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**Bath & North East  
Somerset Council**

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Improving People's Lives

**INVITATION TO QUOTE  
for the Provision of  
a replacement slide and safer  
surface at Manor Copse Play Area,  
Manor Copse Road, Writhlington  
BA3 3LA**

**under the open procedure**

Supply the South West reference number: DN724200  
Date of release: 15/05/2024

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# **INTRODUCTION TO BATH & NORTH EAST SOMERSET COUNCIL**

**Bath and North East Somerset (B&NES)** is a unitary authority created on 1 April 1996 following the abolition of the County of Avon. The Council has responsibility for almost all local government functions within the district, including planning, building control, local roads, council housing, environmental health, markets & fairs, refuse collection, recycling, cemeteries & crematoria, leisure services, parks, and tourism. It is also responsible for education, social services, libraries, main roads, public transport, trading standards, waste disposal and strategic planning.

B&NES covers an area of 136 square miles (352 km<sup>2</sup>), of which two thirds is green belt. It stretches from the outskirts of Bristol, south into the Mendip Hills and east to the southern Cotswold Hills and border of Wiltshire. The city of Bath is the principal settlement in the district.

Bath developed as a spa resort in Georgian times and remains a major cultural tourism centre having gained World Heritage City status.

The village of Writhlington is situated to the south east of Radstock and very close to the southern tip of Bath & North East Somerset.

## **The CORPORATE STRATEGY**

The Corporate Strategy is the Council's overarching strategic plan. It sets out what we plan to do, how we plan to do it, and how we will measure performance. The Strategy was adopted on 20 July 2023. You can view the details on our website - <https://beta.bathnes.gov.uk/document-and-policy-library/corporate-strategy-2023-2027>

We have one overriding purpose – **TO IMPROVE PEOPLE'S LIVES.**

We have two Core Policies:

### **i) TACKLING THE CLIMATE AND NATURE EMERGENCY**

1. To lead the UK in climate and nature action, building a sustainable future for Bath and North East Somerset - net zero, nature positive by 2030

### **ii) GIVING PEOPLE A BIGGER SAY**

To listen to and work with residents to act on their concerns.

## **SUPPLIERS AND CONTRACTORS WHO DO BUSINESS WITH THE COUNCIL MUST COMMIT TO HELPING THE COUNCIL MEET THESE OBJECTIVES**

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## STANDARDS REQUIRED BY CONTRACTORS AND SUPPLIERS

*These standards are required by contractors/suppliers to perform the Contract in accordance with Council procedures. Should you require further information, please contact [procurement@bathnes.gov.uk](mailto:procurement@bathnes.gov.uk).*

### Code of Conduct

- You are expected to give the highest possible standard of service with impartiality.
- Do not use any information obtained during the course of your Contract with B&NES for personal gain or benefit. Do not pass it on to others who might use it in such a way.
- You must follow all policies of the Council and not allow your own personal or political opinions to interfere with your work.
- You are required to be courteous, efficient and provide impartial service delivery to all groups and individuals within the community.
- It is expected that everyone working for/on behalf of the Council shall:
  - be honest
  - maintain a high standard of integrity and conduct at all times
  - not use his/her position to further private interests or those of relatives and friends
- You are expected to comply with the requirements of the Data Protection and Freedom of Information Acts.
- No harassment of any kind will be tolerated. This includes but is not limited to sexual, sexual orientation, racial, religious and disability harassment. Harassment is conduct by one person to another, which is unwanted, unreasonable and offensive to the recipient.

### Equalities

- In your work you are expected to comply with Council policies and legislation (Equality Act 2010).
- B&NES is committed to equality of opportunity for everyone and believes diversity of the local community is a major strength which contributes to the social and economic prosperity of the area.
- The Council aims to provide appropriate, accessible, and effective services and facilities to all sections of the community without prejudice or bias and equality of opportunity in all aspects of employment.

### Modern Slavery

- You will ensure fair pay to contractors working at Council sites by applying the 'Real Living Wage' including sub-contractors
- You will ensure fair and safe working conditions
- Your workers must have a legal right to work in UK
- You must not employ bonded workers

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- You must employ workers with legitimate qualifications from bona fide training organisations
- You must pay your sub-contractors and workers on time
- You must follow the rules of the Construction Industry Scheme (where relevant)
- You must report any breach or suspected breach to B&NES at the earliest opportunity

### Health and Safety

- The Council is committed to providing and maintaining a safe place of work and healthy environment for all employees and persons affected by its operations.
- Health & Safety is everybody's responsibility, and we must all be continuously aware of our own safety and the safety of others in everything we do.
- Contractors must take reasonable care for their own health and safety and that of others who may be affected by what they do or not do
- You must co-operate with your employer and B&NES on health and safety
- You must correctly use work items provided by your employer, including personal protective equipment, in accordance with training or instructions
- You must not interfere with or misuse anything provided for your health, safety, or welfare

### Electronic Access (if relevant)

- Do not use any log on or password that has not been specifically set up for you.
- Any use of e-mail or Internet facilities, business or private, must not breach the law.
- Do not send, access, or transfer any information or message that is defamatory.
- Do not download, copy, or transmit materials in breach of the Copyright, Designs and Patents Act.
- Do not access, transmit or display any material with a content that is forbidden e.g., sexual material.
- Do not send any commercially sensitive information by e-mail, unless you have been given the authority to do so by the appropriate B&NES contact.

### General

- The Council will not tolerate unacceptable behaviour and will take appropriate action if required.
- Generally, the test of reasonableness should apply - "Would it be reasonable.....?"

# SECTION 1 – THE REQUIREMENT

## 1.1 Overview and Background

The Council wishes to establish a contract for the provision and installation of a replacement slide plus safer surface for Manor Copse play area, Manor Copse Road, Writhlington, Bath BA3 3LA. The Council is managing this procurement in accordance with the Public Contracts Regulations.

This is a goods and services contract being procured under the Open procedure.

We would like to replace the existing slide and surface with a large slide for older children.

The new unit and new wet pour surface will replace the existing stand-alone slide and existing surface. (The existing surface is too thick to re-cover again).

The Council is procuring contract as a central purchasing body for itself.

## 1.2 Strategic Objectives of the Contract

The play area is set within a secluded space and serves the local community living in a mixture of houses and flats. The space is covered in tarmac, with swings and small pieces of play equipment for younger children. The location of the new slide will be on the footprint of the old slide and any gap between the new safer surface and the tarmac needs to be filled in with tarmac.



Map of Manor Copse Play Area, serving the local estate

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Slide at Manor Copse Play Area

### 1.3 Specification

The new slide and surface should meet the following specifications:

- unit to meet BS EN 1176 and the surface to meet BSEN 1177
- the unit framework and underground supports to be made of steel
- the unit height will not exceed 4m
- the unit will not contain any toxic materials that have been recycled from tyres or contain any chemicals that could leach out in contact with children
- the safer surface is to be made of wet pour with sufficient depth to fulfil the various fall heights, as appropriate. The wet pour will be black with a coloured fleck; do not include any decal inserts or colour blocks e.g. stripes
- the finished safer surface will match the level of the surrounding tarmac; any gaps in the surrounding surface to be made good. The tender needs to include disposal of the existing wet pour off site
- a full colour pdf size A3 must be submitted as part of the tender
- The scheme will be evaluated by B&NES Parks Play Team
- The successful company will need to provide a design and method statement for installation of the new equipment with their tender

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- A maintenance manual with inspection regime and replacement programme for parts must be provided with approximate running costs for the first 10 years life of the unit and surface and the expected lifetime of the kit
- The appointed contractor for this work will assume the role of Designer and Contractor under the Construction (Design and Management) Regulations 2015 (CDM 2015). If the appointed contractor has bid as a Prime Contractor and will use third parties/sub-contractors to deliver some or all of the services then it will assume the role of Principle Contractor under the Construction (Design and Management) Regulations 2015 (CDM 2015). The bidding model upon which your quotation is based should be specified in Section 3 – Questionnaire.
- Buried and overhead services such as live electricity lines and water pipes may be located in or around the project site. Care must be taken to avoid the dangers associated with underground services whilst carrying out this work.
- Manor Copse play area is within a public space. The appointed contractor will be required to take appropriate measures to ensure that members of the public are protected from the risks of construction work. The site will require a secure compound and vehicle/machinery movements will need to be carefully managed; no valuable tools / machinery to be left unsecured on site
- The appointed contractor will be required to produce a risk assessment outlining how health and safety risks will be managed during installation
- The play area is not sited in a CAZ zone.

