



Section 1

Invitation to Tender (ITT)

Dated October 2019

London Borough of Southwark

Open Access Drop-in Service for Children & Young People

No.	Service Category	Tenders Due
1	Open Access Drop-in Service for Children & Young People	15/11/2019

	Contents	Page No
	Tender Information	
1	Definitions	3
2	Introduction	4
3	Details of the Project	5
4	Conditions of Contract	5
	Conditions of Tendering	
5	Basis of Tenders	6
6	Summary Stages of the Pseudo Negotiation Procedure	7
7	Information, Costs and Expenses	9
8	Communications Protocol	11
9	Submission of Tender	13
10	Evaluation of Tenders	17
11	Non- Consideration of Initial and/or Final Tender	17
12	Rejection of Tender	18
13	Acceptance of Tender	19
14	Confidentiality	20
15	Warranties	21
16	Conflicts of Interest	22
17	Data Protection Legislation (GDPR)	22
18	Freedom of Information Act	23
19	TUPE	24
20	Small Business Enterprises and Employment Act	24
21	Indicative Award Timetable	25

TENDER INFORMATION

1 Definitions

Except where defined below, defined terms shall have the same meaning as set out in clause 1 of the Conditions of Contract (contained in Section 4 of this Tender Pack).

The terms defined below shall have the following meanings:

ITT: means this Invitation to Tender.

Tender Documents: means the following list of documents:

- **Section 1:** Invitation to Tender
- **Section 2:** Evaluation Methodology
- **Section 3:** Response Document including:
 - Method Statement Response/Delivery Proposals
 - Price Schedule
 - Tender documentation for signature including:
 - Form of Tender;
 - Certificate of Non-Collusion, Non-Canvassing Certificate and Conflict of Interest Certificate;
 - Offences Certificate;
 - Negotiation Protocol; and
 - Parent Company Guarantee (PCG) and PCG Undertaking (where relevant).
 - Bond and Bond undertaking
 - TUPE Confidentiality Undertaking
- **Section 4:** Draft Conditions of Contract (see contents and schedules)
- **Section 5:** High Level Service Specification

Tender: shall mean that document contained in Schedule 3, comprising the offer submitted by the Tenderer to provide the Service incorporating, for the avoidance of doubt, but without limitation, the Tenderer's Form of Tender, Price Schedule, Method Statement Response/Delivery Proposals, supporting documents and any post-tender clarifications.

Tenderer: means those organisation's invited to submit a Tender in response to this ITT.

2 Introduction

- 2.1 By a Contract Notice placed in the Official Journal of the European Union dispatched 04 October 2019 and published 07 October 2019 (the **Contract Notice**), London Borough of Southwark (the **Council**) are inviting expressions of interest from suitably qualified and experienced organisations in order to select a Tenderer (the **Tenderer**) to enter into a **Contract** for the service as stated on page 1 as part of the Southwark Open Access for Children & Young People (the **Project**).
- 2.2 This procurement is being conducted in accordance with Public Contracts Regulations (PCR) 2015. The procurement is subject to the Light-Touch Regime under Section 7 Social and Other Specific Services.
- 2.3 The Council is undertaking a Pseudo Negotiation Procedure for this procurement under the Light Touch Regime and as further detailed in this 'Invitation to Tender' document (the **ITT Document**).
- 2.4 Interested parties in this Project were required to answer three pre-qualifying questions before completing and submitting a Standard Selection Questionnaire (**SQ**) to the Council. As part of the SQ process applicants were required to satisfy minimum standards of financial standing and probity and to demonstrate their technical capacity and experience. Applicants who satisfied those minimum standards were then evaluated and shortlisted in accordance with the selection criteria set out in the SQ. The Council does not warrant the fitness of any Applicant to carry out the Project.
- 2.5 In accordance with the Pseudo Negotiation Procedure, the London Borough of Southwark (the "Council") invites your organisation and other shortlisted applicants (each a **Tenderer**) to participate in Negotiations as detailed in this Invitation to Tender document, which comprises the Tender Documents as detailed on page 3.
- 2.6 Tenderers must participate in Negotiations prior to submitting their Tenders (as detailed in Section 3) and in accordance with the following instructions (the **Instructions**). The Council reserves the right to reject any Tender which does not comply with these Instructions in any particular way.
- 2.7 **All Tenderers are requested to acknowledge receipt of this Invitation to Tender document, and to have downloaded all of the documents detailed on page 3 from Southwark Council's e- procurement Portal, ProContract 3, as soon as possible by sending a message to the Council via Procontract3.**
- 2.8 **If the Tenderer does not wish to, or is unable to tender, then the Tenderer should notify Southwark Council of this and their reasons for their decision by sending a message to the Council via Procontract3.**
- 2.9 The Council gives notice that this Invitation to Tender document is set out as a general outline only for the guidance of intended Tenderers and does not constitute, nor constitute any part of, an offer or contract.

