**SS17064**

Road Asset Renewal Contract

**Schedule 1**

**INVITATION TO TENDER**

Growth, Environment and Transport





**Important Notice**

This document has been prepared by The Kent County Council (“the Client”) to present the Client’s requirements and provides details to tenderers for this stage of the tender process.

This document shall be read in conjunction with:

Schedule 1 Invitation to Tender (this document).

Schedule 2 Forms for Completion.

Schedule 3 Conditions of Contract.

Schedule 4 Quality Questions.

Schedule 5 Financial.

Schedule 6 Service Information.

If a bidder considers that any of the information submitted in its tender should not be disclosed by the Client under a Freedom of Information Act 2000 request, it will have to set this out in the Freedom of Information Form provided by the Client in Schedule 2 (Forms for Completion). The bidder will accept any decision made by the Client as set out in the Freedom of Information Form.

You are advised to read all sections carefully before tendering. Should you have any difficulties with the tender, documentation or process please contact Strategic Sourcing & Procurement via the ‘Messages’ facility on the Kent Business Portal as identified in Section 3: Instructions of the Invitation to Tender.

This documentation is non-transferable.

**Contents**

Contents…………………………………………………………………………………..

[1. Introduction 3](#_Toc499556617)

[2. The Client’s Requirements 5](#_Toc499556618)

[3. Instructions 7](#_Toc499556619)

[4. Tender Process 13](#_Toc499556620)

[5. Negotiation Process & Meetings 18](#_Toc499556621)

[6. Information to be returned as Part of the Tender 21](#_Toc499556622)

# Introduction

Kent County Council (the Client) is the largest local authority in England covering an area of 3,500 square kilometres. It has an annual expenditure of over £1bn on goods and services and a population of 1.5m. The Client provides a wide range of personal and strategic services on behalf of its residents, operating in partnership with 12 district councils and 316 parish/town councils.

The Client consists of four operational directorates which are:

* Adult Social Care and Health (ASCH)
* Children, Young People and Education (CYPE)
* Growth, Environment and Transport (GET)
* Strategic and Corporate Services (ST)

This requirement is for the Road Asset Renewal Contract within the Growth, Environment and Transport (GET) Directorate.

**Background**

The Client’s current Resurfacing Contract (including major surfacing works that may include reconstruction of the highway) is due to expire on the 30th June 2018. During the initial two year term, the average spend of the contract was £9m per annum, but with a challenging forecast in public sector funding, it is highly likely this will be less in the future. That said, the Client pursues every opportunity to secure additional resource to fund specific maintenance projects.

The contract will commence upon 1st July 2018 and will continue for a period of thirty months unless terminated in accordance with the Conditions of Contract attached in Schedule 3 of this Invitation to Tender. There is also a potential for a further contract extension of up to two years.

The work will be carried out in multiple phases with no work carried out between November and February each year. The initial phases are planned as follows, subject to weather conditions:

* Phase 1 – July to October 2018
* Phase 2 – March 2019
* Phase 3 – April to October 2019
* Phase 4 –March 2020
* Phase 5 – April to October 2020

Extension periods totalling no more than twenty four months may be offered to the successful Contractor. This will be awarded at the discretion of the Client. This is not guaranteed and the Client reserves the right to procure the work from other sources. The Client also reserves the right to award future work to other Contractors should the Contractor not have the capacity to undertake the work to the timescale detailed above.

The project consists of multiple sites. There will be several phases of work throughout the contract period. One contract is being let for the whole of the County covering all twelve Districts. These are detailed in Section One (Scope and Context).  All work undertaken within the contract will be priced using the Price List (Appendix A of this document).

The Contracts are fixed price contracts until 30th March 2021 with a Price Adjustment for Inflation Clause to be implemented if the third or fourth year optional extensions are awarded. There is one Price List, for work procured across Kent.

The Works Information for Tender has been prepared and is typical of the nature of the work that will be procured in future Contract phases. Tender examples consist of twenty two (22) urban and rural sites across Kent. The works at each site will generally entail the cold milling of the existing surface and repaving with a binder course of AC or SMA and a surface course of HRA, TSCS or SMA.  All sites will include adjustments to covers and replacement of road markings and road studs where required.