#### 1.4 **Term of Contract/Goods or Service Requirement Date**

The Goods/Service are required by 20th September 2024 or earlier.

#### 1.5 **Estimated Value of Contract**

£30,000 ex VAT.



## **SECTION 2 – INSTRUCTIONS TO BIDDERS**

### **2.1 E-Tender System**

The Council uses the Supplyingthesouthwest e-Tendering system to issue Invitations to Quote and to receive responses from Bidders.

**Suppliers must ensure that they have the most up to date Invitation to Quote document by registering on the e-Tendering system at [www.supplyingthesouthwest.org.uk](http://www.supplyingthesouthwest.org.uk) and expressing an interest. This will enable suppliers to view the latest documents and see any comments and discussions on those documents.**

Assistance in relation to the e-Tender system is available to Bidders via the Supplier Help facility on the Login page. Supplier Guidance documents are also available to view and download. If you are still unable to resolve your issue in using the system you should send an e-mail to [ProContractsuppliers@Proactis.com](mailto:ProContractsuppliers@Proactis.com) explaining the nature of your query.

### **2.2 Register Intent or opt out**

The “Register Intent” button will be greyed out until the mandatory requirement to click on “View ITT” has been carried out.

Once the Quote Information has been viewed Bidders will be able to click on “Register Intent” which will inform the Council of your intention to respond to this opportunity.

If a Bidder does not wish or is unable to submit a Quote and not interested in proceeding, then they should click “Opt Out” to decline the opportunity.

### **2.3 Preparation of Quote**

Bidders must obtain for themselves all information necessary for the preparation of their Quote response and all costs, expenses and liabilities incurred by the Quote in connection with the preparation and submission of the Quote shall be borne by the Bidder, whether their offer is successful or not.

Information supplied to the Bidder by Council staff or contained in Council publications is supplied only for general guidance in the preparation of the Quote. It shall remain the property of the Council and shall be used only for the purpose of this procurement exercise.

Bidders must satisfy themselves as to the accuracy of any such information and no responsibility is accepted by the Council for any loss or damage of whatever kind and howsoever caused arising from the use by Bidders of such information.

Responses to each Quote question should be written concisely and clearly answer the question posed in English.

Bidders will only be able to respond to questions that require an input from them and are located within the Invitation to Quote document attached within the e-Tender system.

#### **2.4 Price Schedule/s**

The Council requires Bidders to complete and upload Price Schedule(s) where requested to do so within the e-Tender system.

All prices shall be in Pounds Sterling and exclusive of VAT.

#### **2.5 Other Documents or Supporting Evidence**

As instructed to do so within the e-Tender system, the Bidder must complete and upload other documentation that may be provided with this Quote process, or upload evidence to support their Quote submission.

Quotes must not be qualified, conditional, or accompanied by statements that could be construed as rendering them equivocal and/or placed on a different footing to those of other Bidders. Only Quotes submitted without qualification, in accordance with this invitation to Quote will be accepted for consideration. The Council's decision on whether a Quote is acceptable or not will be final and the Bidder concerned will not be consulted. If a Bidder is excluded from consideration, the Bidder will be notified.

#### **2.6 Returning Your Completed Quote**

Bidders are required to submit their Quote within the e-Tender system by the time and date in the Procurement Timetable at the end of Section 2.

It is the Bidder's responsibility to ensure that the Quote is submitted and that all the requested documentation has fully uploaded by the closing date and time. Bidders should therefore allow enough time to complete questions and upload their response. Please do not leave it to the last minute.

Failure to complete and upload the requested documentation within the e-Tendering system will result in the Council rejecting the Quote as a Fail / Non-compliant Quote.

Documentation: If you are uploading multiple documents, it is recommended that you zip them using WinZip or WinRAR. Do not include any macro enabled spreadsheets or embedded documents. Acceptable file formats are: *jpg, jpeg, zip, pdf, doc, xls, ppt, docx, xlsx, pptx*.

Late Quote Submissions: Quotes received after the closing date will not be considered. The Council is under no obligation to consider partial submissions.

Emailed or hard copy Quotes will not be accepted.

If the Council issues an amendment to the original Quote, and if it regards that amendment as significant, an extension of the closing date may, at the discretion of the Council, be notified to all Bidders.

The Bidder's Quote response will be checked for completeness and compliance before responses are evaluated. The Council expressly reserves the right to require a Bidder to provide additional information supplementing or clarifying any of the information provided in response to the requests set out in the Quote. However, the Council is not obliged to make such requests.

Bidders shall accept and acknowledge that by issuing this Invitation to Quote, the Council shall not be bound to accept any Quote. The Council reserves the right not to conclude a Contract or Framework Agreement for some or all of the goods, services and/or works for which Quotes are invited.

## **2.7 Quote Validity**

The Quote should remain open for acceptance for a period of 120 days. A Quote valid for a shorter period may be rejected.

## **2.8 Communication**

All contact and communication during this procurement should be submitted in writing through the e-Tendering system.

Bidders should seek to clarify any points of doubt or difficulty using the messaging facility in the Supplyingthesouthwest e-Tender system. They must submit clarifications at least 10 days prior to the closing date of the Quote for the Council to respond. It is not acceptable for Bidders to seek clarifications via telephone or e-mail outside of the e-Tender system. Please check the messaging system before submitting the clarification to make sure it hasn't already been asked/answered.

Where the Council considers any question or request for clarification to be of material significance it may communicate both the query and the response, in a suitably anonymous form, to all interested parties that have expressed an interest in the Quote. Bidders should therefore not include within their question the organisation's name and any potential commercially sensitive information.

## **2.9 Confidentiality**

The Bidder must keep confidential and will not disclose to any third parties any information contained within their bid. They shall not release details other than on an 'In Confidence' basis to those whom they need to consult for the purpose of preparing the response, such as professional advisors or joint Bidders.

The Quote shall not be canvassed for acceptance or discussed with the media, any other Organisation, member/officer of Bath & North East Somerset Council, or their representatives. Any supplier trying to exert any undue influence during the Quote process will be excluded from the process.

## 2.10 Grounds for Rejection

The Council reserves the right to reject or disqualify a Quote and/or its Consortium Members where:

- A Quote is submitted late, is completed incorrectly, is materially incomplete or fails to meet the Council's submission requirements which have been notified to Bidders;
- the Bidder and/or its Consortium Members are unable to satisfy the terms of Regulation 57 of the Public Contracts Regulations and/or fails to certify that it has fulfilled these requirements;
- the Bidder and/or its Consortium Members are guilty of material misrepresentation in relation to its application and/or the process;
- the Bidder and/or its Consortium Members contravene any of the terms and conditions of this document or the ITT; or
- there is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the Bidder and/or its Consortium Members;
- dis-qualification 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.

## 2.11 Disclaimer

Whilst the information in this ITT and supporting documents has been prepared in good faith, it does not purport to be comprehensive nor has it been independently verified.

Neither the Council, nor any relevant other Contracting Bodies, nor their advisors, respective directors, officers, members, partners, employees, other staff or agents:

- make any representation or warranty, express or implied, as to the accuracy, reasonableness or completeness of the ITT; or
- accepts any responsibility for the information contained in the ITT or for their fairness, accuracy or completeness of that information nor shall any of them be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication.

Any Framework Agreement or Contract concluded as a result of this ITT shall be governed by English law.

## 2.12 Freedom of Information Act

The Council must adhere to the 'Freedom of Information Act 2000'. The Act allows access to information held by the Council, including Quote documents and Contracts awarded to its suppliers and contractors.

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There are some limited exemptions, including information, the disclosure of which would be an actual breach of confidence or likely to prejudice the commercial interests of any person, or information that constitutes a trade secret.

Bidders are requested to state which part, if any, of the information supplied with their Quotes is confidential or commercially sensitive or should not be disclosed in response to a request for information. Where Bidders state that any information is confidential or commercially sensitive, they must also state why they consider the information to be confidential or commercially sensitive.

Bidders' statements will be considered in the context of the exemptions provided for under the Act and the Council is unable to give any guarantee that the information in question will not be disclosed.

### **2.13 Transparency**

Bidders should be aware that if they are awarded a Contract, details about the resulting Contract will be published on the Council's website in accordance with the Local Government Transparency Code 2015. For further details of what the Council must publish, please visit the Local Government Association website at [www.local.gov.uk](http://www.local.gov.uk)

In some circumstances limited redactions will be made to some contract details prior to publication in order to comply with the Data Protection Act and for the protection of national security.

