

**Durham County Council**

**Provider Panel for Day Services**

**ProContract Reference DN526604**

**ITT Document 1 - Instructions to Bidders**

**INTRODUCTION AND PRE-SUBMISSION INSTRUCTIONS**

*Please read the information in this section before beginning to complete the ITT. Your response should be submitted using the accompanying Document 3 – Response.*

*Further post-submission guidance is given at the very end of this document.*

**1.1 Introduction to Durham County Council**

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

The council’s high-level priorities are set out in our Council Plan, which supports the County Durham Vision 2035, developed with partners and residents, the vision sets out the shared long-term ambitions for the county. It is structured around three externally focused results-based ambitions of ‘**more and better jobs’**, ‘**long and independent lives’** and ‘**connected communities’**

The Council is now driving forward measures to unlock growth in our economy, and this will necessitate a rethinking of how to develop a more sustainable local economy in the future, and to maximise the value of the County Durham Pound by local spending.

Social value is about considering the economic, social and environmental benefits for communities when making decisions about how contracts are awarded, and budgets are invested. When employing a contractor, for example, factors such as the businesses’ environmental ethos, apprenticeship programmes and community outreach work are taken into account, alongside considerations such as quality, price and timescales for delivery.

In line with this vision and maximising the County Durham Pound, the Council has developed a Procurement Strategy to ensure that we carry out all commissioning and procurement activities collaboratively and in an economic, environmental and socially responsible manner on behalf of the council and its key stakeholders, making sustainable purchasing decisions that promote the long-term interests of the communities we represent.

More information on these policies is available at:

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

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

**1.2 Introduction to the Proposed Contract**

This procurement activity is for the Provider Panel for Day Services.

This Provider Panel will be an open panel, whereby organisations that wish to apply to become a member of the panel can do throughout the lifetime of the panel.

The **start date** for the original contract is 1st July 2021.

The **end date** for the original contract is 31st March 2025.

The proposed contract is to be let with **options to extend** for 6 periods of 12 months from the actual end date subject to funding and subject to the provider panel still meeting the needs of the Council.

For clarity, where the Council has exercised its discretion to apply the inflationary rate increase, for Provider Panel Members, this shall take effect in April every annum (date of increase will be confirmed).

This procurement is issued under an Open Tender process in line with Public Contracts Regulation 2015, under Regulation 74 of the Public Contracts Regulations 2015 for contracts for social and other specific services (Light Touch Regime).

The Lead Officer for this procurement is Donna Iley, Resources, on behalf of Lucile Blight, Commissioning Policy and Planning Officer, Adult and Health Services.

The Council may disclose with other Public Sector Contracting Authorities any of the Tenderer's information/documentation (including any that the Tenderer considers to be confidential and/or commercially sensitive such as specific tender information) submitted by the Tenderer to the Council during this Procurement. The information will not be disclosed outside of the public sector. Tenderers taking part in this competition consent to these terms as part of the competition process.

**1.2.1 Day Services**

This Provider Panel is being created without any restrictions placed on the number of successful Providers who may be appointed to the Provider Panel.

For the purposes of this Provider Panel, Day Services are defined as the provision of some or all of the following Services following a full assessment of the Service User’s individual needs by the Care Co-ordinator / Social Worker:-

* Social Care;
* Practical Support;
* Rehabilitation/Re-enablement;
* Carer Respite/Short Breaks;
* Support to facilitate access to Volunteering or Employment Opportunities;
* Meaningful activities to meet assessed care needs;
* Outreach support within local communities

Providers must specify which Service User Group/ Lot they are intending to offer day services to. For the purposes of this Provider Panel the Council has identified the following Service User Groups (Lots):

|  |  |
| --- | --- |
| **Lot No.** | **Lot Title** |
| 1 | Older People (aged 65yrs+) |
| 2 | Adults with Physical Disabilities and/or Sensory Impairment (aged 18-64yrs) |
| 3 | Adults with Learning Disabilities and/or challenging behaviour, those on the autism spectrum and/or, those who may have associated mental health problems (18-64yrs) |
| 4 | Transport |

**1.2.2 Operation of the Provider Panel and Call-off Arrangements**

The Provider Panel for Day Services is an agreement of multiple providers (on a non-exclusive basis).

