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**LINCOLNSHIRE COUNTY COUNCIL**

**INVITATION TO TENDER**

**DOCUMENT 1: INSTRUCTIONS**

**FOR**

The repair and maintenance of CCTV systems, smoke/ fire detection systems, automatic gate systems with an access control system and electric fences

**PROJECT REFERENCE: WS/PL2202**

**CONTRACT NOTICE REFERENCE: 2022/S 000-025362**

**DATE: 9th September 2022**

**DEADLINE FOR RECEIPT OF TENDER SUBMISSION: 20th December 2022 at 12:00 noon**

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**SECTION 1 – INTRODUCTION**

1. Introduction
	1. This Invitation to Tender invites the Bidders who have been shortlisted following the selection process using the SQ and the criteria identified therein to submit a Tender Submission to the Council for the Procurement.
	2. The following 5 (five) Bidders are being invited to submit a Tender Submission (in alphabetical order):
		1. [Bidder 1]
		2. [Bidder 2]
		3. [Bidder 3]
		4. [Bidder 4]
		5. [Bidder 5]
	3. Capitalised terms and expressions shall have the meanings ascribed to them in Appendix 1.
	4. The Conditions of Procurement in Appendix 2 regulate the conduct of Bidders and the Council throughout the Procurement.
	5. All references to a "Paragraph", "Section" or "Appendix" are to a Paragraph, Section or Appendix of this Document 1 of the ITT unless otherwise stated.
	6. Purpose of this ITT
	7. The instructions provided in this ITT are provided to assist Bidders in responding to the ITT and submitting a Tender Submission.
	8. This document should be read in conjunction with the other Procurement Documents which have been made available at this stage of the Procurement.
	9. The instructions provided in or with this ITT supersede any other instructions previously provided by the Council. Any changes to the instructions provided in this ITT document will be notified to Bidders simultaneously.
	10. Document Structure
	11. The ITT is structured in [four] documents (all available on the Portal):
		1. Document 1: Instructions (including Response Requirements)
		2. Document 2: Specification
		3. Document 3: Response
		4. Document 4: Contract
		5. Pre market engagement responses
	12. Timetable
	13. The following table sets out the proposed timetable for the remainder of the procurement process. The Council reserves the right, in its absolute discretion, to amend the timetable or extend any time period in this ITT.

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| --- | --- |
| **Description** | **Date** |
| Issue of the ITT and other Procurement Documents which have been made available at this stage. | 25th November |
| Deadline for receipt of ITT queries via the Portal.  | 13th December 12:00 noon |
| Deadline for Tender Submission uploaded onto the Portal\* | 20th December 12:00 noon  |
| Evaluation of Tender Submissions | 3rd January – 6th February |
| Internal Governance  | 7th – 9th February |
| Notification of Preferred Bidder and Standstill Period | 10th February – 20th February |
| Contract Award | 21st February |
| Commencement Date | 1st April  |

\* Tender Submissions received after this deadline will not be considered.

* 1. Queries from Bidders
	2. If the Procurement Documents are incomplete the Bidder should contact the Council (via the Pro-Contract tender Portal) to arrange for the missing material to be sent. It is the Bidder's responsibility to ensure that they have all the information they need to prepare their Tender Submission.
	3. Any queries or requests for clarification about the Procurement and/or this ITT must be submitted via the Pro-Contract tender Portal only, no later than the deadline in paragraph 1.12 to allow the Council sufficient time to respond to all concerned prior to the closing date for receipt of completed Tender Submissions. The Council may not answer any questions submitted after this date. The Council will endeavour to respond to requests for clarification as soon as possible.
	4. If there is a technical issue with the Portal, please contact the ProContract helpdesk at <https://procontract.due-north.com/Login>. If there is a technical issue with the Portal which impacts the submission of the completed Tender Submissions on the Portal, Bidders should also contact the Council at procurement.lincolnshire@lincolnshire.gov.uk.
	5. Where the Council considers any queries or requests for clarification to be of material significance, it may communicate both query and the response to all interested parties who have responded. If a Bidder does not wish for a query or response to be disclosed to other Bidders because it believes the query to be of a commercially confidential nature, it must communicate this and the reason why to the Council. The Council will consider the request in the event the Council does not consider the query to be commercially sensitive it will commutate this with the Bidder. The Bidder will then have the opportunity to either withdraw the query or proceed with the query that will be disclosed with the response to all interested parties. For the purpose of disclosure to interested parties the Council will anonymise all queries.
	6. It is the responsibility of each Bidder to monitor all clarifications issued by the Council. The Council accepts no liability for any Bidder's failure to keep abreast of clarifications issued.

**SECTION 2 – BRIEF DESCRIPTION OF CONTRACT**

1. Brief Description of Contract
	1. Overview
	2. The services which are being procured as part of this Procurement are repair and maintenance of CCTV systems, smoke/ fire detection systems, automatic gate systems with an access control system and electric fences at their sites.
	3. The Contract will run for a period of 3years commencing1st April 2023 there will be an option for the Council to extend the Contract by a period of 12 months, followed by a further option to extend for a further 12 months.
	4. The estimated value of the Contract is £500,000
	5. Background Information
	6. Lincolnshire County Council are looking for a supplier to provide the services briefly described as repair and maintenance of CCTV systems, smoke/ fire detection systems, automatic gate systems with an access control system and electric fences at their sites (Customer's Sites). There are a total of 24 Customer’s Sites, these are split into 11 Household Waste Recycling Centres, 5 Waste Transfer Stations and 8 Highways Depots throughout Lincolnshire.
	7. The incumbent Supplier has indicated that the Transfer of Undertakings (Protection of Employment) regulations 2006 do not apply, however it is the responsibility of Bidders to complete all necessary checks to ensure this. Council has been informed that TUPE does not apply, however Bidders are encouraged to satisfy themselves of this this with the current supplier Please see Appendix 1 for details of the Customer’s Sites.
	8. Information given in respect of current orders is given as a guide and the Council makes no warranty and accepts no liability as to the actual value or volume of orders to be placed through the Contract.
	9. **Specification**
	10. The full specification is in Document 2.
	11. Contract Documentation
	12. It is proposed that the Council and the successful Bidder will enter into a binding contract. The Contract will be in the form ofthe draft Contractat Document 4 and will include all of the contract documents referenced within it.
	13. Bidders should note that the terms and conditions of the draft Contract at Document 4 are not open for negotiation. By submitting a response to this ITT, Bidders are agreeing to be bound by the terms of the tender documents and the terms and conditions of the draft Contracts without negotiation or amendment. Tender Submissions must be submitted on the basis that all terms and conditions are accepted.
	14. Evasive, unclear, hedged or qualified Tender Submissions may, at the Council’s discretion, be taken as a rejection by the Bidder of the terms set out in this ITT, and the Bidder’s Tender Submission may be rejected as non-compliant.]
	15. **Financial Model/Price**
	16. The draft payment mechanism and terms that will be used throughout the operation of the Contract are outlined in Schedule 3 Pricing Schedule of ITT document 4. By submitting a response to this ITT, Bidders are agreeing to be bound by them without negotiation or amendment.
2. The PROCUREMENT PROCESS