In submitting a Quote, the Bidder accepts the Council's right to publish details of expenditure as well as information contained within the Quote.

### **2.14 Equality**

The Council is committed to equality of opportunity for everyone and believes that the diversity of the local community is a major strength that contributes to the social and economic prosperity of the area. This extends to its commercial relationships with its suppliers.

All suppliers will be treated fairly and equitably before, during and after the Quote procedure. Should you have any concerns about the way in which an officer of the Council has treated you, then you should, in the first instance, contact the Head of Strategic Procurement & Commissioning.

### **2.15 Ethical Procurement**

The Council will consider the impact of economic and social factors along with price and quality and must ensure that the practices its Suppliers and Contractors undertake are above reproach.

Any indications of unacceptable practices in the supply chain such as fraud, corruption, modern-day slavery, human trafficking and child labour will be challenged.

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Where a Contract exists between the Council and a Supplier or Contractor and it is found that any of the practices above exist, then the Council will be entitled to terminate such a Contract in accordance with its terms and conditions.

## 2.16 Climate and Nature Emergency

Climate change impacts the current and future wellbeing of our local residents and so the Council has decided to take urgent action. In 2019, the Council declared a climate emergency across Bath & North East Somerset and is committed to playing its part by adopting a policy of net zero carbon by 2030.

The key areas that will be tackled by the Council under its Climate Emergency Strategy are:

- Support transition to a green local economy;
- Enable a major shift to walking, micro mobility (cycling), car-sharing, buses, and rail;
- Carbon neutral development and energy efficiency retrofitting;
- Increase natural environment carbon stores and biodiversity;
- Carbon neutral, social and affordable housing;
- Energy efficient homes;
- Improvement to the transport infrastructure.

## 2.17 Procurement Timetable

The indicative timetable for this procurement is set out below. This is intended as a guide and, whilst the Council does not intend to depart from the timetable, it reserves the right to do so at any time.

Date or Target Date	Activity
<b>21/05/2024</b>	ITT issued to potential suppliers
<b>06/06/2024</b>	Closing date for clarification questions to be submitted
<b>10/06/2024</b>	Council responds to clarification questions
<b>19/06/2024 noon</b>	<b>Closing date and time for receipt by the Council of Bidders responses to the ITT</b>
<b>11/07/2024</b>	Evaluation of the ITT responses by Tender panel & supplier financial accounts by Internal Audit
<b>18/07/2024</b>	Award decision made and award letter issued
<b>19/07/2024</b>	Contract award concluded
<b>22/07/2024</b>	<b>Commencement Date of Contract</b>

## 2.18 Required documents

The table below indicates which documents are included in this Invitation to Quote. Bidders should ensure that they complete and upload ALL the required documents within the Supplyingthesouthwest e-Tendering system. Failure to complete and return documents may result in a reduction in the overall score for the Quote.

<b>DOCUMENT TITLE</b>	<b>COMPLETE AND UPLOAD</b>
Section 1 – The Requirement including specification	x
Section 2 – Instructions to Bidders	x
Section 3 – Questionnaire	✓
Section 4 – Pricing Schedule	✓
Section 5 – Evaluation and Award	x
Appendix 1 - Non-Collusion Certificate	✓
Appendix 2 - Terms & Conditions of Contract	x
Appendix 3 - Maps and photos of the site	x

## 2.19 Terms & Conditions

The Council's Terms and Conditions of Contract are attached.

These are the terms that will apply to this contract. When you submit your Quote response, you are agreeing to be bound by these terms.

## **SECTION 3 - QUESTIONNAIRE**

The purpose of the Questionnaire is to enable the Council to assess supplier suitability for providing goods and services.

### **Notes for completion**

- i. Please ensure that all questions are completed in full, and in the format requested. Failure to do so may result in your submission being disqualified. If it does not apply to you, please state clearly 'N/A'.
- ii. Should you need to provide additional Appendices in response to the questions, these should be numbered clearly and listed as part of your declaration.
- iii. Please return a completed version of this document with your Quote submission using the e-procurement system.

### **Verification of Information Provided**

- iv. Whilst reserving the right to request information at any time throughout the procurement process, the Council may enable the Supplier to self-certify that there are no mandatory/ discretionary grounds for excluding their organisation. The Council will request evidence from the winning Contractor only after the final Quote evaluation decision.

### **Sub-contracting arrangements**

- v. The Supplier should advise in a separate appendix the names of sub-contractors, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.

### **Confidentiality**

- vi. The Council reserves the right to contact the named customer contact regarding the contracts included in section 3. The named customer contact does not owe the Council any duty of care or have any legal liability, except for any deceitful or maliciously false statements of fact.
- vii. The Council confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the Public Contract Regulations.



## SELECTION QUESTIONNAIRE

<b>3.1 Supplier details</b>	<b>Answer</b>	
Full name and address of the Supplier		
Registered company/charity number		
Registered VAT number		
Name of parent company		
Please mark 'X' in the relevant box to indicate your trading status	i) a public limited company	<input type="checkbox"/> Yes
	ii) a limited company	<input type="checkbox"/> Yes
	iii) a limited liability partnership	<input type="checkbox"/> Yes
	iv) other partnership	<input type="checkbox"/> Yes
	v) sole trader	<input type="checkbox"/> Yes
	vi) other (please specify)	<input type="checkbox"/> Yes
Please mark 'X' in the relevant boxes to indicate whether any of the following classifications apply to you	i) Voluntary, Community and Social Enterprise (VCSE)	<input type="checkbox"/> Yes
	ii) Small or Medium Enterprise (SME) <small>1</small>	<input type="checkbox"/> Yes
	iii) Sheltered workshop	<input type="checkbox"/> Yes
	iv) Public service mutual	<input type="checkbox"/> Yes
<b>Bidding model</b>		
<b>Please mark 'X' in the relevant box to indicate whether you are;</b>		
a) Bidding as a Prime Contractor and will deliver 100% of the key contract deliverables yourself	<input type="checkbox"/> Yes	
b) Bidding as a Prime Contractor and will use third parties to deliver <u>some</u> of the services	<input type="checkbox"/> Yes	

<b>3.2 Contact details</b>	
Supplier contact details for enquiries	
Name	
Postal address	
Phone	
Mobile	
E-mail	

<b>3.3</b>	<b>Technical and Professional Ability</b>
<b>a.</b>	<p><b>Relevant experience and contract examples</b></p> <p>Please provide details of up to two contracts, in any combination from either the public or private sector; voluntary, charity or social enterprise (VCSE) that are relevant to our requirement. VCSEs may include samples of grant-funded work. Contracts for supplies or services should have been performed during the past three years.</p> <p>The named contact provided should be able to provide written evidence to confirm the accuracy of the information provided below.</p>

	<b>Contract 1</b>	
<b>Name of customer organisation</b>		
<b>Point of contact in the organisation</b>		
<b>Position in the organisation</b>		
<b>E-mail address</b>		
<b>Description of contract</b>		
<b>Contract Start date</b>		
<b>Contract completion date</b>		
<b>Estimated contract value</b>		

<b>3.4</b>	<b>Additional Project Related Minimum Standards</b>	
i)	Proof of certification of the unit to BSEN 1176	
ii)	Proof of certification of the surface to BSEN 1177	

## TENDER QUESTIONNAIRE

Suppliers are required to answer the following questions comprehensively and provide evidence, where requested to support their answer. Please ensure you adhere to any word counts or instructions. The questions in this Quote Questionnaire will be scored in accordance with 5.2 Award Criteria and Weightings.

<b>9.1</b>	<b>Project Related Scored Questions</b>
i)	What is the expected cost of maintenance over the first 10 years?
ii)	What is the expected life of the kit?

## Climate Emergency

<b>9.2</b>	<b>Climate Emergency</b>
i)	If successful, what will you do to actively reduce your carbon footprint for this contract?
ii)	How can you assist B&NES in achieving its zero-carbon policy through this contract?

## SECTION 4 – PRICING SCHEDULE

### 4.1 Pricing

Bidders must complete the pricing spreadsheet below with all the proposed charges/prices to provide the requirement(s) in accordance with the specification. This may include supplementary spreadsheets to provide transparency of the metrics used for calculating fixed, minimum and variable charges.