The Provider Panel will be permanently open to allow for the refreshing of members to the Panel.

The Council makes no guarantee to any member of the Panel that they will be awarded any Call-Off Contract and no guarantee is made in respect of any volume of work under any such agreements, or in aggregate under the Provider Panel.

Each Provider should understand that their submission constitutes an acceptance to the Council of the terms of the Provider Panel Agreement. A place on the Panel merely affords the Provider the opportunity to respond to an invitation from the Council for the provision of services (Call-Off).

Call off Arrangements

Provider Panel Members will be eligible for invitation by the Council to provide services under the terms of the Call-Off Contracts and priced in accordance with the Pricing Schedule.

The Call Off from the Panel will operate whereby the Care Facilitator / Social Worker on behalf of a Service User will consider, in combination, the following factors in order to determine the most appropriate provision for an Individual Service User:

* Suitability of Provision
* Price, including the cost of transport (where applicable)
* Service User choice

Where transport is applicable Providers should note that the cost will be included when determining the Price. Where the Provider cannot provide transport that is required as part of the Individual Service User’s Plan and it is necessary for a third party transport to be arranged, then this cost will be included in calculations to determine the Price.

RAC Route Planner will be used to establish the shortest route for a journey when calculating and comparing the total cost of an individual placement across multiple Providers.

Further information with regard to the Provider Panel Operation and Call Off can be found in ITT Document 2 (Terms and Conditions).

**1.2.3 Further relevant information**

The Council does not expect any individual to have rights of continued employment against the successful Provider under the Transfer of Undertakings (Protection of Employment) Regulations 2006 on the commencement of the Contract.

Further details regarding the operation of the Provider Panel including the Service Specification can be found in document title; ITT Document 2 Part 2 - Provider Panel Agreement for Day Services.

**1.3 Procurement timetable**

**All communications relating to this procurement should be made through the NEPO Portal.**

**No officer of the Council, including the Lead Officer, will enter into correspondence through any other means, including by email or telephone**.

**1.4 About Your Organisation**

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

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

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

**1.4.1 Sole Bidders**

You are a sole bidder if you are the only organisation bidding for this contract as part of your submission. Your organisation will be solely liable to the Council for the delivery of the requirements of the contract.

You may intend to use sub-contractors, consultants or other partner organisation. You do not need to identify them in your ITT submission, unless:

* you will be relying on them to deliver any of the essential requirements of the contract, as set out in the specification, which you would be unable to fulfil with your own resources, or:
* where you are relying on the skills or capabilities of the sub-contractor in your response to any of the technical questions in this ITT.

Where either (or both) of these applies, you should answer “Yes” to question 1.2(b)(i) in the Response document, and list the details of each of these sub-contractors in the space provided in 1.2(b)(ii).

**1.4.2 Consortia, Partnerships and Joint Ventures**

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

You may also intend to use sub-contractors that are not part of your consortium or partnership. You do not need to identify these in your ITT submission, unless:

* you will be relying on them to deliver any of the essential requirements of the contract, as set out in the specification, which you would be unable to fulfil with your consortium or partnership’s own resources, or:
* where you are relying on the skills or capabilities of the sub-contractor in your response to any of the technical questions in this ITT.

Where either (or both) of these applies, you should answer “Yes” to question 1.2(b)(i) in the Response document, and list the details of each of these sub-contractors in the space provided in 1.2(b)(ii).

**1.4.3 Special Purpose Vehicles**

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

You may also intend to use sub-contractors that are not part of your SPV. You do not need to identify these in your ITT submission, unless:

* you will be relying on them to deliver any of the essential requirements of the contract, as set out in the specification, which you would be unable to fulfil with your SPV’s own resources, or:
* where you are relying on the skills or capabilities of the sub-contractor in your response to any of the technical questions in this ITT.