**SECTION 3 – THE PROCUREMENT PROCESS**

* 1. Introduction
	2. This Procurement is a Restricted Procedure procurement conducted in accordance with the general principles of transparency, non-discrimination and equal treatment, and in accordance with the procedure set out in Regulation 28 of the PCR 2015.
	3. Tender Submissions and Contract Award
	4. Bidders are now invited to make a Tender Submission in response to this ITT.
	5. Tender Submissions will be assessed against the award criteria and in accordance with the evaluation methodology detailed in Section 5.
	6. Following that evaluation, the award of the Contract will be made on the basis of the Tender Submission that is the most economically advantageous, subject to the Council's right to reject abnormally low tenders pursuant to Regulation 69 of the PCR 2015.
	7. Final Due Diligence
	8. Before the award of the Contract, the Council may undertake further final due diligence in respect of the Preferred Bidder. The purpose of this final due diligence is to determine that the Preferred Bidder still meets the Council's minimum selection requirements. Any Bidder that fails to do so may be eliminated from the Procurement.
	9. Bidders will be expected to provide such assistance as the Council may reasonably require in undertaking any such due diligence.
	10. Bidders should note that in accordance with its obligations under the PCR 2015 for the Restricted Procedure, the Council will not enter into negotiations in connection with the Preferred Bidder's Tender Submission following its submission.
	11. Contract Award Decision
	12. The Council will notify Bidders of its decision on the identity of the Preferred Bidder with whom it intends to proceed to contract award. A standstill period will be held as required under the PCR 2015.
	13. Following expiry of the standstill period, the Preferred Bidder will be required to execute the Contract together with all other associated documents required by the Council.
	14. The Council will issue a contract award notice in accordance with its obligations under the PCR 2015.

**SECTION 4 – INSTRUCTIONS FOR COMPLETION OF TENDER SUBMISSIONS**

1. Instructions for completion of tender submissions
	1. This ITT (all five documents) contains relevant and important information in relation to the preparation and submission of the Tender Submission. Bidders should comply with all of the requirements of this ITT.
	2. As part of their Tender Submission, there are two broad elements that Bidders are asked to respond to: a qualitative offer and a financial offer.
	3. **Qualitative response requirements**
	4. Bidders are required to respond in writing to all questions contained in Document 3, Section 3: Response Requirements. Bidders should follow the same numbering convention and numbering order as detailed in Document 3, Section 3.
	5. Financial response requirements
	6. Bidders are required to complete Document 3, Section 4: Financial Model / Price in accordance with the instructions contained therein.
	7. Contractual Commitments
	8. All information contained in the Bidder's Tender Submission should be factually accurate. The Tender Submission and any commitments given may be incorporated into the Contract by the Council.
	9. The Council anticipates that Bidder’s responses will become contractual commitments and will form part of Schedule 2 Supplier’s Service Delivery Plan of the Contract. Responses to questions should therefore be written with this in mind and should contain clear commitments. The Council reserves the right to clarify where it feels a commitment is unclear.
	10. General Instructions
	11. Bidders should ensure that all documents submitted as part of their Tender Submission comply with the following instructions:
		1. Bidders must only include the documents requested by the Council;
		2. Bidders must answer all questions as accurately and concisely as possible;
		3. Responses and supplementary documents must be provided in English;
		4. Financial information must be stated in Pounds Sterling;
		5. Bidders must not provide general marketing or other materials;
		6. Bidders must state the number of words that have been used to answer each question (this text does not count towards the word count or page limit);
		7. Where a word or page limit has been stipulated, only the information within this word or page limit will be assessed. Unless expressly stated otherwise, additional information will not be assessed and therefore should not be submitted. This includes any hyperlinks inserted into the submission. Bidders should note that the Council will limit any evaluation to the stipulated length of any such answer and the remainder of the response will not be considered or evaluated;
		8. Text included in diagrams will not be included within the word count. However, if a Bidder's use of words within diagrams is excessive and/or appears intended to circumvent the word count then the Council reserves the right to include it in the word count;
		9. Generic statements which refer to information within company profiles, brochures or other promotional and/or marketing literature should not be included and will not be evaluated;
		10. In respect of individual question responses, Bidders must ensure that each response is self contained and does not seek to rely upon cross-referencing to responses to provided in respect of other questions. For the avoidance of doubt, unless otherwise stated, no account will be taken in the evaluation of the response to a particular question of information referenced and contained in a response or responses to other questions;
		11. Text based information must be in 11-point, Arial font using 2.5cm page margins on A4 sized paper. Text in diagrams must not be any smaller than 8-point, Arial font; and
		12. Responses should be submitted in Microsoft Word format. If the Bidder intends to use alternative formats (e.g. PDF) they should submit a request through the clarification process prior to the deadline for clarifications. It is at the Council's discretion whether they accept this.
	12. Procedure for submission of Tender Submissions
	13. Tender Submissions must be submitted electronically on the Pro-Contract tender Portal by no later than the deadline for Tender Submissions stated in the timetable at paragraph 1.12. Any Tender Submissions received after the deadline or by any other method will not be considered.
	14. The Pro-Contract Tender Portal can accept any commonly used file format (e.g. Word, PDF, Excel) up to a maximum file size of 1000MB per file and more than one file can be submitted.
	15. The Council strongly recommends that Bidders upload Tender Submissions well in advance of the deadline in order to avoid the risk of a late submission. Once the deadline has expired Bidders will not be able to submit a Tender Submission. Tender Submissions via the electronic ProContract tenderbox cannot be accessed or opened by the Council until after the deadline has expired.
	16. The Council may reject as non-compliant any Tender Submission that is not properly completed, that is qualified in any way, or that is not submitted strictly in accordance with the requirements of this ITT.
	17. Summary of Documentation to be submitted
	18. Bidders must submit the following documents as outlined in Document 3 (the total of which comprise the Tender Submission):
		1. Section3: Quality Response;
		2. Section 4: Financial Model / Price; and
		3. A completed Tender Certificate.
		4. A completed Commercially Sensitive Information form