Sites approaching traffic signals may require the replacement of the traffic loops. Some sites will require the application of High Friction Surfacing.  Many sites will require road closures and night time working.  Working restrictions will be in place on many sites with defined times.

The Client anticipates giving the Contractor at least 6 weeks’ notice of the Works Information for the Contract phases of work.  However there may be the need to undertake ad-hoc schemes on an occasional basis throughout the contract period.

The Client will be operating under the Traffic Management Act, The Kent Permit Scheme and The Kent Lane Rental Scheme.  All works programmes will need to comply with noticing requirements and any constraints imposed by the Roadworks Teams to ensure adherence with the Schemes.

**ITT Responses**

Responses are to be submitted in accordance with the instructions set out within this ITT. Any quantities shown within this ITT and any relevant documentation are estimated and may be subject to variation and therefore do not form any basis of guarantee.

Further details of the potential services required throughout the duration of the contract can be found under Schedule 6 – Service Information.

Strategic Sourcing and Procurement is the lead division for the Client on all procurement matters and is undertaking the tendering and contracting of this requirement.

**Important Note**

**Responses will only be accepted via the Kent Business Portal.** Instructions on how to submit your response can be found within the ‘Help’ facility. These instructions should be consulted in order to ensure that your response is submitted correctly.

**Please do-not embed any files in your response**, instead where required, clearly mark all appendices for each response provided. Any additional documentation submitted, but not immediately apparent to the evaluator may be at risk of not being assessed.

# The Client’s Requirements

This section summarises the Client’s requirements stated in the Service Information. These areas are further articulated in the documents accompanying this ITT.

**The Client’s Aims**

The Client’s five year vision states: “Our focus is on improving lives by ensuring every pound spent in Kent is delivering better outcomes for Kent’s residents, communities and businesses.” This gives a clear statement about what the Client want to achieve as an organisation and forms part of Client’s Strategic Statement 2015-2020. This document defines three clear County Strategic Outcomes together with our Supporting Outcomes, as articulated in the diagram below:

****

In 2017/18, the Growth, Environment and Transport Directorate will continue to focus on achieving these Outcomes. With regard to the second Strategic Outcome, ‘**Kent communities feel the benefit of economic growth by being in–work, healthy and enjoying a good quality of life”** we plan and deliver a programme of major capital projects to support and unlock development; we work closely with the District Councils to develop transport strategies, to ensure growth is sustainable and provides opportunities of active travel and recreation within a safe and pleasant environment.

**Contract Award**

It is intended for the Contract to be **awarded in April/May 2018 prior to commencement from the 1st July 2018**.

The Scope of Services and Works Information is as set out in the Schedule 6 - Service Information.

# Instructions

**General**

These instructions are designed to ensure that all tenderers are given equal and fair consideration. It is important that you provide all the information asked for in the format and order specified. Please use the ‘Messages’ facility within the Kent Business Portalif you require clarification on any sections of this Invitation to Tender.

Tenderers should read these instructions carefully before completing the tender response. Failure to comply with the completion and submission requirements may result in the rejection of the tender. Participation in the tender process automatically signals that the tenderer accepts these conditions of participation.

The Invitation to Tender consists solely of this document and the attached schedules as follows:

* Schedule 1: Invitation to Tender
* Schedule 2: Forms for Completion.
* Schedule 3: Conditions of Contract.
* Schedule 4: Quality Questions
* Schedule 5: Financial.
* Schedule 6: Service Information.

The details of this document and all associated documents are to be treated as private and confidential and for use only in connection with this tender process. Copyright of all tender documents, including any amendments or further instructions, shall remain with the Client. This Invitation to Tender is not transferable.

The dates detailed in section four are provided for information purposes only. The Client does not guarantee to complete each phase by those dates stated.

**Tender Clarification**

All clarification and communication from tenderers during the period of this procurement exercise must be directed via the ‘Messages’ facility within the Kent Business Portal.