Where either (or both) of these applies, you should answer “Yes” to question 1.2(b)(i) in the Response document, and list the details of each of these sub-contractors in the space provided in 1.2(b)(ii).

**1.4.4 Multiple Bids**

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

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

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

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

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

**1.5 Completing the ITT – general notes**

**Terminology**

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

**The purpose of the Response Document (Document 3)**

The ITT response document (Doc 3) has been designed both to assess the suitability of bidders to deliver the Council’s requirement(s), to exclude any unsuitable bidders, and to establish which of the suitable bidders should be awarded the proposed contract, based on the clearly set out Award Criteria.

The response is divided into three parts, explained as follows:

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

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

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

**Part 3: Additional Selection and Award Questions**

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

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

**Completing the Questionnaire**

Unless submitting an ESPD (see below), bidder must complete and return their ITT submission using ITT Document 3 - the response template issued by the Council. Bidders must not use any other template(s) and must not alter the page layout or other formatting of the template issued by the Council.

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

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

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

**1.6 Questions and clarifications prior to submission**

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

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

The deadline for the submission of a question or request for clarification for this ITT is as per the timetable at section 1.3, unless an amendment to this is issued by the procurement officer. In such cases, questions or requests for clarification must then be submitted by no later than the amended date.

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

Bidders should clearly identify any requests for clarification (or parts of requests) which they consider to be commercially confidential, stating the reasons why they consider the request to be so. The Council will decide at its sole discretion whether or not to accept the bidder's request. If the Council does not accept the request for confidentiality, the Council will notify the bidder who has made the request, so that the bidder may have the opportunity to withdraw the request. In such circumstances, should the bidder fail to withdraw the request within three working days, the Council reserves the right to publish the request and the Council’s response to it via the NEPO Portal.

Unless otherwise clearly indicated in the Specification or elsewhere in this ITT, the Council will assume that the bidder has satisfied itself and undertaken its own due diligence and that it has sufficient information to make the offer requested, and that its Tender will not be conditional on the supply of further information after the contract is awarded. The Council will not be liable for any omission or assumption on which the bidder was relying when submitting its Tender.

**1.7 Submitting your ITT response**

Completed ITTs must be returned via the NEPO Portal system no later than the date and time stipulated in the timetable at section 1.3, unless an extension has been granted by the procurement officer. *Any such extension will apply to all bidders and will be clearly indicated on the NEPO Portal. Completed ITTs must then be returned no later than the extended date stipulated.*

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

For guidance on how to submit your response through the NEPO Portal, please visit the NEPO website training section at <https://www.nepo.org/suppliers/learn> to access the Navigating the Portal suite of videos.  These also include useful information on how to manage your online ProContract account.

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

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

Tenders must not be qualified in any way. A qualified Tender will not be accepted on the grounds that it does not constitute a proper offer which the Council wishes to consider. The Council would consider the following to be qualifications to a Tender (without limitation):

* Anything in the ‘Form of Tender’ giving the Council reasonable grounds to believe that the Tender does not constitute an unconditional offer to the Council that remains valid for a minimum period of 90 days from the Tender Deadline.
* Anything within the Tender giving the Council reasonable grounds to believe any reservations indicated in the ‘Form of Tender’.
* Anything elsewhere within the Tender giving the Council reasonable grounds to believe either of the following:
* Any of the activities will be carried out in a manner that is materially inconsistent with the express requirement of the Specification.
* Any of the activities will be carried out on terms which are materially different to those contained in the Terms and Conditions.

It is up to the signatory to satisfy themselves that they have the necessary authority, within their organisation, to sign on the organisation’s behalf.

**It is the bidder’s responsibility to ensure that the ITT has been completed accurately. All of the information presented will be taken at face value and the Council reserves the right to request post tender clarifications in accordance with Section 3.4 below.**

**2. COMPLETING PART 3**

**2.1 – Further guidance on completing Part 3**

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

**Sections 4, 5 and 6** are government standard questions covering financial standing (if required), group structure (if applicable), and compliance with the Modern Slavery Act 2015. These questions are accompanied by additional notes on their completion.