**SECTION 5 – EVALUATION OVERVIEW**

1. Evaluation overview
	1. This Section 5 sets out the criteria and evaluation methodology that the Council will use to evaluate Tender Submissions to determine the most economically advantageous tender and explains the staged approach to the evaluation.
	2. The Council will evaluate Tender Submissions using the following award criteria and weightings:

| **Level 1 Award Criteria** | **Level 1 Award Criteria Weighting** | **Level 2 Award Criteria**  | **Level 2 Award Criteria Weighting (expressed as a % of Level 1 Award Criteria Weighting)**  |
| --- | --- | --- | --- |
| Price | 40% | *Document 3*: Financial Model / Price | 40% |
| Quality | *60%* | Implementation of the Service |  |
| *Q1* | *4%* |
|  | Software, Security Programmes and Operating Systems  |  |
| *Q2* | *4%* |
| *Q3* | *3%* |
| *Q4* | *5%* |
| Unscheduled Maintenance Visits |  |
| *Q5* | *5%* |
| *Q6* | *5%* |
| *Q7* | *7%* |
| *Q8* | *4%* |
| *Q9* | *7%* |
| Health and Safety |  |
| *Q10* | *6%* |
| *Q11* | *6%* |
| Exiting the Contract |  |
| *Q12* | *4%* |

* 1. There will be a separate evaluation of the 'Price' and 'Quality' criteria prior to the scores being combined into a total overall score for each Tender Submission.
	2. Compliant Tender Submissions will be ranked according to their total overall score, with the Tender Submission with the highest total overall score being ranked first.
	3. The Evaluation Process
	4. The Council will conduct the following staged approach to the evaluation. The Council reserves the right to run any of the stages in parallel. At any stage the Council may request that the Bidder clarifies their Tender Submission in accordance with paragraph 5.41.
	5. Stage 1 - Preliminary Completeness and Compliance Stage
	6. The Tender Submission will be checked for completeness and compliance.
	7. The Council may request that the Bidder clarifies their Tender Submission in accordance with paragraph 5.41 to ensure that the Tender Submission is complete and compliant. The Council reserves the right to exclude Bidders whose Tender Submissions are incomplete or non-compliant.
	8. Stage 2 – Quality Evaluation
	9. Each response to the questions in Document 3: Response Requirements will be assessed and allocated a score out of four (4) using the following scoring methodology:

|  |  |  |
| --- | --- | --- |
| **Term** | **Score** | **Explanation** |
| Good Response | 4 | The submission is comprehensive and is clear, detailed and specific in answering all elements of the question and how it is proposed that it will meet the Council's requirements and contract objectives. There are no omissions. The risk to the authority is very low |
| Acceptable Response | 3 | The submission addresses the stated requirements of the question with only minor omissions.  The submission is clear, detailed and specific in answering the question, but in some minor areas lacks fullness, clarity or detail in describing how it is proposed that it will meet the Council's requirements and contract objectives. The risk to the authority is low |
| Limited Response | 2 | The response addresses some of the stated requirements of the question but lacks clarity or detail in describing how it is proposed that it will meet some material areas of the Council's requirements and contract objectives. The omissions are material. The risk to the authority is medium |
| Poor Response | 1 | The response is general and lacks clarity or detail in describing how it is proposed that it will meet the Council's requirements and contract objectives. The omissions are significant and the risk to the authority is high |
| Completely unsatisfactory/ unacceptable response | 0 | There is no response or no response of relevance to the question. The risk to the authority is very high |

* 1. Bidders should not assume that any member of the Council's evaluation panel evaluating a particular question will have read the answers to all of the questions and therefore each response should be complete and comprehensive in its own right.
	2. Calculation of Quality Scores
	3. The weighted score for each 'Quality' question will be calculated using the following formula: Insert formula, e.g. Score achieved/Maximum achievable score x weighting = weighted score.
	4. For example,

|  |  |
| --- | --- |
| Method Statement Question 7Please outline how you propose to ensure that your engineer is on site within 5 hours for faults with the smoke/ fire detection, automatic gates and electric fence systems and 24 hours for faults with the CCTV systems. | Weighting 7% |
| Supplier | Score achieved | Calculation from 5.3 | Weighted score  |
| Supplier 1 | 1 (poor response) | 1 / 4 x 7 = 1.75 | 1.75% |
| Supplier 2  | 3 (acceptable response) | 3 / 4 x 7= 5.25 | 5.25% |
| Supplier 3  | 4 (Good response) | 4 / 4 x 7 = 7 | 7.00% |

* 1. Weighted scores for each 'Quality' question will then be added together to give the total weighted score achieved for 'Quality'.
	2. Stage 3 Financial Evaluation
	3. 'Price' will be evaluated on the basis of each Bidder’s tendered prices as set out in the completed Document 3, Section 4: Financial Model / Price.
	4. The lowest overall priced compliant Tender Submission will receive the maximum available 'Price' score.
	5. The maximum price score is given to the lowest submitted price. Other price scores will be calculated as a percentage of the maximum score based on their price in relation to the lowest price.
	6. This is calculated using the following formula:

Step 1: Bidder's Submitted Price – Lowest Submitted Price = X

Step 2: X / Lowest Submitted Price = Y

Step 3: Price Weighting \* (1-Y) = Bidders Price Score

* 1. If a bid is more than twice the amount of the lowest price the equation will produce a negative number, in this case the bids score 0 points.
	2. Any non-compliant or abnormally low Tender Submission shall be excluded for the purpose of determining the lowest overall priced Tender Submission.
	3. A worked example of this is outlined below. In this example the price weighting is 40%. Bidder 1 has the lowest submitted price and as such receives the maximum price score of 40%. Bidder 2 submitted a price 25% higher and therefore receives a score 25% lower. Bidder 4 has submitted a price that is twice the amount of the lowest submitted score and therefore receives 0 price points.