The Client will endeavour to answer all questions as quickly as possible, but cannot guarantee a minimum response time. The Client will respond to any request for clarification at least 4 days before the deadline for receipt of tenders.

No requests for clarification will be accepted after **XX February 2018.**

In order to ensure equality of treatment of tenderers, the Client intends to publish the questions and clarifications raised by tenderers together with the Client’s responses (but not the source of the questions) to all participants on a regular basis.

The Client reserves the right not to respond to a request for clarification or to circulate such a request where it considers that the answer to that request would or would be likely to prejudice its commercial interests.

**Preparation of Tender**

The information contained within this document should be regarded as a statement of the Client’s current position as it is able to determine at this time. Tenderers must carefully examine and consider the tender documents and satisfy themselves of the appropriateness and validity of any information provided. In submitting a tender, tenderers shall be deemed to have read and understood all of the tender documents.

**Freedom of Information**

In accordance with the obligations and duties placed upon public authorities by the Freedom of Information Act 2000 (the ‘FoIA’), the Client may, acting in accordance with Secretary of State’s Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the said Act, or the Environmental Information Regulations be required to disclose information submitted by the tenderer to the Client.

In respect to any information submitted by a tenderer that it considers commercially sensitive the tenderer should:

* clearly identify such information as commercially sensitive;
* explain the potential implications of disclosure of such information; and
* provide an estimate of the period of time during which the tenderer believes that such information will remain commercially sensitive.

Where a tenderer identifies information as commercially sensitive, the Client will endeavour to maintain confidentiality. Tenderers should note, however, that, even where information is identified as commercially sensitive, the Client may be required to disclose such information in accordance with the FoIA or the Environmental Information Regulations (the ‘EIR’). In particular, the Client is required to form an independent judgment concerning whether the information is exempt from disclosure under the FoIA or the EIR and whether the public interest favours disclosure or not. Accordingly, the Client cannot guarantee that any information marked ‘confidential’ or “commercially sensitive” will not be disclosed.

Where a tenderer receives a request for information under the FoIA or the EIR during the procurement process, this should be immediately passed on to the Client and the tenderer should not attempt to answer the request without first consulting with the Client.

**Tender Validity**

The tenderer is required to hold the tender open for acceptance for a period of 90 days from the closing date for the submission of tenders.

**Conditional Tenders**

Conditional tenders will be disregarded where the condition upon which a tender is based cannot be fulfilled.

Tenderers should, however, note that once a contract is entered into this stands alone. If a conditional tender is accepted then the relevant amount in that tender forms the basis of the contract with that condition. Therefore if for any reason another contract to which the condition relates is later terminated, the tenderer will not be able to require the price in this contract to be increased to what its associated conditional tender would have been. All contract variations are controlled via the variation to contract procedure.

**Submission of Tenders**

Bidders should note the following points when completing the ITT online. Where appropriate documents should be uploaded to the Kent Business Portal.

All documents requiring a signature must be signed:-

* where the bidder is an individual, by that individual;
* where the bidder is a partnership, by at least two duly authorised Partners;
* where the bidder is a company, by a Company Director, where such person is duly authorised for that purpose.

The tender and any documents accompanying it must be in the English language.

Tenders must be returned electronically via the Kent Business Portal no later than **12:00pm (midday) on XX February 2018.**

Some files may take longer to upload dependent upon size and the Broadband connection. Please take this into consideration when uploading larger files, and ensure that you leave enough time to complete your submission.

Instructions on how to submit your response can be found within the ‘Help’ facility on the Kent Business Portal. These instructions should be consulted in order to ensure that your response is submitted correctly.

To submit a response the ‘Submit Response’ button must be used and an email of confirmation will be provided when a submission is successful. Bidders should retain this email of confirmation.

Responses will only be accepted via the Kent Business Portal.

The Client reserves the right to extend the period for submission of tenders and will inform all bidders accordingly.

**Right to Reject/Disqualify**

The Client reserves the right to reject or disqualify a tenderer where:

* the tenderer is guilty of serious misrepresentation in relation to its tender; expression of interest; the ITT and/or the tender process; and or
* there is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the tenderer.