**Section 7** contains a number of additional questions which are evaluated on an “Essential Criteria” or “pass or fail” basis. These are used where the Council requires evidence that the bidder meets a specific requirement – such as having a particular licence or form of certification in place, or complying with health and safety standards. Unlike scored Technical Questions, Essential Criteria are considered so crucial to the requirement that if a bidder cannot meet them, it would not be possible for that bidder to be awarded the contract.

**7.1 Insurance**

**7.2 Health and Safety**

**7.3 Equality and Diversity**

**7.4 Environmental Management**

**7.5 Safeguarding**

**7.6 UK GDPR**

**7.7 Data Protection and Information Commissioners Office**

**7.8 Disclosure and Barring Service**

**7.9 Service User Groups**

**7.10 Social Value**

**7.11 Premises Based Delivery (for information only)**

Please note that 7.11; Premises Based Delivery is for information only and is not part of the pass / fail evaluation.

For ease of reference, the detailed evaluation criteria for each Essential Criteria question for Section 4, 5, 6, and 7 are printed below the relevant question in Document 3.

**Sole Bidders**

You must provide all the information requested in this section.

**Consortia, Partnerships, Joint Ventures and Special Purpose Vehicles**

You must provide all the information requested in this section in respect of all the consortium or SPV member(s) as named in your response to Part 1

**Evaluation Criteria**

This section is evaluated on a pass/fail basis. Bidders who fail will be disqualified from the procurement process. Note that where there are multiple Essential Criteria questions, you will be disqualified if you fail any of those questions.

For ease of reference, the detailed evaluation criteria for each Essential Criteria question are printed below the relevant question in Document 3.

**2.2 - Section 8 Price**

Bidders are required to submit their prices for Day Services. The Services have been categorised across the following Service User Groups/ Lots:

|  |  |
| --- | --- |
| **Lot No.** | **Lot Title** |
| 1 | Older People (aged 65yrs+) |
| 2 | Adults with Physical Disabilities and/or Sensory Impairment (aged 18-64yrs) |
| 3 | Adults with Learning Disabilities and/or challenging behaviour, those on the autism spectrum and/or, those who may have associated mental health problems (18-64yrs) |
| 4 | Transport |

Bidders must note the minimum and maximum rates where they apply. Bidders who exceed the minimum/maximum prices stated will be removed from evaluation for that Category/Service User Group (Lot).

You must complete the Pricing Schedule applicable to the Service User Group (LOT) and the Categories of Service and additional services. If a Bidder omits completion of a Service User Group (LOT) or Category of Service then the Council will assume that the Bidder does not wish to deliver to this Group or Category.

The Council reserves the right (at its discretion) to disqualify the entire bid or to seek further clarification regarding significant omissions. In practice, if there are significant omissions the Council is likely to exercise its discretion to disqualify the entire bid.

You must provide your Tender Prices on the basis that you are making an offer on the terms of the Provider Panel Agreement (including the Specification) as supplied in this ITT. Your Tender Prices must include all costs associated with fulfilling the requirements of the contract. The Council will not be liable for any additional costs or charges that are / which were omitted.

The Council has the right to reject any abnormally low or high price proposals and the right to withdraw this ITT at any time.

The Provider Panel’s Price(s) along with all other financial information submitted in Tenders will be checked for arithmetical accuracy.

If any mathematical errors or anomalies are identified the Provider will be given the option of allowing his Tender Pricing to stand or to amend the Tender Pricing to correct a genuine mathematical error. Providers may also be asked to explain any anomalies in the Tender Pricing. In practice if there are significant errors the Council will exercise its discretion to disqualify the entire Bid.

Bidders are required to complete the pricing schedule for all Service User Groups/Lots and Categories of Services that they are wishing to deliver. All providers submitting a price between the minimum and maximum per day rates stated for that service / category will be assessed as successful for the Price evaluation.

The Council will call off for individual day service packages as outlined in the Provider Panel Agreement for Day Services.