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| **Price weighting = 40%** |
|  | Bidder 1 | Bidder 2 | Bidder 3 | Bidder 4 |
| Submitted Bid | £100 | £125 | £175 | £205 |
| Price Score awarded | 40% | 30% | 10% | 0% |

* 1. Abnormally Low Tenders
	2. The Council reserves the right to reject any Tender Submission on the grounds of it being abnormally low in accordance with Regulation 69 of the PCR 2015.
	3. A Tender Submission may be considered abnormally low if, for example, because of favourable terms offered to the Council, it raises a suspicion that the Bidder will not be able to perform according to the terms offered.
	4. Any Tender Submission that is considered abnormally low will be scrutinised by the Council and information will be required from the Bidder (e.g. to explain the prices or costs proposed in its Tender Submission). This includes ensuring that this is not as a result of a failure to understand the requirements of the draft Contract or the Procurement Documents.
	5. Before the Council rejects a Tender Submission which contains an abnormally low offer it will:
		1. require that the Bidder explains (in writing) the elements of the Tender Submission which the Council considers to be abnormally low;
		2. take account of the evidence provided in response to a request in writing; and
		3. verify the offer or parts of the Tender Submission being abnormally low with the Bidder. The Council may reject any Tender Submission that it considers to be abnormally low after following the process in Regulation 69 of the PCR 2015.
	6. Stage 3 - Quality Evaluation
	7. Calculation of Overall Score
	8. Each Bidder’s combined score for 'Price' and 'Quality' will be added together to determine each Bidder’s total overall score. The first ranked Bidder will be the one that achieves the highest overall score. The remaining Bidders will be ranked accordingly.
	9. Evaluation teams and moderation
	10. Each Tender Submission will be evaluated by the Council's evaluators, which may involve members of staff and/or external advisors. External professional advice may be taken on specific questions. The Council's evaluators may be divided into different evaluation teams and each team will undertake an initial review of a different section of the Tender Submission. An evaluator may belong to more than one evaluation team. Some teams may consist of a single individual (particularly where they question concerns "technical" matters).
	11. Each evaluator will independently review each response within the relevant section of the Tender Submission, but will not score the response.
	12. The evaluation teams will then convene in a consensus meeting where a consensus score for each response within the relevant section will be discussed and agreed.
	13. Clarifications
	14. Following receipt and initial review of each Bidder’s Tender Submission the Council may need to seek clarifications from Bidders where information submitted appears to be incomplete or erroneous or where specific documents are missing. In these circumstances, the Council reserves the right to request the Bidder to submit, supplement, clarify or complete the information or documentation provided with the Tender Submission. The Council will make the request via the Pro-Contract Tender Portal. Where the Council makes a request to a specific Bidder for any such additional information or points of clarification, a Bidder will have two working days to provide the documentation by the medium requested (preference will always be to upload onto Portal). Any such clarification received shall then be added to that Bidder's response for the purposes of the assessment.
	15. Where the information is incomplete, inaccurate, or clarifications have not been forthcoming, and the resulting gaps are material and make it impossible to carry out the assessment according to the stated methodology, the Council may determine that these are grounds for the Bidder to be rejected from the Procurement. Where a Bidder asks for a longer period than two working days this will be considered by the Council in light of the reasons given; and the Council may grant a longer period if it considers that this is reasonable and is in accordance with the PCR 2015.
	16. Results
	17. When the decision on the results of the evaluation has been taken, all Bidders will be advised as to whether they have been successful or unsuccessful. In accordance with the PCR 2015, the Council will give feedback to Bidders that have been unsuccessful.