Please complete the pricing details in full as failure to include all requested information may result in a reduction in your score.

The Council reserves the right to request further clarification of the pricing information by sending the Bidder a clarification message through the e-tendering system.

All charges/prices must be in pounds sterling and should be exclusive of VAT.

All pricing information will form the basis of any resulting Framework Agreement or Contract.

Item	Total Cost
1. Site management, deliveries, removal of packaging + waste etc, site security, welfare (5 %)	
2. Quality of design and of new play equipment and safer surfacing (40 %)	
3. Ecological and climate change impacts of manufacture and installation (5 %)	
4. Method Statement and Risk Assessment (5%)	
5. Durability, maintenance, construction, materials, guarantees (40%)	
6. Technical assistance after sale (5%)	
<b>TOTAL PRICE</b>	

## SECTION 5 – EVALUATION AND AWARD

### 5.1 Evaluation of Quote

The award decision will be based on the evaluation criteria as outlined in 5.2 The winning Bidder is deemed to have submitted the Most Economically Advantageous Tender. Evaluations will be carried out by Council Officers who will follow the agreed process in accordance with the Council’s procedures.

This Invitation to Quote is in two parts:

- i. The Selection Questionnaire
- ii. The Tender Questionnaire

The response to the Selection Questionnaire will be evaluated first. Bidders MUST pass all questions in this section. Failure to pass any of the questions in the Selection Questionnaire will result in the Quote being disqualified and the Tender Questionnaire will not be evaluated.

### 5.2 Award Criteria & Weightings

Submitted Quotes will be evaluated by officers of the Council using the award criteria and weightings detailed in the table below.

<b>AWARD CRITERIA &amp; WEIGHTINGS</b>	
<p>All questions are mandatory unless stated otherwise. Bidders must submit a response to each one. Failure to complete any question may result in a Fail as Evaluators will not be able to fully evaluate the Quote</p>	
<p><b>Selection Questionnaire</b></p> <p><b>Pass / Fail:</b> The Selection Questionnaire has Pass/Fail questions. Sections or questions scored as ‘Fail’ will result in the disqualification of the Quote and it will not proceed to full evaluation.</p>	
<p><b>Tender Questionnaire</b></p>	
<p><b><u>Quality</u></b> 50 %</p>	<p><b>Scored Questions:</b> Where responses to questions are to be scored, the following scores are applied by Evaluators to a Bidder’s submitted responses. The scores are awarded dependent on the level of evidence provided to each question. A score of 3 represents an acceptable level of evidence.</p> <p>Sections or questions scored as 0 or 1 may result in the Quote not proceeding to full evaluation or If the Bidder receives a score of either 0 or 1 on any question (following application of weightings to</p>

each sub criteria), the Council reserves the right to exclude that bidder from further consideration.

**In addition to the scoring of the main tender questionnaire, the 0 – 5 criteria detailed below will also be used to score Social Value method statements.**

0 – No response and/or evidence is unacceptable or non-existent, or there is a failure to properly address any issue. The Council does not have any confidence in the Bidder's experience, capacity and ability to meet its requirements.

1 – The response and/or the evidence are deficient (or not relevant) in the majority of areas and the Council has a low level of confidence in the Bidder's experience, capacity and capability to meet its requirements.

2 – Large portions of the response are not satisfactory and/or are not supported by a satisfactory level of evidence and the Council has limited confidence in the Bidder's experience, capacity and capability to meet its requirements.

3 – The response is satisfactory and supported by an acceptable standard of relevant evidence but with some reservations/issues not addressed. The Council is satisfied with the Bidder's experience, capacity and capability to meet its requirements.

4 – The response is comprehensive and supported by a good standard of relevant evidence and provides the Council with a good standard of confidence in the Bidder's experience, capacity and capability to meet its requirements.

5 – The standard of the response is very high, and the relevance of the response and the supporting evidence is very comprehensive and provides the Council with a very high level of confidence in the Bidder's experience, capacity and capability to meet the Council's requirements.

**Applying weightings to scores**

The total weighting will be 100% which is split between Price and Quality. The split is shown in the left-hand column of this table.

Individual scored questions will be weighted to account for their level of importance. Each of these will be scored out of 5 (see above) with a weighting applied to that score to produce a weighted score. e.g. if a question is weighted as 20% and scored as 5/5 then the weighted score would be 20/20. If the score were 4/5, then the weighted score would be 16/20.

	<p>All weighted scores are added together to achieve a total weighted score for the scored questions. The total is then multiplied by the quality weighting above to get a final weighting for overall quality of the bid.</p> <p>The attached blank score sheet will show the calculations.</p>
<p><b>Price</b> 50%</p>	<p><b>Price Evaluation:</b></p> <p>The scoring is carried out within an Excel spread sheet outside of the e-Tender system.</p> <p>All price bids are compared against the lowest bid to reach the percentage difference from the lowest bid.</p> <p>Example if the price weighting were 40%, the calculation would be:</p> <p><math>(40 * \text{lowest price}) / \text{bid price}</math></p> <p>The lowest price bid would receive the full 40 points.</p> <p>A negative percentage figure for a lump sum price that is over 100% higher than the lowest price bid will receive a price score of zero. B&amp;NES Council will not award a negative price score</p> <p><b>Abnormally Low Quotes</b> In the event of the Council having received an abnormally low Quote, it will adopt the procedure in Regulation 69 of the Public Contracts Regulations</p>
<p><b>Total Weighted Score</b></p>	<p>The weighted scores for Quality and Price are added together to get a final total score out of 100.</p> <p>In the event of a tie-break, the Council will award to the Bidder with the highest overall Quality score.</p> <p>For contracts below £50,000 in value, the Council may complete an assessment of the winning bidder's financial accounts for due diligence purposes.</p>

### 5.3 Clarifications

Upon examination of the Quotes, the Evaluation Panel may request clarifications from the Bidders. The question(s) will be submitted on the e-Tendering system and Bidders must respond in the same manner.

If clarifications are received from Bidders outside the e-Tendering system, the Panel will ask them to redirect them through the e-tendering system.

It may be necessary to also hold a clarification meeting separately with the Bidders for due diligence purposes. If, as a result of these meetings, the Evaluation Panel decide that the initial scores require adjustment, then the Bidders will be requested to submit a clarification response via the e-tendering system. The Evaluation Panel will keep notes of the reasons why the scores have been adjusted.

#### **5.4 Final score**

Both the quality and price scores from the Quote and clarifications (where relevant) will be combined to produce a total final score and the Bidder with the best overall total final score shall be identified as the winning Bidder.

#### **5.5 Customer References**

References may be taken up for the winning Contractor. These will not be scored and will be for due diligence purposes only. The Council will consider whether to award the contract or seek further clarifications from the Bidder.

#### **5.6 Right to Not Award**

The Council reserves the right to terminate this procedure without any decision to award and will not be liable for any costs incurred by the Bidders in preparing their responses.

#### **5.7 Right to Terminate Subsequent Contract**

The Council reserves the right to terminate any resulting Contract, if it is discovered that the Bidder made any material misrepresentation and/or have not notified to the Council about any material changes in relation to the information provided in the Quote submission.

#### **5.8 Contract Award**

Once the authority to award the Contract has been granted, the Evaluation Panel will award the Contract. The successful company will receive a written notification letter that the Council is intending to award them the business.

Unsuccessful companies will receive a written notification that they have been unsuccessful, and that the Council intends to award the Contract to another bidder.

#### **5.9 Contract Acceptance**

Upon the Council's acceptance of a Quote, a Contract shall thereby be formed and become binding on both parties. Bidders should not submit a Quote unless they agree to be bound by the form of contract issued with that Quote.

Invitation to Tender for less than £50K



The successful Bidder must not undertake work without written notification that they have been awarded a Contract and are required to start work.

#### 5.10 **Withholding of Confidential Information**

The Council will be careful not to disclose confidential information of the successful Bidder and may withhold debriefing information in certain circumstances including where disclosure would be contrary to the public interest, would prejudice the legitimate commercial interests of any supplier, or might prejudice fair competition.

## **SECTION 6 - APPENDICES**

### **Appendices**

1. Non-Collusion Certificate
2. Terms and Conditions of Contract

**APPENDIX 1**

**FAILURE TO SUBMIT THIS NON-COLLUSION CERTIFICATE WHEN RESPONDING TO THE QUOTE WILL RESULT IN YOUR QUOTE NOT BEING EVALUATED**

**NON-COLLUSION CERTIFICATE**

I, the undersigned, in submitting the accompanying Quote to

(Name of Client) .....