Day Service Categories and price ranges are as follows:

|  |  |
| --- | --- |
| **Standard Day Services** | Minimum £20.00 – Maximum £42.33 (per day rate) |
| **Specialised Day Services** | Minimum £35.00 – Maximum £65.90 (per day rate) |
| **1:1 Support**  ***(1:1 support includes Community Outreach)*** | £16.21 per Hour Maximum Rate |
| ***The above rates are based on a 6 hour day which does not include transport time.*** | |
| **Mileage rate** | 45p per Mile Maximum Rate |
| **Bathing session** | £10.00 per Bathing Session Maximum Rate |

**Providers will only be given one rate for each service user and not a mixture of more than one rate.**

**2.3 Section 9 Certificates and Declarations**

| **Declaration Evaluation**  **Criteria** | **Fail** | **Pass** |
| --- | --- | --- |
| The declaration has not been signed by an authorised person as described above **or** some of the information required has not been provided **or** the declaration has been qualified. | The declaration has been signed by an authorised person as described above, **and** all of the information required has been provided, **and** the declaration has not been qualified in any way. |

Please ensure you read this section, including the declaration, very carefully before completing it.

It is up to the signatory to satisfy themselves that they have the necessary authority, within their organisation, to sign on the organisation’s behalf.

The **Evaluation Criteria** applied to the form of tender and declaration are:

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

**3.1 Evaluation on Submission**

This section outlines the methodology by which Tenders will be evaluated. The Council does not undertake to accept the lowest or any tender. The Council may at its discretion reject a Tender which is non-compliant with the requirements of this ITT. Tenders will be evaluated using the following process:

* + 1. Gateway 1, If a Tender is received through the NEPO Portal on or before the Tender Deadline as detailed in section 1.3, it will be considered to have met the requirements of Gateway 1 and will progress to Gateway 2. Any Tender that arrives after the Tender Deadline will not be considered to have met the requirements of Gateway 1 and will not progress further.
    2. Gateway 2, The Council will undertake a completeness and compliance check upon receipt of the Tender. It is essential that bidders confirm their acceptance on the portal of Terms and Conditions, as issued, that all questions in the ITT are answered and that all information requested is submitted and in the correct format. If a bidder’s Tender contains omissions, the Council reserves the right (at its discretion) to disqualify the entire bid or to seek further clarification regarding the omission. In practice, if there are significant omissions the Council is likely to exercise its discretion to disqualify the entire Tender. Any tender not considered to have met the requirements of Gateway 2 will not progress further.
    3. Gateway 3, Sections 1 to 7 will be evaluated on a pass/fail basis. Bidders who fail any section will be disqualified from the process. Only those bidders who pass all of the sections 1 to 7 will progress to have their responses to Section 8, Price evaluated.

**3.2 Requests for Clarification after Submission**

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

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

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

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

**3.3 Operation of the Provider Panel Agreement**

The Council will call off for individual day service packages as follows;

Awards will be made on the basis of the most appropriate placement for the individual service user on the basis of the professional opinion of a council officer a combination of the suitability of the provision, service user preference and price.

**3.4 Contract Award**

Following the results of the evaluation the Council will be in a position to award the contract to the bidder with the highest final evaluation score subject to the following:

* Completion of the statutory ten day standstill period (if applicable).
* The bidder’s Tender will constitute a binding offer on the terms indicated in the ‘Form of Tender’. That offer will not be considered formally accepted by the Council (and the bidder will not formally become the Contractor) until it is issued with a Contract executed by the Council.
* Confirmation of the bidder’s status in relation to the information provided in Part 1, Part 2, or Part 3, where required.

In the event of any material change to any of the information contained in the Tender between the date of this Tender and the date that the Council informs bidders of whether or not they have been selected, then the bidder shall immediately notify the Council in writing of such change.

The Council is entitled to revisit the selection and/or evaluation of the bidder, on the basis of any material change that has occurred, and it may exclude the bidder, if necessary, as a result of that process. Final determination of whether or not any change is material is at the Council’s discretion.

**3.5 Notification**

Successful and unsuccessful bidders will be notified of the evaluation results through the NEPO Portal.

