



Part 1 Information

Standing List Reference

TCOS1117

Standing List Title

**Standing List of Contractors for
Highways and Marine Engineering
Schemes**

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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

The Authority has completed various Highways improvements, Urban Design Schemes and Marine Engineering Schemes in different areas of Torbay, examples of which are included as appendices with these Tender documents. Since 2014 these works have been called off the Authority's Framework to Establish Suitable Contractors to Undertake Highways and Urban Design Schemes, reference T23313H, which ended on 3 June 2018, and Marine Engineering Schemes Framework reference T00114RVS.

This Tender process is to award places to Contractors on a new Standing List combining both Highways and Marine Engineering requirements commencing 25 September 2018.

It is anticipated that the overall approximate spend over the lifetime of this Standing List over both Lots will be £17 million.

Individual call-off Contracts under this Standing List will typically range from £250,000 to £3 million for Highways Schemes and up to £3 million for Marine Engineering Schemes. Some call-off Contracts may exceed or significantly exceed these figures. There may be call-offs which may not meet these range figures; Standing List Contractors will be able to bid for these on an optional basis. It matters not whether the works packages involved are to be let as single "one-off" packages or as a programme of multiple and possibly quite diverse, discrete packages over a period of time.

Being awarded a place on this Standing List is not a guarantee of work and the Authority reserves the right not to use the Standing List to tender for specific projects, particularly where the contract value of that project significantly exceeds the figures above.

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Please see Part 2 Specification for further details.

2.2 Minimum Requirements

Applicants must be able to demonstrate they will meet any Minimum Requirements set out in Part 2 Specification for the whole term of this Standing List Agreement.

2.3 Standing List Period

It is anticipated that the Standing List will commence on 25 September 2018 or at date to be agreed for a period of 2 years and may be extended for a period of up to 2 further years 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.

Any Contractor who has been awarded a place on the Standing List but has not submitted a Tender in a Further Competition for any Call-Off Contract during the first two years of the Standing List to September 2020 will not be invited to the extension of the Standing List for Years 3 and 4.

2.4 Call-off Contract

The Contracts that will be used when a resultant call-off Contract is awarded will be:

- NEC3
- ICC

2.5 Standing List Structure

The Standing List is going to be structured as follows:

Lot 1 – Highways and Urban Schemes

Places on Lot 1 of the Standing List will be awarded to a maximum of 8 Applicants who meet the Selection and Award criteria. Where there is more than one Applicant in 8th place, then all such Applicants shall be awarded places on the Standing List.

TOR2 Ltd, part of the Kier Group, is in a joint venture partnership with Torbay Council and is responsible for delivering a wide range of essential front-line services to the residents of Torbay. Under this joint venture partnership Highways Works contract orders with a value of £250,000 or less are offered to TOR2 Ltd.

Lot 2 – Marine Engineering Schemes

Places on Lot 2 of the Standing List will be awarded to a maximum of 6 Applicants who meet the Selection and Award criteria. Where there is more than one Applicant in 6th place, then all such Applicants shall be awarded places on the Standing List.

Applicants may apply for a place on Lot 1, on Lot 2 or on both Lots.

2.6 Standing List Call-Off Procedures

The call-offs made from this Standing List will be undertaken using the following method:

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2.6.1 Further Competition

This Standing List provides for using Further Competition in the following way:

All Contractors who have places on the relevant Lot of the Standing List will be invited to Tender for the individual Contract Call-Offs arising on that Lot.

Any Contractor who has accepted a place on this Standing List but has not returned a signed Standing List Agreement will not be invited to any Further Competitions for call-off Contracts arising from this Standing List.

Further Competitions will be published on the electronic tendering portal ProContract.

The evaluation criteria for each Further Competition process may be either

Lot 1 Highways Schemes

- 100% Price

Lot 2 Marine Engineering Schemes

- 100% Price; or
- A mixture of Price and Quality

It is for the Contractor to select and put forward the most appropriate sub-contractor for each Call-Off Contract, where it is necessary to propose subcontractors.

The Contracting Authority reserves the right to reject a particular sub-contractor on the basis of proven poor performance in the past and to require the Contractor to propose an alternative.

The Authority reserves the right to add at Call-Off stage any award criteria appropriate to the project being undertaken.

2.7 Standing List Pricing

Pricing will be provided by the successful Applicants at the call-off stage, with prices provided for each individual call-off.

2.8 Variant Bids

The Authority will not consider variant bids.

2.9 Procurement Timetable

The Authority proposes the following timetable for the award of the Standing List:

Procurement Stage	Dates
Sent Call for Competition	Tuesday 10 July 2018
Tender Documents Published	Wednesday 11 July 2018
Clarification Questions to be submitted by	Wednesday 25 July 2018 at 12:00 noon
Clarification Responses to be issued by	Within 5 working days
Tender Submission Deadline Date & Time	Thursday 9 August 2018 at 12:00 noon
Tender Evaluation Period	10 August – 29 August 2018
Award of Standing List Places	31 August 2018
Standstill Period	1 – 10 September 2018
Standing List Agreement signing	11 – 24 September 2018
Standing List Start	Tuesday 25 September 2018

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

2.10 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:

Richard Salter – Engineer TDA – Lot 1 Highways

Colin Peters – Engineer TDA – Lot 2 Marine Engineering

Procurement Representative:

Joanna Pascoe – Procurement Category Lead

2.11 Site Visits

The Authority does not propose to undertake formal site visits. Applicants may visit the sites prior to completing their offer to ensure they are fully familiar with the site locations. The information in the attached appendices is given as an indication of the general requirements of the Call-Off Contracts. Claims on the grounds of lack of knowledge of site locations/conditions will not be accepted by the Authority.