.....

in relation to (details of Quote and reference) .....

.....

certify on behalf of (name of Bidder) .....

that, with the exception of any information attached hereto (see \* below):

- 1) this Quote is made in good faith, and is intended to be genuinely competitive;
- 2) the amount of this Quote has been arrived at independently, and has not been fixed, adjusted or influenced by any agreement or arrangement with any other undertaking, and has not been communicated to any competitor;
- 3) we have not entered into any agreement or arrangement with any competitor or potential competitor in relation to this Quote;
- 4) I have read and understood the contents of this Certificate, and I understand that knowingly making a false declaration on this form may result in legal action being taken against me.

In this certificate, the word 'competitor' includes any undertaking who has been requested to submit a Quote or who is qualified to submit a Quote in response to this request for Quotes, and the words 'any agreement or arrangement' include any such transaction, whether or not legally binding, formal or informal, written or oral.

\* Information is/is not attached hereto (delete as appropriate)

SIGNED: .....

FOR AND ON BEHALF OF: .....

DATE: .....

## APPENDIX 2

### TERMS & CONDITIONS

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# Bath & North East Somerset Council

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## Improving People's Lives

### PURCHASE ORDER CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS AND/OR SERVICES

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#### 1. DEFINITIONS

In these conditions defined terms have capital initials.

- 1.1 "Agreement" means this contract;
- 1.2 "Business Day" means any day other than a Saturday, Sunday or a public or bank holiday in England and Wales.
- 1.2 "Council" means the Council issuing and named on the Purchase Order.
- 1.3 "Council Representative" means the person issuing the Purchase Order on behalf of the Council or subsequently advised in writing by the Council.
- 1.4 "Clause" means the clause referred to under these Conditions of Contract for the Supply of Goods and/or Services.
- 1.5 "Data Protection Legislation" (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent ] 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;
- 1.6 "Data Protection Impact Assessment" an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
- 1.7 Controller , Processor , Data Subject , Personal Data , Personal Data Breach , Data Protection Officer take the meaning given in the GDPR;
- 1.8 "Data Loss Event" any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
- 1.9 "Data Subject Access Request" a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
- 1.10 "Defect" means a part of the Goods and/or services that are not in accordance with the Purchase Order.
- 1.11 "Delivery" is when the Supplier has done all of the work the Purchase Order requires it to do.

- 1.12 "Delivery Date" is the date stated in the Purchase Order for Delivery or, where the Purchase Order requires Delivery within a stated period, the date when the period has elapsed following the date of the Purchase Order.
- 1.13 "Delivery Address" means the place or places stated in the Purchase Order for provision of the Goods and/or Services.
- 1.14 "DPA 2018" Data Protection Act 2018;
- 1.15 "Force Majeure" means any unforeseeable circumstance preventing either Party from performing any or all of its obligations under this Purchase Order which arises from or is attributable to acts or events beyond the control of the Party so prevented including, without limitation, acts of war, civil war, strikes, lockouts (but for the avoidance of doubt excluding strikes, lockouts or other industrial disputes which have their origin within the employees of the Party so prevented or by any default on the part of the Party's suppliers or subcontractors) riot, civil commotion, compliance with any Applicable Law or governmental order, rule, regulation or direction that was not in force at the time the Purchase Order was placed, nuclear and radioactive explosion and contamination from any nuclear utility or nuclear weapon and the effects of which a Party could not have avoided and could not have been overcome by the use of reasonable diligence.
- 1.16 "GDPR" the General Data Protection Regulation (Regulation (EU) 2016/679);
- 1.17 "Goods and/or Services" means the Goods and/or Services including works described in the Purchase Order and 'Goods' or 'Services' shall be construed accordingly.
- 1.18 "Guarantee Period" means a period of eighteen months following Delivery or, in respect of work to remedy a Defect, eighteen months following the remedy or as stated in the Purchase Order or in any Council agreement under which the Purchase Order is issued.
- 1.19 "Intellectual Property Rights" means rights in any patent, copyright, registered or unregistered design, trademark and any application for any of the foregoing, any rights in respect of confidential information and any other intellectual property right.
- 1.20 "LED" Law Enforcement Directive (Directive (EU) 2016/680);
- 1.21 "Order Value" means the price of the Goods and/or Services as stated in the Purchase Order.
- 1.22 "Party" or "Parties" means the Council and/or the Supplier.
- 1.23 "Protective Measures " appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
- 1.24 "Provider Personnel" all directors, officers, employees, agents, consultants and contractors of the Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;
- 1.25 "Provide the Goods and/or Services" or "Providing the Goods and/or Services" means to do the work necessary to discharge the Supplier's obligations under the Purchase Order.
- 1.26 "Purchase Order" means a contract made between the Council and the Supplier for the provision of Goods and/or Services stated in the 'Purchase Order' and includes the Purchase Order Conditions, the Specification and any documents to which they refer.
- 1.27 "Purchase Order Conditions" are these Conditions of Contract for the Supply of Goods and/or Services.
- 1.28 "Specification" means the drawings, patterns, specification, samples (if any) and the description of the Goods and/or Services contained or referred to in the Purchase Order.
- 1.29 "Sub-processor "any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.
- 1.30 "Supplier" means the person, firm, Council or other organisation with whom the Purchase Order is made, including its subcontractors, suppliers or persons engaged to provide the Goods and/or Services.

1.31 The headings in these Purchase Order Conditions shall not affect the interpretation thereof.

1.32 Words in the singular also mean the plural and vice versa.

## **2. SUPPLIER'S OBLIGATIONS**

2.1. The Supplier shall:-

- 2.1.1. Provide the Goods and/or Services in accordance with the requirements, dates and periods shown in the Purchase Order;
- 2.1.2. achieve Delivery of Goods and/or Services by the Delivery Date;
- 2.1.3. ensure that the quantity and description of the Goods and/or Services will be as set out in the Purchase Order;
- 2.1.4. comply with the Council's written instructions and reasonable directions relating to the Goods and/or Services or otherwise to the Purchase Order;
- 2.1.5. mark any consignment of Goods with the Supplier's name and address, the Purchase Order number and the Delivery Address shown in the Purchase Order and include a packing note with a description of the Goods and the weight, number or volume of the Goods;
- 2.1.6. be deemed to have made all necessary enquiries and ascertained the technical, logistic and operational requirements for Providing the Goods and/or Services at the Delivery Address prior to Delivery;
- 2.1.7. warrant that it has full clear and unencumbered title to all Goods provided under the Purchase Order;
- 2.1.8. unless otherwise stated in the Purchase Order, submit any design it undertakes to the Council for acceptance, which will not be unreasonably delayed by the Council, prior to proceeding further with Providing the Goods and/or Services.

2.2. The Supplier acknowledges that precise conformity of the Goods and/or Services with the Purchase Order is of the essence of the contract and the Council will be entitled to reject the Goods and/or Services or terminate the Purchase Order if the Goods and/or Services are not in conformance with the Purchase Order.

## **3. HEALTH AND SAFETY**

3.1. Where the Purchase Order requires the Supplier to provide Services at the Delivery Address, the Supplier shall:-

- 3.1.1. ensure that a competent supervisor is in attendance for the duration of the Services;
- 3.1.2. ensure that a safe system of work (including risk assessments and method statements) has been submitted to the Council Representative for agreement prior to the commencement of the Services;
- 3.1.3. ensure that all operatives under its control are competent and have received a site-specific induction which include the Council's site rules and procedures;
- 3.1.4. ensure suitable and sufficient welfare and first aid arrangements are in place prior to commencement of the Services;
- 3.1.5. provide the Council Representative with emergency arrangements and contacts prior to commencement of the Services;
- 3.1.6. report all incidents to the Council Representative in accordance with the relevant Council procedure, a copy of which will be provided on request;
- 3.1.7. inform the Council Representative of any changes in method of working or changes in design which must be agreed with a revised safe system of work recorded and communicated accordingly.