**3.6 Contract**

The Council expects that each bidder who submits a Tender does so in its own name (e.g. rather than in the name of another group company, or if the bidder is a consortium, in the name of the consortium that was accepted at the Tender stage). If a bidder is accepted onto the contract, the Council would expect that entity to enter into the relevant contract.

**3.7 Confidentiality**

This ITT has been made available by the Council on condition that:

* bidders shall at all times treat the ITT information as confidential
* Subject to the exceptions referred to below, bidders shall not disclose, copy, reproduce, distribute or pass the ITT Information to any other person at any time;
* bidders shall not use the ITT Information for any purpose other than for the purposes of making (or deciding whether to make) a Tender; and
* bidders shall comply with the provisions of section 3.18 (which contains restrictions on publicity activity within any section of the media or similar).

Where a bidder is a consortium, the bidder shall ensure that each member of their consortium who receives any of the ITT Information is made aware of, and comply with, the provisions of this section as if they were a bidder in their own right.

bidders may disclose, distribute or pass the ITT Information to another person (including, but not limited to, for example, employees, consultants, sub-contractors or advisers to the bidder or the bidders' insurers) if either:-

* This is done for the sole purpose of enabling a Tender to be made and the person receiving the ITT Information undertakes in writing to keep the ITT Information confidential on the same terms as set out in this ITT; or
* The bidder obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of the ITT Information.

The Council may disclose detailed information relating to Tenders to the Council members, officers, employees, agents or advisers and they may make the Tenders available for inspection by Council members, officers, employees, agents or advisers to the Council.

The Council also reserves the right to disseminate information that is materially relevant to all bidders, even if the information has only been requested by one bidder, subject to the duty to protect any bidder's commercial confidence in its Tender. Should bidders wish to avoid such disclosure (for example, on the basis that the request contains, or the likely response will contain, commercially confidential information or may give another bidder a commercial advantage) the request must be clearly marked "In confidence - not to be circulated to other bidders" and the bidder must set out the reason or reasons for the request for non-disclosure to other bidders. The Council will act reasonably as regards the protection of commercially sensitive information relating to the bidder, subject to duties under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

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

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

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

**3.8 Freedom of Information**

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

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

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

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

**3.9 Transparency Agenda**

The Council is committed to being transparent and accountable. In support of its commitment to transparency, the Council publishes monthly information on payments to suppliers where a contract or transaction is greater than £500. Bidding organisations should be aware that details of this tender submission relevant to the publication of such data may be made publicly available via the Council's website, and that any data published is further subject to the Freedom of Information Act and Environmental Information Regulations.

**3.10 Use of this Document and Accompanying Documents**

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

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

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

**3.11 Accuracy of the ITT Information and Liability of the Council and its Advisors**

The ITT Information has been prepared by the Council in good faith but does not purport to be comprehensive or to have been independently verified. Bidders should not rely on the detailed information contained in this ITT and should carry out their own due diligence checks and verify the accuracy of the detailed information contained in this ITT. Nothing in this ITT is, or should be construed as, a promise or representation as to the future.

This ITT sets out the Council’s current requirements in respect of the contract. In the event of any inconsistency or conflict between this ITT and any communication previously issued by the Council (including any SQ or any market engagement documentation or sessions), this ITT will take priority over such communication to the extent of any inconsistency.

Bidders considering entering into a contractual relationship with the Council should make their own enquiries and investigations of the Council requirements beforehand. The subject matter of this ITT shall only have contractual effect when and to the extent it is contained in the express terms of an executed contract.

None of the Council’s members, officers, employees, agents or advisers make any representation or warranty as to, or (save in the case of fraudulent misrepresentation) accept any liability or responsibility in relation to, the adequacy, accuracy, reasonableness or completeness of the ITT Information or any part of it (including but not limited to loss or damage arising as a result of reliance by the bidder on the ITT Information or any part of it).