**Right to Cancel, Clarify or Vary the Process**

The Client reserves the right to:

* amend the terms and conditions of the Invitation to Tender process,
* cancel the evaluation process at any stage without liability; and/or
* require the tenderer to clarify its tender in writing and/or provide additional information. (Failure to respond adequately may result in the tenderer not being selected).
* award the contract to more than one contractor if it is felt that this would achieve best value
* not to award the contract at all
* award only part of the intended contract
* discontinue the process at any time without liability.
* make use of the negotiated procedure without prior publication under clause 32 of The Public Contracts Regulations 2015 (32.-(1) In the specific cases and circumstances laid down in this regulation, contracting authorities may award public contracts by a negotiated procedure without prior publication.) should it be necessary.

**Reserve Tenderer**

The Client reserves the right to appoint a reserve tenderer and to call upon this reserve tenderer at any time prior to the execution and completion of the Contract by both parties.

**Canvassing**

Any tenderer who directly or indirectly canvasses any officer, member, employee, or agent of the Client concerning this Invitation to Tender or who directly or indirectly obtains or attempts to obtain information from any such officer, member, employee or agent concerning any other tenderer, tender or proposed tender will be disqualified.

**Disclaimers**

The Client, their directors, officers, members, partners, employees, other staff nor agents:

* makes any representation or warranty as to the accuracy, reasonableness or completeness of the Invitation to Tender; or
* accepts any responsibility for the information contained in the Invitation to Tender or for their fairness, accuracy or completeness of that information nor shall any of them be liable for any loss or damage arising as a result of reliance on such information or any subsequent communication.

Any contract concluded as a result of this Invitation to Tender shall be governed by English law.

**Collusive Behaviour**

Any tenderer who:

* fixes or adjusts the amount of its tender by or in accordance with any agreement or arrangement with any other party; or
* communicates to any party other than the Client any amount or approximate amount of its proposed tender or information which would enable the amount or approximate amount to be calculated (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender or insurance or any necessary security); or
* enters into any agreement or arrangement with any other party that such other party shall refrain from submitting a tender; or
* enters into any agreement or arrangement with any other party as to the amount of any tender submitted; or
* offers or agrees to pay or give or does pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender, any act or omission, shall be disqualified.

**Parent Company Guarantee**

In the event of a tendering company having a parent company or being financed by an external source, a Parent Company Guarantee may be required in the form as shown in Schedule 2.

Tenderers are required to state, within the Selection Questionnaire, if either of the above is applicable to them and if so, what organisation will be providing the guarantee.

The Parent Company Guarantee will form part of the contract should the tenderer be successful. If applicable, a signed contract returned without a signed Parent Company Guarantee will not be accepted.

**Contract Access**

The contract will be open to be used by any public sector organisation within the County of Kent, including but not limited to the following:

* Ashford Borough Council
* Canterbury City Council
* Dartford Borough Council
* Dover District Council
* Gravesham Borough Council
* Maidstone Borough Council
* Medway Council
* Sevenoaks District Council
* Shepway District Council
* Swale Borough Council
* Thanet District Council
* Tonbridge and Malling Borough Council
* Tunbridge Wells Borough Council
* Kent Parish Councils

**Client Not Bound**

The Client does not bind itself to accept the lowest or any tender for all or any part of the requirement and will not accept responsibility for any expense or loss which may be incurred by any tenderer in the preparation of the tender.

Any discussions or correspondence between the Client and tenderers shall be conducted without any obligation whatsoever by the Client to enter into or become bound by any contract.

Unless agreed in writing by **Craig Merchant, Procurement Manager** no amendment or modification can be made to the Invitation to Tender documentation.

The Client will not be bound by any contract until the Contract is embodied in a formal document and signed by all parties of the Client.

**Contract Document**

The contract to be awarded shall be in the form of the draft Conditions of Contract in Schedule 3 which will be signed by all parties and such contract shall incorporate the tender documents, pricing schedule and any other relevant documentation.