* 1.
1. Definitions

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| **Defined Term** | **Definition** |
| **"Advisory Team"**  | means the team appointed to advise the Council in respect of the Procurement, including (but not limited to) the team set out in Clause 18.5 of the Conditions of Procurement.  |
| **"Bidder"** | means a Prime Contractor, Joint Venture or Consortium that submits a Tender Submission. |
| **"Change of Ownership"** | means a change to the structure, control, composition or ownership of a Bidder and/or one or more of its Members, or a change to the membership of a Bidder which is a Consortium, Joint Venture or other such similar group, or a change in one or more of the Key Sub-contractors in the supply chain of a Bidder. |
| **"Conditions of Procurement"** | means the conditions of procurement in Appendix 2 of this ITT.  |
| **"Confidential Information"** | means:the contents of the Procurement Documents; all information in any of the documents included in the Data Room; any answers provided by the Council to any questions asked by a Bidder in relation to the documents in the Data Room or in connection with any other aspect of the Procurement; all information which has either been designated as confidential by the Council in writing or that ought to be considered confidential including commercially sensitive information; information which relates to the business and affairs of the Council (and its suppliers, service providers, agents, professional advisers and representatives); andall information which the Bidder receives or obtains as a result of its involvement in the Procurement.  |
|  |  |
| **"Consortium"** | means an association of two or more organisations who joined together and submitted an SQ Submission and who have not formed a legal entity at this point in the Procurement, and Consortia shall be construed accordingly.  |
| **"Contract Notice"** | means the contract notice with reference **2022/S 000-025362** published on Find a Tender Service on 9/9/22. |
| **"Contract"** | means the contract to be entered into by the Council with the Preferred Bidder. |
| **"Council"** | means Lincolnshire County Council, County Offices, Newland, Lincoln, LN1 1YL. |
| **"Council's Requirements"** | means the requirements outlined in the Specification ITT Document 2.  |
| **"Data Protection Legislation"** | (i) the GDPR and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable law about the processing of personal data and privacy. |
| **"Data Room"** | means the data room that is accessible via the ProContract portal ([https://procontract.due-north.com/opportunities)](https://procontract.due-north.com/opportunities%29).  |
| **"Data Subject"** | has the meaning given to it in the GDPR. |
| **"Economic Operator"** | has the meaning given to it in regulation 2(1) of the Public Contracts Regulations 2015. The term Bidder is used instead of Economic Operator but has the same meaning. |
| **"GDPR"** | means the General Data Protection Regulation ((EU) 2016/679). |
| **"Invitation to Tender" or "ITT"** | means this invitation to tender issued by the Council in respect of the Procurement.  |
| **"Joint Venture"** | means an association of two or more organisations who joined together and submitted an SQ Submission, whether or not that association has already formed or intends to form a legal entity. |
| **"Key Sub-contractor"**  | Each sub-contractor being relied on to satisfy the selection criteria. |
| **"Member"** | means those persons, firms or companies that are considered to form part of a Bidder as identified in the SQ Submission. In the case of a Bidder that is a Consortium, Joint Venture or other such group, "Member" means any one, more or all of members of the Consortium, Joint Venture or other such group. In the case of a Bidder that is a Prime Contractor and which has a nominated supply chain, "Member" means (or also means, in the case of a Bidder that is a Consortium, Joint Venture or other such group which has a nominated supply chain) any one, more or all of the Key Sub-contractors in the supply chain. For the purposes of this definition, the Bidder's ultimate parent company is considered to be a Member. |
| **"Party"** | means either the Council or a Bidder, and Parties shall be construed accordingly. |
| **"Personal Data Breach"** | has the meaning given to it in the GDPR. |
| **"Personal Data"** | has the meaning given to it in the GDPR. |
| **"Portal"** | means the Proactis ProContract portal which is a secure exchange module of the ProContract electronic tendering system (<https://procontract.due-north.com/Login>). |
| **"Preferred Bidder"** | means the Bidder selected as providing the most economically advantageous tender following the Council's assessment of the Tender Submissions. |
| **"Prime Contractor"** | means a Bidder which comprises a single lead organisation (person, firm, or company) that submitted an SQ Submission. |
| **"Procurement Documents"** | means at this ITT stage of the Procurement, any one, more or all of the procurement documents issued by the Council including (but not limited to) this Invitation to Tender. This definition shall be updated at later stages of the Procurement. Procurement Documents may also be referred to in the singular to denote one of these documents.  |
| **"Procurement"** | means this Restricted Procedure procurement process.  |
| **"Project"** | means this procurement. |
| **"Public Contracts Regulations 2015" or "PCR 2015"** | means the Public Contracts Regulations 2015 (SI 2015 No. 102) as amended, and any such successor legislation which may follow.  |
| **"Related Organisation"** | means all entities on which the Bidder is seeking to rely on to meet the selection criteria. For example, these could be parent companies, affiliates, associates or Members (including Key Sub-contractors) and/or financial institutions providing a guarantee.  |
| **"SQ Submission"** | means a submission that was made by a Bidder to the Council in response to the SQ. |
| **"SQ"** | means the selection questionnaire issued by the Council in respect of the Procurement. |
| **"Tender Submission"**  | means a Bidder's tender in respect of the Procurement, submitted in response to this Invitation to Tender. |