## **4. CONFIDENTIALITY AND DATA PROTECTION**

- 4.1. The Supplier shall keep confidential and shall not disclose or reproduce any information or data (including without limitation personal data) processed, collected, obtained, created or developed by the Supplier for the Council or otherwise made available to the Supplier by the Council in connection with the Purchase Order or which otherwise becomes known to the Supplier through the Supplier's performance of the Purchase Order. The Supplier shall not mention the Council's name in connection with the Purchase Order or disclose the existence of the Purchase Order in any publicity material or other similar communication without prior written consent of the Council's Communications Department.
- 4.2. The Supplier is only permitted to use confidential information and data described in Clause 4.1 internally for the purpose of providing the Goods and/or Services and shall disclose it only to its employees, consultants or professional advisors who have a need to know the same for this purpose. The Supplier shall procure that any person receiving confidential information shall observe the provisions of this Clause 4.0 (Confidentiality).
- 4.3. The Supplier shall ensure it complies with the Data Protection Act 2018 and shall use appropriate technical and organisational measures to protect confidential information and data against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, use and/or disclosure. The Supplier shall indemnify the Council against all liabilities, claims, damages, costs, expenses or proceedings whatsoever incurred by the Council as a result of the Supplier breaching any provision of this Clause 4.
- 4.4. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is determined by the Customer and may not be determined by the Contractor.
- 4.5. The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 4.6. The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 4.7. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with this clause 4 unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that :
    - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement;
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Contractor's duties under this clause;
      - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
      - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or

- LED Article 37) as determined by the Customer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
    - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 4.8 Subject to clause 4.6, the Contractor shall notify the Customer immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- or
- (f) becomes aware of a Data Loss Event.
- 4.9 The Contractor's obligation to notify under clause 4.5 shall include the provision of further information to the Customer in phases, as details become available.
- 4.10 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- (a) the Customer with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Customer following any Data Loss Event;
  - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 4.11 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Customer determines that the processing is not occasional;
  - (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 4.12 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 4.13 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 4.14 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Customer;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1 such that they apply to the Sub-processor; and
  - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 4.15 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 4.16 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).



- 4.17 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **5. FREEDOM OF INFORMATION**

- 5.1 The Contractor acknowledges that the Council is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

## **6. PROTECTION OF PUBLIC FUNDS**

- 6.1 The Contractor acknowledges that the Council is under a duty to protect the public funds it administers and that it may use information provided by the Contractor for the purpose of prevention and detection of fraud. The Council may be obliged to share this information with bodies responsible for auditing or administering public funds, for example, the National Fraud Initiative.

## **7. QUALITY AND MARKING**

- 7.1. The Goods and/or Services shall be of satisfactory quality and fit for the purpose for which they are required and shall meet the quality, description and performance stated or referred to in the Purchase Order and shall be equal in all respects to submitted and accepted designs, samples and patterns.
- 7.2. The Goods and/or Services shall comply with all applicable standards, regulations and other legal requirements and with the Specification.
- 7.3. The Supplier shall maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of the Council, its customs, relevant EU Standards and statutory and regulatory bodies;
- 7.4. Goods shall be suitably and sufficiently marked and labelled with information and advice necessary to instruct and warn of any hazards to health and/or safety.
- 7.5. Services will be carried out with all reasonable skill, care and diligence, utilising appropriate equipment and materials and following good industry practice.

## **8. INTERPRETATION OF SPECIFICATIONS**

- 8.1. Any discrepancies or difference between the Parties as to the intent or meaning of anything within the Purchase Order shall be subject to the decision of the Council which shall be binding on both Parties.
- 8.2. The Supplier shall provide all labour, designs, patterns, implements, carriage and all minor details whether or not described in the Specification or shown on the drawings, but which may be necessary in order to provide the Goods and/or Services.

## **9. INTELLECTUAL PROPERTY**

- 9.1. The Supplier grants to the Council a non-exclusive, royalty-free, perpetual, irrevocable, world-wide licence (with the right to sub-license) to use, copy, modify, adapt and otherwise exploit the Supplier Intellectual Property Rights in order to use the Goods and/or Services or undertake other work at the Delivery Address.
- 9.2. The Supplier shall indemnify the Council against all actions, claims, damages, liabilities, losses, costs, expenses or proceedings arising from any infringement or alleged infringement of any Intellectual Property Right, by the use or possession of any part of the Goods and/or Services.

## **10. COMMUNICATION AND NOTICES**

- 10.1. Each instruction, submission, notification, reply and other communication which the Purchase Order requires is communicated in English and in a form, which can be read, copied and recorded.

- 10.2. Notices from the Supplier in relation to Clause 20.0 (Termination and Cancellation) and Clause 21.0 (Force Majeure) shall be sent by recorded delivery post, addressed to the Council, at the Council's registered address and a copy sent immediately to the Council Representative by either email or fax and followed up with a signed copy by first class post. Notices relating to other matters shall be sent to the Council Representative by first class post or email. Unless stated otherwise, notices from the Council to the Supplier shall be sent by first class post to the other Party's last known place of abode or principal place of business or registered office or by email. Notices posted by either Party shall be deemed to have been received three Business Days after the date of posting.

## **11. VARIATIONS**

- 11.1. The Council Representative may instruct written variations to the Purchase Order changing the Goods and/or Services, the Delivery Date and the Delivery Address giving reasonable notice to the Supplier where possible. The Supplier shall comply with such instructions.
- 11.2. The Order Value shall be amended by the value of variations. Variations shall be valued by the Council with reference to the Order Value and any prices within it or, if no suitable prices exist, at reasonable market rates or the Council may invite the Supplier to provide a quotation for the cost of the variation.
- 11.3. Should the Council prevent the Supplier from meeting the Delivery Date, by virtue of a variation or for any other cause, the Council shall make a suitable adjustment to the Delivery Date and notify the Supplier accordingly.
- 11.4. No variation to the Purchase Order shall have effect unless it has been agreed and confirmed in writing by the Council Representative.

## **12. PAYMENT**

- 12.1. Unless otherwise stated in the Purchase Order, the Supplier shall send to the Council, following Delivery, a detailed priced invoice for the Order Value, stating the Purchase Order number and item numbers.
- 12.2. The Council shall pay the Order Value to the Supplier in the manner stated in the Purchase Order or if no manner is stated, following Delivery and against the Supplier's correctly submitted invoice. Unless otherwise stated in the Purchase Order, payment will be made within 30 days from the date of an undisputed invoice.
- 12.3. Payment by the Council to the Supplier will be made by Bank Automated Clearing System (BACS) transfer
- 12.4. Interest on late payment may be claimed by the Supplier at the rate of 2% p.a. above the base lending rate of HSBC Bank plc, calculated on a daily basis and compounded annually.
- 12.5. Unless otherwise stated in the Purchase Order, the Order Value and any prices forming part of it are exclusive of Value Added Tax.

## **13. RECOVERY OF SUMS DUE AND SET OFF**

- 13.1. The Council may set off any sum of money or obligation due to the Supplier under this Purchase Order or any other order against any sum of money or obligation owed by the Supplier to the Council under this Purchase Order or any other order or other agreement between the Parties.
- 13.2. Where no sum of money or obligation is due to the Supplier under this Purchase Order or any other order the Council may invoice the Supplier for any sum of money or obligation owed by the Supplier to the Council under this Purchase Order or any other order or other agreement between the Parties.

## **14. INSPECTION AND TESTING**

- 14.1. The Supplier shall carefully inspect and test the Goods and/or Services for compliance with the Specification. The Supplier shall, if requested by the Council, give the Council reasonable notice of such tests and allow the Council to witness the tests. If requested, the Supplier shall supply the Council with certificates of inspections and tests.
- 14.2. The Council may inspect and test the Goods and/or Services during manufacture, processing, transit, storage or installation and the Supplier shall provide facilities as may reasonably be required by the Council.

- 14.3. Where site tests are required by the Specification they shall be carried out after installation and at least seven day's notice in writing shall be given to the Council Representative inviting a delegate of the Council to witness the tests. Where any site test is failed, any necessary adjustments shall be carried out by the Supplier and the tests shall be repeated in the presence of the Council delegate at a time agreed with the Council.
- 14.4. The Council may use other suppliers to carry out the necessary adjustments and/or modifications if the site tests are not repeated and passed in a reasonable time. The Council may recover the additional cost of using such other suppliers from the Supplier.
- 14.5. Upon request by the Council, the Supplier shall, at the Supplier's sole expense, grant the Council and/or any of the Council's nominated sub-contractors free and unrestricted access to the Supplier's premises and records as the Council may reasonably require without limitation for the purposes of inspection of storage, plant, equipment, transport, data, accounts and other records and assets relating to the Goods and/or Services for the purposes of verifying the Supplier's compliance or ability to comply with its obligations under the Purchase Order. Such records shall be maintained for a minimum of 6 (six) years following the performance of the obligation under the terms of the Purchase Order.