**3.12 Council’s Right to Reject Tenders**

The Council reserves the right to reject or disqualify a bidder where:-

* a Tender is completed incorrectly, is materially incomplete or fails to meet the Tender requirements which have been notified to bidders;
* the bidder (and/or a member(s) of its consortium) are unable to satisfy the terms of Regulation 57 of the Regulations at any stage during the tender process;
* the bidder contravenes any of the requirements of this ITT; or
* there is a material and adverse change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the bidder (and/or a member(s) of its consortium).
* The Council may (subject to compliance with the Public Contracts Regulations 2015, particularly Regulation 57) reject a Tender if in the reasonable opinion of the Council the offer made by a bidder is abnormally low.

The disqualification of a bidder will not prejudice any other civil remedy available to the Council and will not prejudice any criminal liability that such conduct by a bidder may attract.

**3.13 Right to Cancel or Vary the Process**

The Council reserves the right, at any time and at its discretion to;

* Cancel or withdraw from the procurement process at any stage
* Not to award the contract
* Require a bidder and/or a member(s) of its consortium to clarify their Tender in writing and/or provide additional information (failure to respond adequately, may result in a bidder not being successful); and/or
* Amend the terms and conditions of the tender process

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

**3.14 Canvassing**

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

* offers any inducement, fee or reward to any member or officer of the Council or any person acting as an adviser for the Council in connection with this ITT;
* does anything which would constitute a breach of the Bribery Act 2010~~;~~
* canvasses any member or officer of the Council in connection with this ITT; or
* contacts any member or officer of the Council prior to contract signature about any aspect of this ITT in a manner not permitted under the terms of this ITT.
* offers or agrees to pay or give or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender.

**3.15 Non-Collusion**

The Council reserves the right to disqualify (without limiting the remedies the Council may seek, or the other action the Council may take) any bidder who, in connection with this ITT:-

* fixes or adjusts the amount of this Tender by or in accordance with any agreement or arrangement with any other bidder or member of that bidder's consortium (other than a member of its own consortium);
* enters into any agreement or arrangement with any other bidder or member of that bidder's consortium to the effect that he shall refrain from making a Tender or as to the amount of any Tender to be submitted;
* causes or induces any person to enter such agreement as is mentioned in either of the two preceding paragraphs or to inform the bidder or member of that bidder's consortium of the amount or approximate amount of any rival Tender;
* offers or agrees to pay or give or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other Tender; or
* communicates to any person other than the Council the amount or approximate amount of his proposed Tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of a Tender).

**3.16 Conflicts of Interest**

The Council requires any and all actual or potential conflicts of interest to be disclosed by the bidder and resolved to the Council's reasonable satisfaction prior to entry of any Contract. Failure to declare and/or resolve such conflicts to the reasonable satisfaction of the Council could result in the withdrawal of the relevant award of Contract.

**3.17 Intellectual Property**

The copyright of this ITT is vested in the Council and may not be reproduced, copied or stored in any medium without the prior written consent of the Council except in relation to the preparation of a Tender. All documentation supplied by the Council in relation to this ITT is and shall remain the property of the Council and must be returned on demand, without any copies being retained.

**3.18 Publicity**

Bidders (and all of the members of any consortium) shall not undertake (or permit to be undertaken) at any time, whether at this stage or contract signature, any publicity activity with any section of the media in relation to this Contract other than with the prior written agreement of the Council. Such agreement shall extend to the content of any publicity. The word ‘media’ in the context of this paragraph includes, but is not limited to radio, television, newspapers, trade and specialist press, the Internet and email accessible by the Public.

**3.19 Governing Law**

All documents and Tenders must be prepared in the English language. This procurement process and any subsequent contract awarded will be subject to English law and the exclusive jurisdiction of the English courts.

**3.20 General Notices**

The Tender including price should remain valid for a minimum period of 90 days from the Tender Deadline.

Under the contract the Council will require compliance with its policies. Bidders are advised to satisfy themselves that they understand and accept all of the requirements of the contract before submitting their Tender.

The Council reserves the right to issue supplementary documentation at any time during the tender process to clarify any issue or amend any aspect of the ITT. All such further documentation that may be issued shall be deemed to form part of the ITT and shall supplement and/or supersede any part of the ITT to the extent indicated.

1. For the list of exclusion please see: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf> [↑](#footnote-ref-1)