* 1.
1. Conditions of Procurement
2. Introduction
	1. In addition to regulating the conduct of Bidders and the Council throughout the Procurement, these Conditions of Procurement grant the Council specific rights and limit its liability.
	2. Whilst the information in the Procurement Documents is believed to be correct at the time of issue, neither the Council nor its advisors accept any liability for its accuracy, adequacy or completeness, nor is any warrant (express or implied) given as to its accuracy, adequacy or completeness.
	3. The above exclusion extends to liability in relation to any statement, opinion or conclusion contained in, or any omission from, any of the documents of and appendices to the Procurement Documents and in respect of any other written or oral communication transmitted or otherwise made available to any Bidder, and no representations or warranties are made in relation to such opinions, statements or conclusions.
	4. Despite the above, the Council does not exclude liability for fraud.
	5. Bidders must ensure that they read and understand all of the Procurement Documents. The Procurement Documents do not purport to provide all of the information which may be necessary or desirable to enable a Bidder to determine whether or not to respond to the ITT or ultimately to submit a Tender Submission.
	6. Other than if the Council becomes aware of any fraudulent misrepresentation, the Council is not under, and does not assume, any obligation to update or supplement the Procurement Documents or to correct any inaccuracies or misrepresentations contained in or any omissions from the Procurement Documents, which may exist either at the date of these Conditions of Procurement or subsequently. Information contained in these Conditions of Procurement may change from time to time. The Council reserves the right to amend any information contained in this ITT or any subsequent documentation issued in connection with the Procurement at any time. Any amendments to this ITT will be issued to all Bidders at the simultaneously.
	7. Any information provided to any Bidders as part of the procurement is not intended to form the basis of any investment decision and should not be considered as an investment recommendation by the Council or any of its advisers, agents and representatives.
	8. The timeframes specified in the Procurement Documents are indicative only and may be revised by the Council from time to time. If they are revised, the Council shall notify all the Bidders accordingly.
	9. Capitalised terms used in these Conditions of Procurement shall have the meanings given to them in this ITT.
3. BIDDER eligibility
	1. Bidders are reminded that the eligibility requirements in the SQ apply to the Procurement at all times.
	2. The Council reserves the right to require Bidders to provide such further information as the Council may require (and for the avoidance of doubt, the Council may make multiple requests) as to any issue addressed in the SQ Submission, including, but not limited to, the economic and financial standing of the Bidder (or any one, more or all of its Members as appropriate) at any stage of the Procurement and prior to the appointment of a Preferred Bidder and/or the award of Contract.
	3. The Council must be notified in writing via the Pro-Contract Tender Portal promptly of any proposed changes in the information provided in the SQ Submission (including arrangements in relation to any Member of a Bidder) so that a further assessment can be carried out by applying the exclusion grounds and selection criteria to the new information. The Council reserves the right to take such action as it deems appropriate in the circumstances based on an assessment of the updated information, including (but not limited to) disqualifying the Bidder concerned from the Procurement and/or including requiring the Tender Submission to be updated to reflect the revised arrangements and re-evaluating the Tender Submission on that basis.
4. CONFIRMATION OF INFORMATION PROVIDED
	1. In addition to the provisions of Clause 2 (Applicant Eligibility) of these Conditions of Procurement, the Council reserves the right to:
		1. undertake due diligence on the economic and financial standing of the Bidder during the competition in line with the SQ;
		2. seek evidence at any time during the competition or with the successful Bidder, that Bidders can meet the specified requirements where the SQ required a self-certification of compliance with the selection criteria (including the mandatory and discretionary grounds for exclusion);
		3. seek independent financial and market advice to validate information declared, or to assist in the assessment of Tender Submission responses; and
		4. require a Bidder to confirm that their SQ Submission remains accurate at all stages of the procurement process.
5. Changes of ownership
	1. In addition to the provisions of Clause 2 (Applicant Eligibility) of these Conditions of Procurement, Bidders shall ensure that no Change of Ownership takes effect or is entered into prior to the award date without the prior written consent of the Council.
6. BIDDER withdrawal
	1. Bidders may withdraw from the process at any time before the deadline for any Tender Submission by providing written notification to the Council using the secure messaging service on the Portal.
7. Disqualification
	1. A Bidder that contravenes any of the terms and conditions set out in these Conditions of Procurement may, at the sole discretion of the Council, be disqualified from the Procurement.
	2. In addition to its rights set out in the other provisions of this document, the Council reserves the right to reject a SQ Submission or Tender Submission and/or disqualify an Bidder where:
		1. a SQ Submission or Tender Submission is submitted late, is completed incorrectly, is materially incomplete, is submitted in any other format other than as specified within this document or fails to meet the Council's submission requirements which have been notified to Bidders;
		2. the Bidder has breached any of the exclusion grounds and/or does not meet or no longer meets the selection criteria set out in the SQ at any stage during the competition (including but not limited to where there is a change in identity, control, financial standing or other factor);
		3. the Bidder through due diligence is unable to demonstrate their financial capacity for delivery of Contract against the SQ financial assessment;
		4. the Bidder and/or one, more or all of its Members are guilty of material misrepresentation or false statement in relation to its SQ Submission, Tender Submission and/or the process; or
		5. the Bidder breaches the terms and conditions of use for the Portal and terms and conditions of use for the Data Room.
8. Compliance
	1. Bidders agree that in cases where its SQ Submission or Tender Submission is deemed non compliant when compared with the requirements set out within the applicable Procurement Document it may be disqualified from the Procurement.
9. AFFORDABILITY
	1. The Council reserves the right,at its absolute discretion, to disqualify a Bidder at any stage of the Procurement if its proposals appear unaffordable.
10. Involvement in multiple bids
	1. The Council reserves the right to make further enquiries where an Bidder is connected with another bid for this Procurement in order to ensure that an Bidder 's involvement does not cause conflicts of interest (actual, potential or perceived), capacity problems and/or restrictions or distortions in competition. For example, the Council considers that a Bidder is connected with another bid where a Bidder submits a bid:
		1. in its own name and as a Key Sub-contractor and/or a member of a Consortium connected with a separate bid; and
		2. in its own name which is similar to a separate bid from another Bidder within its group of companies.
	2. The Council may require a Bidder to amend or withdraw all or part of a bid if, in its reasonable opinion, any of the above issues have arisen or may arise.
11. Due diligence
	1. Bidders are solely responsible for obtaining the information which they consider is necessary in order to make all decisions relating to their responses and to undertake any due diligence and investigations they consider necessary in order to verify any information provided to them during this Procurement. Bidders must form their own opinions, making such investigations and taking such advice as is appropriate, regarding the information contained on the Portal, without reliance upon any opinion or other information provided by the Council or any of their advisors. The Council will not warrant/certify any third-party information required by Bidders in formulating their Tender Submission.
	2. For the avoidance of doubt:
		1. Bidders should form their own conclusions about the methods and resources needed to meet the requirements; and
		2. The Council does not accept any responsibility for any assumptions and/or calculations made by the Bidders for their assessment of resources to be employed in meeting the Council's Requirements or for any other assumptions and/or calculations they may have drawn or will draw from any pre-contract discussions.
	3. Bidders will be required to accept and comply with the Portal access rules.
12. Tender validity
	1. The Tender Submission must remain valid for acceptance for a period of 90 days from the date of the Tender Submission.
13. Costs of participation
	1. Bidders will remain responsible for all costs and expenses incurred by them, their staff, and their advisors or by any third party acting under their instructions in connection with this entire Procurement.
	2. The Council shall not be liable to reimburse or compensate the Bidders in respect of any costs. For the avoidance of doubt, the Council shall have no liability whatsoever to Bidders for (i) any costs incurred through participation in the Procurement, including costs incurred in the preparation and submission of the SQ Submission or Tender Submission; (ii) any costs of any amendments or changes made to the Procurement Documents or other documentation by the Council at any time, or discussions or communications and (iii) any costs or any other liability in respect of the cancellation of the procurement process for any reason howsoever arising.
14. CONTACT AND COMMUNICATION
	1. Unless expressly specified otherwise, the Council's named contact point is the sole and central point of contact for Bidders in the competition and in connection with this ITT. Bidders must communicate solely in the manner specified in this ITT.
	2. To ensure consistency and transparency as well as maintain commercial confidentiality, Bidders should not contact the Council other than through the identified channels.
15. Confidentiality
	1. Save to the extent made publicly available by the Council, the information in this ITT is made available on the condition that it is treated as confidential by the Bidder and is not disclosed, copied, reproduced, distributed or passed to any other person at any time except for the purpose of enabling a bid or submission to be made (for example disclosure by a Bidder] to its insurers who are directly involved in the bid provided that such person has given an undertaking at the time of receipt of the relevant information (and for the benefit of the Council) to keep such information confidential.
	2. Any information provided by the Council to each Bidder at any point during the competition, including the information contained within this ITT, any other information provided to Bidders whether via the Portal, orally or in writing during the process (including any Procurement Documents issued by the Council), and any information acquired by the Bidder through its participation in process, evaluation and any meetings with the Council, is made available on condition that it is treated as confidential by each Bidder and its advisers (except where it is already in the public domain). Bidders must ensure that such information is not disclosed to any other person at any time except and to the extent that this is necessary to enable a bid to be made.
16. Freedom of Information and environmental information
	1. The Council is subject to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). All information submitted to the Council may be disclosed in response to a request made pursuant to the FOIA or the EIR.
	2. In respect of any information submitted by a Bidder that it considers being commercially sensitive, the Bidder should:
		1. clearly identify which information is considered commercially sensitive;
		2. explain the potential implications of disclosure of such information; and
		3. provide an estimate of the period of time for which the Bidder considers that such information will remain commercially sensitive.
	3. The Council will endeavour to:
		1. hold confidential all information submitted by a Bidder that it identifies as being commercially sensitive; and
		2. consult with a Bidder about commercially sensitive information before making a decision on any FOIA requests and EIR requests received.
	4. Bidders should note, however, that the final decision on any FOIA request and EIR request rests with the relevant public body, subject to applicable law. Even where information is identified as commercially sensitive, unless an exemption/exception provided for under the FOIA/EIR is applicable, the Council will be obliged to disclose that information in response to a request. Accordingly, the Council cannot guarantee that any information marked "commercially sensitive" will not be disclosed.
17. Intellectual Property
	1. Bidders are reminded that all intellectual property rights, including copyright, in the Procurement Documents and any other documents and materials supplied by the Council and/or its advisers in this Procurement, in whatever format, belongs to the Council, its Advisory Team or the relevant owner/licensor. Bidders shall not copy, reproduce, distribute or otherwise make available any part of these documents to any third party (except for the purpose of preparing a SQ Submission or Tender Submission) without the prior written consent of the Council. All documentation supplied by the Council in relation to this Procurement must be returned or destroyed on demand, without any copies being retained by the Bidders.
18. Publicity
	1. Bidders should not make available to the press, or in any other way make public, any information in relation to the Procurement and/or the Contract, the selection of the long or short list of Bidders,, the appointment of the Preferred Bidder, the award of the or the Procurement in general without the prior written consent of the Council.
	2. The Council reserves the right to publicise or otherwise disclose to any third party, information in relation to the Procurement and/or the Project, the selection of the long or short list of Bidders (including details of their respective Members, sub-contractors, representatives, advisers, consultants, servants or agents), the Procurement in general or the award of the Contract at any time.
19. Conflict of interest
	1. The purpose of this Clause 18 of these Conditions of Procurement is to define the rules to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
	2. The rules described in this Clause 18 are intended to avoid any distortion of competition and to ensure equal treatment of all Bidders in line with the Council's obligation to deal with conflicts of interest as set out in the PCR 2015 (Regulation 24) and more generally its obligation to treat Bidders equally and without discrimination and to act in a transparent and proportionate manner (Regulation 18). Obligations of equal treatment, non-discrimination, transparency and proportionality are also imposed on the Council by virtue of the Treaty on the Functioning of the European Union.
	3. The concept of conflicts of interest is wide. In the PCR 2015 it is described as covering at least "any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure" (Regulation 24(2))."Staff members" refers to staff members of the Council or of a procurement service provider acting on behalf of the Council who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. "Procurement service provider" refers to a public or private body which offers ancillary purchasing activities on the market.
	4. For illustration purposes and to offer guidance to Bidders who may wish to participate in this Procurement, the Council will regard a conflict of interest arising where:
		1. a staff member from a Bidder and/or one of its sub-contractors is also an adviser to the Council; or
		2. an adviser, agent or sub-contractor to the Bidder in relation to the Procurement has previously been an adviser to the Council in relation to the Procurement and/or the Project, including in relation to the preparation of documents or information relating to the Procurement and/or the Project; or
		3. an adviser, agent, or sub-contractor to a Bidder has previously been an advisor to any other Bidder or Member of any other Bidder in respect of the Project.