## **15. DELAY AND DAMAGES**

- 15.1. The Council may recover from the Supplier all additional cost, loss and expense reasonably incurred by the Council which is properly attributable to the Supplier's failure to meet the Delivery Date (save where Clause 15.3 applies) or its breach of the Purchase Order or arises from termination of the Purchase Order pursuant to Clause 20.3 including, without limitation, all additional costs incurred by the Council in obtaining the Goods and/or Services (or any part of them) in substitution from an alternative supplier.
- 15.2. Failure by the Supplier to provide the Goods and/or Services within the required time will constitute a breach of contract under Clause 20.1.1 of the Purchase Order Conditions.
- 15.3. Where liquidated damages for delay are stated in the Purchase Order to be applicable and an amount payable in respect of liquidated damages is included, in the event that the Supplier fails to meet the Delivery Date, the Supplier shall pay to the Council the liquidated damages at the rate stated in the Purchase Order for the period from the Delivery Date until Delivery.

## **16. SUPPLIER'S RESPONSIBILITY FOR THE GOODS AND/OR SERVICES**

- 16.1. Until Delivery, risk in the Goods and/or Services shall rest with the Supplier.
- 16.2. Unless otherwise agreed in writing all tools, patterns, drawings, designs and other documents or equipment supplied by, or on behalf of, the Council shall be and remain the property of the Council and the Supplier shall be responsible for their safe custody and return upon request of the Council or immediately upon termination. They shall not be disposed of by the Supplier to any third party or used except for the purpose of Providing the Goods and/or Services.
- 16.3. Property in the Goods shall pass to the Council when they are delivered to the Delivery Address and the Goods are found by the Council to be in accordance with the Purchase Order.
- 16.4. In the Provision of Goods and/or Services the Parties do not intend on creating any relationship of employer and employee or otherwise between the Supplier personnel and the Council. The Supplier shall at all times remain responsible for effecting all statutory deductions, insurances and accruals in respect of the Suppliers' personnel.

## **17. DEFECTS**

- 17.1. Defects arising prior to the end of the Guarantee Period shall be remedied by the Supplier at the Supplier's cost in accordance with the Council's reasonable instructions, or if not instructed, as soon as reasonably practicable and in any event within one month of notification of Defect. The Council may elect whether the remedy is achieved by repair, replacement or rework.
- 17.2. Other than at the Council's discretion, defective Goods will only be returned to the Supplier once replacement Goods have been provided. Goods returned shall be sent carriage forward to the Supplier at the risk and cost of the Supplier. Repair or replacement Goods shall themselves be subject to the provisions of the Guarantee Period.
- 17.3. If the Supplier fails to remedy a Defect in accordance with this Clause 16, the Council may, having given written notice to the Supplier, assess the cost of having the Defect remedied by another supplier and recover the reasonable costs incurred from the Supplier.
- 17.4. The Parties may agree that a Defect will not be remedied in return for a reduction in the Order Value. A variation shall be made confirming the agreement and the reduction to the Order Value.

## **18. ASSIGNMENT**

- 18.1. The Council may assign or transfer the Purchase Order or any part of it at will.
- 18.2. The Supplier may not sub-contract, assign or transfer the Purchase Order or any part of it without the consent in writing of the Council. Such consent shall not relieve the Supplier from any liability or obligation under the Purchase Order. The Supplier acknowledges and agrees that the Council may reasonably withhold its consent to such a proposal if it, acting in good faith, considers that the Suppliers proposal to sub-contract, assign or transfer its obligations under this Purchase Order is to such number of sub-contractors, or to such a degree or in such a manner as might jeopardise the efficient or effective performance of the Suppliers obligations or delivery of the Goods and/or Services.

## **19. INDEMNITY AND INSURANCE**

- 19.1. Unless otherwise stated in the Purchase Order, the Supplier shall effect and maintain insurance for:
  - 19.1.1. Public liability insurance in respect of loss of or damage to property, including property owned by the Council, (other than the Goods and/or Services) and for bodily injury to or death of a person (other than an employee of the Supplier) arising from or in connection with the provision of the Goods and/or Services. The minimum limit of indemnity shall be £5,000,000 for any one occurrence and unlimited as to the number of occurrences and the insurance shall be maintained until the end of the Guarantee Period.
  - 19.1.2. Employer's liability insurance in respect of death of or bodily injury to employees of the Supplier arising out of and in the course of their employment in connection with the Purchase Order. The minimum level of indemnity shall be £5,000,000 and the insurance shall be provided until the end of the Guarantee Period.

- 19.1.3. Professional indemnity insurance covering the liability of the Supplier in respect of the design and specification of the Goods and/or Services where liability on the part of the Supplier for design and specification of the Goods and/or Services applies under the Purchase Order. The minimum level of indemnity shall be £1,000,000 each and every claim and shall be provided until 6 years after Delivery.
- 19.2. The Supplier shall ensure that the interests of the Council are indemnified under the insurances to be affected and maintained by the Supplier under Clause 19.1 in the following manner:
- 19.2.1. Under the provisions of an indemnity to principal clause in respect of public liability and employer's liability insurance
- 19.2.2. As an additional insured in respect of property damage insurance
- 19.3. The insurances shall be affected with well- established insurance companies or underwriters of repute (i.e. with a Standard and Poor's rating of A- or above). When required by the Council, the Supplier shall supply to the Council documentary evidence that the Insurances required under Clause 18 have been taken out and are being maintained.
- 19.4. The Supplier shall be liable for and shall indemnify the Council against any expense, liability, loss, claim, damages, costs or proceedings arising under any statute or at common law in respect of personal injury to or the death of any person arising out of or caused by the Provision of the Goods and/or Service, except to the extent that the same is due to any negligence or default on the part of the Council or of any person for whom the Council is responsible (including other contractors and their servants or agents employed by the Council).
- 19.5. The Supplier shall be liable for, and shall indemnify the Council against, any expense, liability, loss, claim, damages, costs or proceedings in respect of any injury or damage to any property real or personal (including injury or damage to property of the Council) insofar as such injury or damage arises out of or is caused by the carrying out of the Provision of Goods and/or Services by the Supplier and to the extent that the same is due to any act, omission, negligence, breach of statutory duty or default of the Supplier, its servants or agents or any of the Supplier's sub-contractors or their servants or agents.
- 19.6. Nothing in any Council agreement or Purchase Order excludes or limits the liability of a Party for death or personal injury caused by its own negligence, for fraudulent misrepresentation by it, for fraud or for any matter for which it would be illegal for that Party to exclude or to attempt to exclude its liability.
- 19.7. The Supplier shall indemnify, and keep indemnified, the Council against any expense, liability, loss, claim, costs or proceedings the Council may suffer or incur as a result of any claims made against it in respect of TUPE, National Insurance contributions, income tax and other statutory charges arising out of any Supplier personnel being found or considered to be an employee of the Council.
- 19.8. Save in respect of the provisions of Clause 19.6, the Council's liability to the Supplier under or in connection with the Purchase Order, or any Council agreement with the Supplier under which the Purchase Order is made, howsoever arising including, without limitation, negligence, breach of contract or breach of statutory duty shall be limited to the Order Value.

## **20. TERMINATION AND CANCELLATION**

- 20.1. The Council may terminate the Purchase Order immediately in whole or in part, by giving written notice to the Supplier if the Supplier has failed, or in the opinion of the Council is likely to fail to:-
- 20.1.1. provide all or part of the Goods and/or Services or remedy a Defect (in whole or in part) upon being required to do so in writing by the Council; and/or
- 20.1.2. achieve Delivery by the Delivery Date; and/or
- 20.1.3. comply with an instruction of the Council relating to the Goods and/or Services or otherwise relating to the Purchase Order
- 19.2. Either Party shall be entitled to terminate this Purchase Order immediately by giving written notice to the other if:-
- 19.2.1. an encumbrancer takes possession, or a receiver is appointed over any of the property or assets of the other Party;

- 19.2.2 the other Party makes any composition or voluntary arrangement with its creditors or enters into administration or a moratorium comes into force in respect of the other party (within the meaning of the Insolvency Act 1986);
  - 19.2.3 the other Party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and so that the Council resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on the other party under this Purchase Order);
  - 19.2.4 an insolvency practitioner has been appointed by the other Party; or
  - 19.2.5 the other Party ceases or threatens to cease to carry on business.
- 19.3 If the Council terminates the Purchase Order or cancels any part of it, under Sub-Clauses 20.1 and 20.2 above, the Council may recover from the Supplier the forecast additional cost to the Council of procuring the Goods and/or Services from an alternative supplier.
- 19.4 The Council may terminate the Purchase Order immediately by written notice or cancel any part of it for any other reason in which case, subject to Clause 21.7, the Council shall pay the Supplier his reasonable and substantiated costs incurred up to the date of termination or cancellation in order to provide the Goods and/or Services in whole or part as the case may be.
- 19.5 The conditions of contract that expressly or by implication have effect after termination of the Purchase Order including, without limitation, Clause 4 (Confidentiality), Clause 10 (Communication and Notices), Clause 13 (Recovery of Sums Due and Set Off), Clause 17 (Defects), Clause 18 (Assignment), Clause 19 (Indemnity and Insurance) and Clause 23 (Waiver) will continue to be enforceable notwithstanding termination.