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Please refer to the attached Appendices for examples of works undertaken under the previous Frameworks:

Lot 1 – Highways Schemes

Appendix 1 - Brixham Road

Appendix 2 - Kings Ash Road

Appendix 3 - Fleet Street

These plans highlight two areas in Paignton and one in Torquay; Applicants can arrange their own site visits to view the different schemes, recently completed.

Lot 2 – Marine Engineering Schemes

Appendix 4 – Recent Marine Engineering Schemes

3 Procurement Process

3.1 Procurement Procedure

The Authority is inviting expressions of interest from Applicants in response to the OJEU Contract Notice 2018/S 131-298152 dated 11 July 2018. This Procurement is being undertaken following the Open Procedure as outlined within the Directive (2014/24/EU) and implemented in the United Kingdom by The Public Contracts Regulations 2015 (SI 2015/102).]

3.2 Selection

The Authority will use a Qualitative Selection process to 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.

Applicants are required to indicate at Section 6 in Part 3 Selection Questionnaire whether they are applying for Lot 1 or Lot 2 or both Lots by completing the relevant Section 6 Questions.

The Applicant's response will be evaluated in accordance with the scoring methodology set out in section 3.4 below.

Please Note: Applicants are required to submit responses to Part 3 Selection Questionnaire in full.

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.

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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
Part 3 Selection Questionnaire		Pass		Pass
Part 1 Potential Supplier Information, comprising:	The Authority may exclude any Applicant who fails part or all of this section.			
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
Part 2 Exclusion Grounds:	The Authority may exclude any Applicant who fails this section.			
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
Part 3 Selection Questions	The Authority may exclude any Applicant who fails part or all of this section.			
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>Assessment of Suitable Financial Standing</p> <p>In order to demonstrate they have suitable financial standing to meet the following minimum requirements:</p> <ul style="list-style-type: none"> • The Applicant's annual turnover, for the previous 2 financial years, must be a minimum of twice the estimated Contract Value of £2 million¹; and • 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&B Risk of Bad Debt Write Off Score (also known as the Failure Score) which identifies the level of risk of a business failing. Please Note: 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 		Pass	Pass

¹ The estimated contract value is defined as the average anticipated spend over the life of the Standing List divided by the length of Standing List, including any extensions.

Stage One Selection	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
	<p>Information.</p> <p>Please Note:</p> <ul style="list-style-type: none"> • In responding 'Yes' to question 4.2(a) the Applicant is making a self-declaration that they meet the Authority's annual turnover requirement² and giving permission for the financial check to be undertaken. • 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. <p>Submissions will be assessed as follows:</p> <ol style="list-style-type: none"> 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. 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. 3. Where: <ol style="list-style-type: none"> a) the Applicant fails the turnover requirement and the credit check yields a Failure Score between 30 and 49; or b) the Applicant passes the turnover requirement and the 			

² 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>credit check yields a Failure Score of below 50; or</p> <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>Please Note: The Finance Department's decision is final.</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	This section will be assessed on the basis of pass or fail. The Applicant must demonstrate they have relevant experience in		Pass	Pass

Stage One Selection	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
Experience and Contract Examples	delivering similar requirements, or are able to explain why they are unable to provide a minimum of one example.			
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 – Mandatory Pass / Fail Requirements	This section will be assessed on the basis of pass or fail. Where an Applicant scores more than 50% for a question they will be assessed as a pass, where the score is below 50% they will be assessed as a fail. The Applicant must demonstrate they meet all the requirements.		Pass	Minimum Score for each Question 50%

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 only evaluate the Stage Two submissions of those Applicants who have satisfied the requirements of Stage One Selection and meet any mandatory requirements for Stage Two.

Applicants are required to complete and submit Part 3 Selection Questionnaire, Part 4 Award Questionnaire and Part 6 Certificates and Declarations. **Applicants are required to complete Part 4 Award Questionnaire LOT 1 if they wish their responses to be**

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considered for Lot 1 only, or Part 4 Award Questionnaire LOT 2 if they wish their responses to be considered for Lot 2 only or BOTH if they wish their responses to be considered for both Lots 1 and 2.

Applicants may apply for a place on Lot 1, on Lot 2 or on both Lots. Places may be awarded to the successful Applicants on Lot 1, on Lot 2 or on both Lots.

Lot 1

Places on Lot 1 of the Standing List will be awarded to a maximum of 8 Applicants who meet the Selection and Award criteria. Where there is more than one Applicant in 8th place, then all such Applicants shall be awarded places on the Standing List.