For the avoidance of doubt, the list of situations in this Clause 18.4 is non-exhaustive.

* 1. The Council has different types of advisor staff for this stage in the Procurement, including its Procurement and Legal advisers.
	2. Bidders (or any one or more of their Members) are responsible for ensuring that no actual, potential or perceived conflicts of interest exist between themselves and any of their Advisory Team and the interests of the Council. Bidders must notify the Council immediately of any actual, potential or perceived conflict of interest.
	3. In the event of any actual, potential or perceived conflict of interest, the Council shall in its absolute discretion decide on the appropriate course of action. The Council reserves the right to:
		1. disqualify Bidders where the Bidder fails to notify the Council that there is an actual, potential or perceived conflict of interest or where an actual conflict of interest exists;
		2. request further information from Bidders and require Bidders to put certain measures in place. This may include requiring Bidders to enter into a specific conflict of interest agreement with the Council.
	4. The Council strongly encourages Bidders to contact the Council as soon as possible using the Portal should it have any concerns regarding actual, potential or perceived conflicts of interest.
1. Canvassing and Non‑Collusion
	1. Any attempt by any Bidder (or any one or more of its Members), its advisers or agents to:
		1. directly or indirectly canvass the Council, its Advisory Team or agent in relation to the Procurement;
		2. obtain information on another Bidder or another Tender Submission from any employees of the Council, its Advisory Team or agent;
		3. offer, give or agree to give any gift, inducement, fee or reward to any member, employee, agent or advisor of the Council;
		4. do anything which would constitute an offence under the Bribery Act 2010;
		5. collude with any other person in order to influence the Procurement;
		6. contact any officer, employee, agent or advisor of the Council about any aspect of the Procurement except as authorised in the Procurement Documents, including (but without limitation) for the purposes of discussing the possible transfer to the employment of the Bidder of such employee for the purpose of the competition or for soliciting information in connection with the competition;
		7. fix or adjust the amount or content of any Tender Submission in accordance with any agreement or arrangement with any other person, other than in good faith where such other person is a proposed Member of the Bidder, or a supplier, adviser or provider of finance to the Bidder;
		8. communicate to any person other than the Council, or seek or obtain from such other person, information about the amount or content of any Tender Submission, other than in good faith to obtain quotations for supplies, services or finance;
		9. enter into any agreement or arrangement with any other Bidder to fix or adjust the form, content or amount of any Tender Submission;
		10. enter into any agreement or arrangement with any other Bidder that will result in such other Bidder refraining from submitting any Tender Submission;
		11. cause or induce any person to enter any such agreement or to inform the Bidder of its Tender Submission and their contents;
		12. obtain details of the Tender Submission of another Bidder;
		13. carry out any other co-operation or collusion which the Council considers has actually or potentially undermined competition;
		14. communicate to any person other than the Council the contents of any Tender Submission except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of any Tender Submission (for example, for insurance or a guarantee); or
		15. disclose to any person other than the Council and except as permitted by the Procurement Documents the whole or any part or any details of the Procurement,