## **21. FORCE MAJEURE**

- 21.1. Subject to Clause 21.4, neither Party shall be liable for any failure to perform, or delay in performing, an obligation (other than indemnity obligations) if and to the extent that the failure or delay is caused by Force Majeure.
- 21.2. Where the Supplier is unable to perform its obligations by reason of Force Majeure the Supplier shall immediately notify the Council Representative in writing of its wish to claim relief under Clause 21.1 and provide an estimate of its duration, details of the obligations which are affected by Force Majeure and the way in which and the extent to which the Party considers that the performance of its obligations is likely to be affected.
- 21.3. Where the Supplier is unable to provide the Goods and/or Services by reason of Force Majeure the Council shall assess the information provided under Clause 21.2 and either alter the Delivery Date accordingly or cancel any part of or terminate the Purchase Order.
- 21.4. For the period of the Force Majeure each Party shall:
- 19.4.1 take all reasonable steps available to minimise the effects of the Force Majeure on the performance of its obligations and to resume full performance of the Purchase Order without reasonably avoidable delay;
  - 19.4.2 permit, and use all reasonable efforts to facilitate, any efforts that the other Party may make to obtain alternative supplies or services;
  - 19.4.3 update the information provided in the notice under Clause 21.2 at least once a week throughout the period during which the performance of its obligations is affected.
- 21.5. For the avoidance of doubt, if the Supplier is relieved from performing any obligation affected by Force Majeure it shall not be entitled to payment for the performance of that obligation in respect of the period for which relief is obtained.
- 21.6. If the Party claiming relief under Clause 21.1 is prevented by the Force Majeure from wholly or substantially performing its obligations under the Purchase Order for a period of more than 1 month either Party may terminate the Purchase Order by written notice to the other Party.

- 21.7. Clause 20.4 does not apply if the Council terminates or cancels any part of the Purchase Order under Clause 21.3, Clause 21.6 or Clause 4 (Severance).

## **22. BONA FIDES OF WORKPEOPLE**

- 22.1. The Supplier shall, if required, provide accreditations and permits for the labour and staff it uses, with a form of authority acceptable to the Council for each person whom it requires to have access to the Council's property and shall keep a record of all forms provided. Forms and passes shall be surrendered as soon as access is no longer required.
- 22.2. The Council shall be entitled, at its discretion, to request that an individual under the control of the Supplier be removed from its property and, in the event of any such request the Supplier shall forthwith remove such individual and arrange for their replacement, if required, to provide the Goods and/or Services.
- 22.3. The Supplier shall at all times ensure its business and supply chains meet their obligations under the Modern Slavery Act 2015 and shall demonstrate the steps it takes to monitor compliance at the request of the Council.

## **23. WAIVER**

- 23.1. No failure or delay by a Party to exercise any right or remedy provided under this Purchase Order or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **24. RIGHTS OF THIRD PARTIES**

- 24.1. Neither the Council nor Supplier confers or purports to confer on any Third Party any benefit or right to enforce any term of the Purchase Order under the Contracts (Rights of Third Parties) Act 1999.

## **25. SEVERANCE**

- 25.1. If a provision of the Purchase Order is held to be illegal, invalid or unenforceable, in whole or in part the provision will be severed from this Purchase Order and rendered ineffective and the Parties intend that the legality, validity and enforceability of the remainder of the Purchase Order shall not be affected.
- 25.2. In the case of any discrepancy or ambiguity or conflict between any of the documents forming the Purchase Order, the order of precedence shall follow:
- the Purchase Order
  - the Purchase Order Conditions
  - the Specification

## **25. ANTI-CORRUPTION**

- 25.1 The Council may terminate the Purchase Order forthwith by giving notice in writing to the Supplier and recover from the Supplier the amount of any loss resulting from such termination if the Supplier shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Purchase Order or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the Purchase Order or any other contract with the Council or if the like acts shall have been done by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier) or if in relation to any contract with the Council the Supplier or any person employed by the Supplier or acting on its behalf shall have committed any offence under the Bribery Act 2010.
- 25.2 Any clause in the Purchase Order limiting the Supplier's liability does not apply to this Clause 25 (Anti-Corruption).

## **26. ENTIRE AGREEMENT**

- 26.1 The Purchase Order, and any Council agreement with the Supplier under which the Purchase Order is made, is the entire agreement between the Parties and supersedes all prior proposals, promises, agreements, arrangements, representation, misrepresentation, understandings and misunderstandings between the Parties and relating to its subject matter (whether oral or in writing). For the avoidance of doubt

these Purchase Order Conditions shall prevail over the Supplier's terms and conditions which, whether or not notified to the Council on any invoice, other document or otherwise, shall not form part of the Purchase Order. The terms of the Purchase Order may only be varied in accordance with Clause 11 (Variations).

- 26.2 Each Party acknowledges that in entering into the Purchase Order it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether a Party to the Purchase Order or not) that is not set out in the Purchase Order or the documents referred to in it. Subject to Clause 28.2, each Party waives all rights and remedies which, but for this Clause 26, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance. The only remedy available to any Party in respect of any representation, warranty, collateral contract or other assurance that is set out in this Purchase Order (or any document referred to in it) is for breach of contract under the terms of the Purchase Order. Nothing in the Purchase Order shall, however, limit or exclude any liability for fraud.



**27. DISPUTE RESOLUTION**

- 27.1 Any dispute arising out of or in respect of the Purchase Order may be referred in writing by either Party to a dispute resolution committee comprising the Council Representative and the Supplier Representative. Failing resolution of the dispute by the dispute resolution committee within a period of 10 (ten) Business Days of the reference to them the dispute may immediately be referred in writing by either Party for determination to the Council's procurement team and Supplier sales manager who shall seek to reach agreement of the dispute within 1 (one) calendar month.

**28. LAW AND JURISDICTION**

- 28.1 Each party irrevocably submits to the exclusive jurisdiction of the English and Welsh Courts in relation to all matters arising out of or in connection with the Purchase Order which shall be governed by the laws of England and Wales.
  - 28.2 For the avoidance of doubt, nothing in the Purchase Order shall relieve the Supplier and its sub-contractors and agents of their statutory or common law responsibilities or obligations in relation to the Goods and/or Services (or any part of it).
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## **Glossary**

‘Bidder’ means the company that is submitting a Quote response to this Invitation to Quote document;

‘Contracting Bodies’ or ‘Contracting Body’ means a public sector organisation or Local Authority described in the Contract or Framework Agreement which is allowed to procure under the Contract;

‘Contractor’ means the person, firm or company appointed by the Council or Contracting Body to supply the Goods or Services or Works under this Contract and shall include the Contractor's employees, personal representatives, successors and permitted assigns;

‘Council’ means Bath & North East Somerset Council;

‘Contract’ means the written agreement between the Council or Contracting Body consisting of the clauses within the terms and conditions of contract and the Order;

“e-Tender system” means the electronic Tender system Supplyingthesouthwest. It is provided by ProActis and is hosted via <http://www.supplyingthesouthwest.org.uk>

‘Invitation to Quote’ means this document and all its components, which is inviting Bidders to bid for the Contract or for inclusion in the Framework Agreement;

‘Offer’ means the offer made by the Bidder in relation to the proposed Contract;

‘Specification’ means the scope and description of the Goods, Services or Works to be provided pursuant to this Contract as set out in Section 1 – Specification;