**Abnormally Low Tenders**

Under Regulation 69 of Public Contracts Regulations 2015 if a tenderer returns an abnormally low priced tender response, in relation to the spread of pricing received from other tenderers, the Client reserves the right to request an explanation in writing from the tenderer of the offer or those parts which it considers contribute to the offer being abnormally low. The Client will take account of the evidence provided in the response to a request in writing and will subsequently verify the offer or parts of the offer being abnormally low with the tenderer. Only at the end of this clarification period taking into account the individual facts, will the Client decide whether the offer should be rejected or not.

The Client reserves the right to reject the offer when the evidence supplied does not satisfactorily explain the low level of price and costs. Any tenderer must return the clarifying information within two working days from issue by the Client, via the Kent Business Portal.

**Tied Tenders**

If after the evaluation process has taken place, two (or more) submissions have achieved exactly the same score, the Tenderer with the highest total quality score across the tied submissions will be awarded the contract.

If the deadlock cannot be broken as the quality scores are the same, then the Client’s representatives may decide to use any other reasonable process including (but not limited to); further decimal points, requiring further re-submissions or a resubmission of prices.

The Client retains the right to cancel the process (see Right to Cancel, Clarify or Vary the Process) in the event that a successful tender cannot be determined.

**Transparency**

The Client 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 Client during this Procurement. The information will not be disclosed outside of the public sector. Tenderers taking part in this competition consent to this as part of the competition process.

# Tender Process

**Process**

An OJEU Notice and Selection Questionnaire (SQ) will be released on 6 December 2017. Following the SQ, an ITT will be released in January 2018 and will run until February 2018. It is the Client’s intention to use a Competitive Procedure with Negotiation where the Negotiation period will take place in March 2018. **The Client may award contracts on the basis of the initial tenders without negotiation.**

If required, the Client will reduce the number of candidates invited to submit tenders using the criteria within the SQ. A maximum of 6 bidders will be shortlisted to progress to the ITT. After initial tender submission, the Client may reduce the number of candidates invited to negotiate using the criteria defined within the Award Criteria.

The Negotiation period is scheduled for March 2018. Exact dates will be determined nearer the time and to relevant tenderers only. **Further detail is provided in Section 5: Negotiation Process & Meetings**.

Following the Negotiation period, ITT revisions will be submitted as appropriate by each tenderer. There will then be a final evaluation by April 2018.

Prior to Contract Award, the tenderer who achieved the highest score in the tender evaluation may be required to attend a Pre-Award Clarification Meeting at the Client’s offices. The purpose of this meeting is to ensure there is a clear mutual understanding between the Client and the tenderer regarding the requirements of the Contract prior to Contract Award. It is important to note that it is NOT a negotiation meeting or an opportunity to present new information. The contractor’s Bid Manager and Account Manager who will be responsible for delivery of the contract will be required to attend this meeting.

**Timetable**

The dates set out in the timetable below are proposed dates and may be subject to change:

**Table 1: Procurement Timetable**

|  |  |
| --- | --- |
| **Milestones** | **Date** |
| OJEU Notice | 6-Dec-17 |
| Selection Questionnaire (SQ) issued | 6-Dec-17 |
| SQ submission | 10-Jan-18 |
| SQ evaluation begins | 10-Jan-18 |
| SQ Evaluation Complete | 15-Jan-18 |
| Issue Invitation to Tender | Jan-18 |
| Clarification request deadline | Feb-18 |
| Tenders returned | Feb-18 |
| Evaluation of Tenders | Feb-18 |
| Negotiation period   * Negotiation meetings * ITT revisions * ITT submissions * Revised ITT evaluation | Mar-18 |
| Internal review and approvals | Apr-18 |
| Estimated Contract Award date | Apr-18 |
| Mobilisation starts | 01-May-18 |
| Mobilisation ends | 30-Jun-18 |
| New delivery arrangements/contracts start | 01-Jul-18 |

**Evaluation Criteria**

All tenders received will be considered on the information contained in the tender or obtained by the Client as a direct result of the procurement process.