may result in a Bidder being disqualified from the procurement process, without prejudice to any other civil or legal remedies available to the Council and without prejudice to any criminal liability that such conduct by a Bidder may attract.

1. VARIANTS
	1. The Council does not authorise or accept the submission of variants.
2. Anti-Competitive Behaviour
	1. In order to create a level playing field for Bidders, the Council may require evidence from Bidders that their arrangements are not anti-competitive. The Council reserves the right to require Bidders to comply with any reasonable measures which may be needed to verify that no anti-competitive arrangements are in place.
	2. Any evidence of any anti-competitive behaviour may result in Bidders being disqualified from the procurement process.
3. Right to cancel or vary the PROCUREMENT
	1. Neither the issue of these Conditions of Procurement nor any information given later on in the Procurement Documents or otherwise as part of the competition commits the Council to accept any Tender Submission and/or award any contract pursuant to this procurement and/or constitutes an offer to enter into a contractual relationship.
	2. The Council may in its sole discretion at any time terminate discussions and/or negotiations with any one or more Bidders and/or to discontinue this competition.
	3. The Council reserves the right:
		1. to cancel the Procurement process and assessment process at any stage;
		2. to request further information from Bidders in relation to their SQ Submission and/or any Tender Submission;
		3. to amend the Conditions of Procurement; and/or
		4. not to award any or any one or more contracts as a result of the competition.
	4. The Council may refrain from considering any SQ Submission or any Tender Submission if it is not in accordance with the requirements and conditions set out in the relevant instructions and requirements.
4. Data Protection
	1. Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other party to be in breach of it.
	2. Where a Party has provided Personal Data to the other Party pursuant to the Procurement, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other party may reasonably require.
	3. The Parties shall be responsible for their own compliance with Articles 13 and 14 of the GDPR in respect of the processing of personal data for the purposes of the Procurement.
	4. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing Personal Data as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as an Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
	5. A Party processing Personal Data for the purposes of the Procurement shall maintain a record of its processing activities in accordance with Article 30 of the GDPR and shall make the record available to the other Party upon reasonable request.
	6. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Procurement ("Request Recipient"):
		1. the other Party shall provide promptly, and in any event within three (3) working days, any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
		2. where the request or correspondence is directed to the other Party and/or relates to that other Party's processing of the Personal Data, the Request Recipient will:
			1. promptly, and in any event within five working days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
			2. provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
	7. Each Party shall notify promptly, and in any event within 48 hours, the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Procurement and shall:
		1. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
		2. implement any measures necessary to restore the security of any compromised Personal Data;
		3. work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
		4. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by law.
	8. Personal Data provided by one Party to the other Party may be used exclusively in relation to the Procurement.
	9. Personal Data shall not be retained or processed for longer than is necessary and in any event shall be deleted on conclusion of the Procurement or the Bidder's elimination from it, whichever is sooner.
	10. The Bidder shall indemnify and keep indemnified and hold harmless the Council from and against all damages, liabilities, demands, costs, expenses, claims, actions and proceedings (including all consequential, direct, indirect, special or incidental loss or punitive damages or loss, legal and other professional fees, cost and expenses, fines, penalties, interest and loss of profit or any other form of economic loss (including loss of reputation)) suffered or incurred by the Council arising out of or in connection with any act or omission by the Bidder or a Member or any of their staff or agents in connection with this Clause 24.]
5. Third Parties
	1. Nothing in these terms is intended to confer any rights on any third party under the Contracts (Rights of Third Parties) Act 1999. This does not affect any right or remedy of any person which exists or is available apart from that Act.
6. Applicable law
	1. The law of England and Wales is applicable to this Procurement.
	2. The parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales in relation to any dispute arising out of or in connection with this Procurement.
7. CONTRACT
	1. A Tender Submission is an offer to enter into a Contract on the terms of the contents of the bid. Notification of an award decision does not constitute acceptance by the Council. Any document submitted by a Bidder shall only have contractual effect when it is contained within an executed written Contract.
8. bidder warranties
	1. In submitting a Tender Submission, the Bidder warrants, represents and undertakes to the Council that:
		1. it understands and has complied with the conditions set out in this ITT;
		2. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Bidder, its staff or agents in connection with or arising out of the ITT are true, complete and accurate in all respects, both as at the date communicated and as at the date of submission of the Tender Submission;
		3. it has made its own investigations and undertaken its own research and due diligence, and has satisfied itself in respect of all matters (whether actual or contingent) relating to the ITT and has not submitted its Tender Submission in reliance upon any information, representation or assumption which may have been made by or on behalf of the Council (with the exception of any information which is expressly warranted by the Council); and
		4. it has full power and authority to respond to this ITT and to perform the obligations in relation to the Contract and will, if requested, promptly produce evidence of such to the Council.