2.3 Selection Questionnaire – EU Definition of an SME:

<http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/>

5.2.4 Selection Questionnaire – PSC Guidance:

<https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>

5.2.5 Appendix 1 NEC Contract Data and Z Clauses

5.2.6 Appendix 2 Form of Novation

5.2.7 Appendix 3 Works/Site Information - Stage 3 Design / Planning Pack / Preliminaries / Site Information

5.2.8 Appendix 4 Programme

5.2.9 Appendix 5 Bond/Warranty Forms

## 5.3 Definitions

Term	Definition
<b>Agent</b>	TDA are the agent acting on behalf of the Client (Torbay Council) for this scheme.  (TDA is a trading name of Torbay Economic Development Company Limited, a company registered in England and Wales No. 7604855 Registered Office Tor Hill House, Union Street, Torquay, Devon TQ2 5QW).
<b>Applicant</b>	An organisation that may respond to this Tender.
<b>Authority</b>	Torbay Council.
<b>Authority Authorised Representative</b>	The Officer leading the Tender process on behalf of the Authority who will be responsible for managing the resultant Contract.
<b>Award</b>	The process by which the Authority will determine the successful bidder in accordance with <i>Regulation 67 Contract award criteria</i> of the Public Contracts Regulations 2015.
<b>Award Questions</b>	The written response submitted by the Applicant to evidence their ability to meet the Authority's requirements, which will form part of the evaluation process upon which award of the Contract will be based.
<b>Bidding Model</b>	The Applicant's proposals relating to any consortia or sub-contracting arrangements that will be put in place in order to deliver the Contract.
<b>Call for Competition</b>	The Contract Notice sent electronically for publication in the Official Journal of the European Union.
<b>Confidential Information</b>	Any information or documents which the Authority considers to be confidential in nature and which will only be made available to Applicants who sign and submit a Confidentiality Agreement.
<b>Consortia/Consortium</b>	Two or more persons, at least one of whom is an economic operator, acting jointly for the purpose of being awarded a public contract in accordance with <i>Regulation 19 Economic operators</i> of the Public Contracts Regulations 2015.

<b>Term</b>	<b>Definition</b>
<b>Contract Term</b>	The length of the Contract including extensions, if available.
<b>Contracting Authority</b>	Torbay Council and any other Authority on whose behalf Torbay Council may be working.
<b>Contractor</b>	The Applicant awarded the Contract culminating from an offer to supply accepted by the Authority.
<b>Messaging Facility</b>	The area within ProContract where Applicants submit clarification questions and Confidentiality Agreements during the tender process and through which the Authority will post its replies.
<b>Documents</b>	All of the tender documents in relation to this Tender.
<b>Eligible Users</b>	Any organisation given access to the Contract resulting from this Tender.
<b>Landlord Works</b>	The Landlord works are defined as the scope of works listed in Appendix 3.
<b>Lead Applicant</b>	The organisation leading the bidding process on behalf of its consortia or sub-contractor partners.
<b>Lot</b>	One of a number of categories of goods or services into which a single procurement process has been divided. The use of lots potentially allows for multiple providers to be appointed following a single procurement process.
<b>Official Purchase Order</b>	The Authority's Official Purchase Order, to which these conditions apply.
<b>ProContract</b>	The e-tendering portal through which the Authority advertises opportunities and conducts Tenders.
<b>Price Review Mechanism</b>	The mechanism that will be used during the life of the Contract to review and vary the price.
<b>Procurement Representative</b>	The Procurement Officer who is leading the procurement process on behalf of the Authority.
<b>Public Contracts Regulations</b>	The UK legislation concerning public procurement, which can be found at: <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a> .

Term	Definition
<b>Relevant Tax Authority</b>	The organisation responsible for administering tax policy in the country in which the Applicant's organisation is established.
<b>Standstill</b>	The period, as set out in Regulation 87 of the Public Contracts Regulations 2015, immediately following notification of the award decision to Applicants during which the Authority must not enter into the Contract.
<b>Supplying the South West</b>	Means the same as ProContract.
<b>Tender</b>	The invitation to bid for this Contract; and / or The Applicant's response to this tender opportunity.
<b>Tenant Works</b>	The Tenant works are defined as the scope of works listed in Appendix 3.
<b>Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE)</b>	The regulations which govern how employers must deal with transfer of staff when a service or business changes hands from one employer to another in order to ensure the principal terms of employees' rights are protected.