**Award Criteria**

The Client shall base the award of this contract on the Most Economically Advantageous Tender (MEAT), with regard to price and quality. A Price per Quality Point evaluation methodology will be used where the Price is divided by Quality score to achieve a Price per Quality Point (PQP). The Quality score achieved by normal evaluation method with a threshold as appropriate.

The Quality element will be assessed using the following evaluation criteria:

**Table 2: Quality Award Criteria**

|  |  |
| --- | --- |
| **Criteria** | **Weighting** |
| Customer Ethos and Member Engagement | 20% |
| Mobilisation | 20% |
| Programming/Permitting | 20% |
| Approach to Construction | 20% |
| Additional Larger Schemes | 10% |
| Performance Framework | 10% |
| **Total** | **100%** |

The Client has set a **minimum Quality threshold of 55%**. The Client therefore reserves the right to exclude bidders from the rest of the procurement process which fail to score a minimum of 55% for quality.

Tenderers should note that any quantities provided are indicative and do not give any guarantee of work. Tenderers must submit a fully compliant tender including submitting responses to Forms for Completion (Schedule 2), Quality Questions (Schedule 4) and Financial (Schedule 5).

**Scoring**

The Quality Questions in Schedule 4 will be assessed using the Scoring methodology below. The marks detailed in the table are the only achievable marks tenderers will receive. The Client will not be able to award marks in between each category (e.g. tenderers will not be able to achieve 5 marks).

**Table 3: Quality Questions Scoring Methodology Example**

|  |  |  |
| --- | --- | --- |
| **Category** | **Scoring** | **Mark** |
| **Unacceptable Standard** | Either the response was not provided or not relevant to the question and/or fails to address more than two prompts. This does not give the Client confidence in the tenderers ability to deliver this requirement. | 0 |
| **Weak Standard** | The response covers at least three prompts which are realistic and deliverable. Sufficient supporting detail has been provided in two or more of these. Evidence to other prompts may be missing, lacking in detail or highlight concern within this requirement. This gives the Client limited confidence in the tenderers’ ability to deliver this requirement. | 3 |
| **Acceptable Standard** | The response covers at least five prompts which are realistic and deliverable. Sufficient supporting detail has been provided in four or more of these. Evidence to other prompts may be missing, lacking in detail or highlight concern within this requirement. This gives the Client confidence with minor concerns in the tenderers’ ability to deliver this requirement. | 6 |
| **Good Standard** | The response covers all prompts which are realistic and deliverable. Sufficient supporting detail has been provided in at least five of the prompts. Evidence to other prompts may be lacking in detail or highlight concern within this requirement. This gives the Client a high level of confidence in the tenderers’ ability to deliver this requirement. | 8 |
| **Excellent Standard** | The response covers all prompts and is supported by comprehensive detail which is realistic and deliverable in all aspects. This gives the Client complete confidence in the tenderers’ ability to deliver this requirement. | 10 |

**Pricing Evaluation**

The Price List comprises of Schedule 5 which shows the rates the Client is seeking to be priced as part of this procurement process.

Each rate (where applicable) will be broken down into the following categories:

* People (On Site) Staff/Labour
* Equipment
* Materials
* Sub-Contract
* Charges
* Subcontract Fee
* Direct Fee

The tender total for assessment purposes will be the total value derived from the model that will be used for the tenderers priced submission. This will be published at the tender stage. A draft version of the pricing schedule has been attached.

**Final Scoring**

All scores for each individual criterion will be combined in accordance with the ratios noted under Evaluation Criteria. An example is shown in Table 4 below.

**Table 4: Individual Tenderer Final Score Example**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Criteria & weighting** | **Individual Criteria** | **Marks** | **Weighting** | **Final scores** |
| Quality Questions | Customer Ethos and Member Engagement | 8/10 | 20% | 16/20 |
| Mobilisation | 8/10 | 20% | 16/20 |
| Programming/Permitting | 8/10 | 20% | 16/20 |
| Approach to Construction | 8/10 | 20% | 16/20 |
| Additional Large Schemes | 8/10 | 10% | 8/10 |
| Performance Framework | 8/10 | 10% | 8/10 |
| **Total score for quality questions** | | | 80/100 |
| **Total score for Quality Questions** | | | **80** | |
| **Total Price (Activity Schedule)** | | | **£5,000,000** | |
| **Total Price per Quality Point score** | | | **£62,500** | |