Lot 2

Places on Lot 2 of the Standing List will be awarded to a maximum of 6 Applicants who meet the Selection and Award criteria. Where there is more than one Applicant in 6th place, then all such Applicants shall be awarded places on the Standing List.

The Applicant's response will be evaluated in accordance with the scoring methodology set out in section 3.4 below.

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
Part 4 Award Questionnaire		100%		%
Method Statements	The questions within this section will be assessed on a scoring basis.		75%	
Technical Questions	The questions within this section will be assessed on a scoring basis.		25%	

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Stage Two Award	Evaluation Criteria	Main Criteria	Sub-Criteria	Threshold
	<i>Organisation – 10%</i> <i>Health & Safety – 5%</i> <i>Quality – 5%</i> <i>Social Value, Sustainability and Environment – 5%</i>			

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

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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, including questions and 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 Tender 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 Standing List Agreement and/or Call-Off 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 3rd 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.

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 Standing List Agreement or Call-Off 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) 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 response 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

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 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 Standing List Agreement or Call-off Contract 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

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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 the Standing List. If the Standing List 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 Standing List. 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

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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 Standing List Agreement 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 Agreement or call-off 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 Standing List Agreement) cover all of the Applicant's obligations under the Standing List Agreement;
- (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 Standing List Agreement or Call-off Contract Terms and Conditions as drafted the Authority reserves the right to withdraw the Standing List 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 Standing List Agreement shall become binding on all parties.

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Prior to issuing the Standing List Agreement the Authority will require the successful Applicant to provide evidence of compliance with any contractual requirements, such as insurances, disclosure and barring service checks and policies and procedures. **Please Note:** If the successful Applicant is unable to provide this evidence the Authority reserves the right to withdraw the Standing List award and class the submission as non-compliant.

The successful Applicant will not be allowed to participate in any call-offs from the Standing List prior to the formal Standing List Agreement 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	Contains the Selection Questions and may include the requirement for Applicants to provide some on-line responses.	Yes
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
Part 4 Award Questionnaire	Contains the Award Questions and may include mandatory requirements, method statements and/or technical questions.	Yes
Part 6 Certificates and Declarations	Contains the Certificates and Declarations to which all Applicants must conform.	Yes
Standing List Agreement	Contains the terms and conditions under which the Standing List will operate.	No Applicants are required to confirm acceptance as part of their response

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

5.2 Appendices and Links

5.2.1 Appendix A ProContract User Guide

5.2.2 Selection Questionnaire – 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

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 – Brixham Road

5.2.6 Appendix 2 – Kings Ash Road

5.2.7 Appendix 3 – Fleet Street

5.2.8 Appendix 4 – Recent Marine Engineering Schemes

5.2.9 Appendix 5 - Windy Corner

5.2.10 Appendix 6 – Shiphay Lane

5.2.11 Appendix 7 - Station Square Paignton

5.3 Definitions

Term	Definition
Applicant	An organisation that may respond to this Tender.
Authority	Torbay Council.
Authority Authorised Representative	The Officer leading the Tender process on behalf of the Authority who will be responsible for managing the resultant Contract.
Award	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.
Award Questions	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.
Bidding Model	The Applicant's proposals relating to any consortia or sub-contracting arrangements that will be put in place in order to deliver the Contract.
Call for Competition	The Contract Notice sent electronically for publication in the Official Journal of the European Union.
Call-off	The process of calling a contract off the Standing List.
Confidential Information	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.
Consortia/Consortium	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.
Contract Term	The length of the Contract including extensions, if available.

Term	Definition
Contracting Authority	Torbay Council and any other Authority on whose behalf Torbay Council may be working.
Contractor	The Applicant awarded the Contract culminating from an offer to supply accepted by the Authority.
Messaging Facility	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.
Direct Award	The process of awarding a contract off the Standing List without the need to undertake a further competition.
Documents	All of the tender documents in relation to this Tender.
Eligible Users	Any organisation given access to the Contract resulting from this Tender.
Standing List	The pre-qualified list of suppliers and agreement put in place with those suppliers to enable them to be invited to future call-off contracts.
Further Competition	A call-off procedure that will be followed when putting contracts in place under the Standing List.
Lead Applicant	The organisation leading the bidding process on behalf of its consortia or sub-contractor partners.
Lot	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.
Official Purchase Order	The Authority's Official Purchase Order, to which these conditions apply.
ProContract	The e-tendering portal through which the Authority advertises opportunities and conducts Tenders.
Price Review Mechanism	The mechanism that will be used during the life of the Contract to review and vary the price.
Procurement Representative	The Procurement Officer who is leading the procurement process on behalf of the Authority.

Term	Definition
Public Contracts Regulations	The UK legislation concerning public procurement, which can be found at: www.legislation.gov.uk .
Relevant Tax Authority	The organisation responsible for administering tax policy in the country in which the Applicant's organisation is established.
Standstill	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.
Supplying the South West	Means the same as ProContract.
Tender	The invitation to bid for this Contract; and / or The Applicant's response to this tender opportunity.
Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE)	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.