Each tenderer will be ranked using their Price per Quality Point as shown in Table 5 below. Note that the prices shown are illustrative only.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tenderer** | **Quality Score** | **Total Price** | **Price per Quality Point** | **Ranking** |
| Tenderer A | 80 | £5,000,000 | £62,500.00 | **1st** |
| Tenderer B | 75 | £4,800,000 | £64,000.00 | **3rd** |
| Tenderer C | 80 | £5,200,000 | £65,000.00 | **4th** |
| Tenderer D | 55 | £4,600,000 | £83,636.36 | **5th** |
| Tenderer E | 78 | £4,900,000 | £62,820.51 | **2nd** |
| Tenderer F | 52 | £4,700,000 | N/A | **Not Considered** |

**Table 5: Evaluation final score example**

**Validation Exercise**

The Client reserves the right to carry out a validation exercise to determine whether the tenderers can substantiate their evidence supplied to support answers given to questions detailed in tenderer’s responses including Schedule 4 Award Criteria.

In validating the evidence, the Client will use any practical means, and may approach any person or organisation named in the tenderer’s case studies as part of the validation. The validation may include meetings with the tenderer.

**Sustainability Check**

During this stage of the assessment, those individuals who assessed the tender will jointly review the conclusions they have reached to satisfy themselves that the tender is sustainable. They may seek further clarification from the tenderers to enable them to understand the tender better. These clarifications may be sought in writing or at a meeting called for that purpose.

Failure to provide satisfactory evidence to support any part of this aspect of the tender may result in the tender being rejected at the Client’s absolute discretion.

# Negotiation Process & Meetings

**Aim of the Negotiation**

The purpose of the negotiations is to provide the opportunity for the Client and Tenderers to engage in discussions and negotiation in order to seek an improvement in the delivery and costs, associated with nominated areas of the contract.

This process will provide Tenderers with the opportunity to propose innovative or alternative approaches to the delivery of services across the areas of negotiation that offer the Client improved costs and/or delivery methods aimed at enhancing the service provision across the life of the contract.

The Negotiation period will take place after the initial tender evaluation in February 2018. This is anticipated to take place throughout March 2018. **The Client may award contracts on the basis of the initial tenders without negotiation.**

**Overview and Aims of Negotiation Meetings**

The negotiation meetings will be the forum, within which, the Tenderers can discuss their proposed innovative or alternative approaches for the delivery of services open for negotiation. The Negotiation period will include one-to-one meetings between the Tenderers and Client on the service areas identified in Section 5 below.

The purpose of the Initial meetings will be to:

* Ensure the Tenderers are clear of the objectives
* Ensure that the Tenderers understand the minimum requirements
* Discuss Tenderers ideas and options.
* Identify and discuss risks and opportunities for the Client, Tenderer and others.
* Identify resources (land, funds, staff, ICT, policy, etc.) required for Client, Tenderers and others.
* Agree the feasibility of any proposals.
* Give the Client confidence that rates submitted can reflect proposals.
* Discuss timescales and mechanisms for implementation of proposals.
* Discuss how any proposals may effect the pricing options.
* Discuss how any proposals may effect the quality submission.

Any subsequent negotiation meetings (if necessary) will aim to:

* Achieve a greater understanding of the respective positions of the Client and the Tenderer’s, to ensure a shared understanding of the scope and context of the area of negotiation.
* Allow the Tenderer’s to discuss and develop their proposed ideas and solutions in consultation with the Client’s representatives.
* Give the Client’s representatives, if necessary, the opportunity to review the Contractors proposal for a revised specification.
* Enable Tenderers to seek explanation from the Client on any aspects of the service under negotiation that may be unclear and to raise any preliminary issues relating to Tenderers’ approaches to the service.

The purpose of the final negotiation meeting will be to:

* Allow the Tenderers to present their final proposed approach and discuss any remaining areas of concern/clarification.
* Conclude the negotiation process.

The Negotiation sessions will **not** be evaluated.

The Client intends to conduct these meetings in a way, which is fair and transparent, that does not risk distorting competition or unfairly discriminating against any Tenderer.

Tenderers should note that nothing said or intimated by the Client, or its advisers, at these meetings will constitute any transfer of risk to the Client or grants any approvals for Tenderers’ proposals in relation to their adequacy in meeting the Client’s requirements. However, the Client will endeavour to provide general advice, consistent with the requirements of Tendering probity, where preliminary high-level ideas and suggestions canvassed by Tenderers may or may not be acceptable to the Client.

**Tenderers should provide details of areas which they wish to discuss with the Client with their initial tender submission.** This does not preclude further areas being raised during the Negotiation meetings, but will afford the Client sufficient time to consider those issues and enable more developed discussions during the meeting.

**Conclusion of Negotiation**

If, at the end of these discussions, the Client has agreed substantially all aspects of the proposed approach with the Tenderers and considered the implications on the specifications and outcomes, the Negotiation stage will formally close and the Instruction to Submit Final Tender (ISFT) will be issued.

After the Client has declared that the Negotiation phase has been concluded, **no** further Negotiation or formal discussions will be held with Tenderers (unless a significant and unforeseen issue subsequently arises which necessitates further Negotiation and the Client formally re-opens Negotiation having regard to the Public Contracts Regulations).

The formal clarification process, as per the Invitation to Tender, for clarifying any specific issue relevant to the procurement may, however, continue until the set deadline for clarifications prior to submission of Final Tenders.

In accordance with the Public Contracts Regulations 2015, following submission of Final Tenders, no further negotiations of the Tender will occur.

**Confidentiality**

Answers to questions raised by Tenderers during the negotiations shall be disclosed in writing to all other Tenderers, unless both the question and answer relate specifically to the approach proposed by the Tenderer whereby they will be considered commercially sensitive.

Should Tenderers wish to avoid such disclosure (for example, on the basis that the request or response contains commercially confidential information or may give another Tenderer a commercial advantage) the Tenderer must clearly indicate this when making the request, identifying that it relates to a commercially confidential matter, which the Client will then consider.

The Client will consider each such request for non-disclosure on its merits and in particular whether any regulations or considerations of probity require such a request to be denied.

Where the Client decides that the question (or request) and its response, cannot be withheld from circulation, the Tenderer reserves the right to withdraw the question or request, or alternatively re-present it in a different manner.

In accordance with Regulation 21 of the Public Contracts Regulations 2015, during the negotiation process the Client shall not disclose to another Tenderer any approach proposed by a Tenderer without that Tenderer’s consent.

It should be recognised by Tenderers that ideas may not necessarily be unique to them and may have been considered by the Client or other Tenderers. Accordingly, while treating all Tenderers equally and fairly, the Client reserves the right to explore with all Tenderers, ideas and proposals which it considers are topics in the public domain, notwithstanding, that the idea or proposed approach already appears in the proposals of an individual Tenderer.

**Areas for Negotiation**

The Client will be using a Competitive Procedure with a Negotiation process, to tender the Road Asset Renewal Contract whilst facilitating negotiations on potentially new initiatives or approaches related to the following aspects of the service:

1. Programming
2. Highway Recycling
3. Performance Framework
4. Service Approach

**Meeting Attendance and Roles**

Tenderers will be advised of the names and positions of the Client’s negotiation Team at least two working days prior to meetings

Additional Legal advisers may be consulted to advise on elements of the Negotiation where needed.

Confirmation of proposed meeting dates will be provided in advance of meetings but Tenderers should ensure that the indicative dates and timings for Negotiation meetings contained in the Tender timetable are noted and scheduled into the diaries of the relevant Tenderer’s personnel who will be involved in the meetings.

# Information to be returned as Part of the Tender

The Tenderer is required to submit the documentation detailed within Schedules 2, 4 and 5. The tenderer’s response is to be uploaded onto the Kent Business Portal using the “Response Wizard” function.

Tenders not submitted in this format will be classed as a non-compliant bid and therefore not evaluated.

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