3 Details of the Project

- 3.1 This procurement is for the delivery of a preventative, young person led, community-based open access drop-in service that acts as a referral point to information, advice, services and support. One contract will be awarded to one provider for a period of 3 years from 01 April 2020 until 31 March 2023, with the option of two further single year extensions until 31 March 2025. The service should provide an alternative provision to core Children and Young People's Mental Health and Wellbeing services.
- 3.2 The service will commence as a 'test and learn', initially delivering to young people aged 12 to 25. The service will develop and expand to reflect the needs of the Children and Young People of Southwark, ultimately aiming to offer a holistic preventative service for ages 0-25. Throughout the three years of the contract, it is expected that the provider will use the knowledge and expertise of young people and their parents to shape service delivery.
- 3.3 The Council is seeking to appoint an experienced, competent provider for the Open Access service who can work in partnership with the Council to deliver a service which will be a preventative, young person led, community-based, open access drop-in service that acts as a referral point to information, advice, services and support. A few key deliverables of the Open Access Service are:
- People are better able to manage their mental health and lead a full life
 - Increased access and awareness of appropriate services
 - Reduced number of avoidable referrals to specialist services
 - Increased peer support
- 3.4 Southwark Council's overall aim is to improve outcomes for children and young people. The Open Access service model is to ensure that children, young people and their family networks are able to access the support they need through early intervention stop issues from escalating. Further details are set out in Section 5 - 'High Level Service Specification' of this Tender Pack.

4. Conditions of Contract

- 4.1 Tenderers will need to agree to the **Conditions of Contract** included in Section 4 of this Tender Pack and tender on the basis of the **Conditions of Tendering**, included in this document, Section 1 ITT.
- 4.2 There will be a high level service specification that will continue to be developed throughout the test and learn phase of the project. The successful Tenderers service delivery proposal will form part of the Conditions of Contract .
- 4.3 Tenderers should note that the Conditions of Contract and its formation, interpretation and performance shall be subject to and interpreted in accordance with the laws of England.

CONDITIONS OF TENDERING

5. Basis of Tenders

- 5.1 Tenderers are invited to bid for the Open Access contract once they have been shortlisted.
- 5.2 Tenders shall be evaluated in line with the guidance provided in these tender documents and as noted in condition 6 of Section 1 (this document).
- 5.3 Tenders should be prepared under the same headings and in the same sequence as set out in the ITT document.
- 5.4 The successful Tenderer will need to agree to the final Conditions of Contract provided in Section 4 (subject to any amendments proposed in their Tender and accepted by the Council).
- 5.5 The composition of any pre-qualified Tenderer (including consortium members) shall not be changed except with the Council's prior written consent. Tenderers should also notify the Council of any changes to the identity of any significant subcontractor. The Council reserves the right to determine whether or not to continue with the assessment of a Tenderer's Final Tender, whether or not to allow a Tenderer to continue to participate in the procurement process and/or whether or not to enter into any agreement in respect of the project with a Tenderer where there has been a change (direct or indirect) in the composition or ownership of that Tenderer or a change in the principal relationships between the Tenderer's consortium members. If there has been a change to a Tenderer's consortium members, or a change to the identity of a significant subcontractor which the Council reasonably believes could impact on the delivery of the Project, the Council reserves the right (without being obliged) to request the Tenderer to complete a new SQ for assessment in accordance with the criteria used for the Tenderer's original SQ.
- 5.6 Tenderers are required to inform the Council immediately of any changes to the information provided in their response to the SQ (including but not limited to information concerning members and structure of any consortium). Any new information that is provided to the Council in accordance with this requirement may be evaluated by the Council in accordance with the same assessment criteria used to evaluate the original responses to the SQ stage as appropriate. The Council reserves the right to withdraw the qualification of a Tenderer at any time following the assessment of new information where the conclusion of such assessment is that; had the Council been aware of the new information at the time of evaluating the Tenderer's initial response to the SQ the Tenderer would not have been successfully pre-qualified or been shortlisted.

6. Summary Stages of the Pseudo Negotiation Procedure

The ITT process shall follow these stages:

- 6.1 **Negotiation:** The Council intends to conduct formal Negotiation meetings (the Negotiation) with the shortlisted Tenderers as detailed in condition 8 of Section 1 (this document) and the Negotiation Protocol in Section 3. The purpose of the Negotiation phase is for the Council and Tenderers to discuss in detail each of their proposed Tenders, and allow the Council to identify its requirements more clearly. Tenderers will be expected to provide innovative and cost-effective solutions at Negotiation stage and to identify all risks and contingencies involved in their Tender.

Representatives of Tenderers attending Negotiation meetings must have sufficient authority to engage in real and constructive Negotiation with the Council. Each Tenderer will be notified of an allocated Working Day or Time Slots in which they are required to attend the offices of the Council or such alternative location as notified to the Tenderers by the Council to discuss their proposals.

Representatives of Tenderers are required to make themselves available during the Negotiation phase as per the timetable in Table 4.

- 6.2 **Negotiation Stage:** The Council has invited shortlisted Tenderers as per Table 1, to enter into negotiations on how the service will be delivered.

Table 1:

Service	Maximum no. of Tenderers shortlisted from SQ to participate in negotiations	Minimum no. of Tenderers shortlisted from SQ to participate in negotiations (where numbers permit).
Open Access Drop-in Service for Children & Young People	5	3

Shortlisted Tenderers will be invited to participate in negotiations, which will be based upon the high level specification and initial proposals from Tenderers outlining how they intend to deliver against its requirements; initially to young people aged 12 to 25 during the test and learn stage, then developing and expanding the service to young people aged 0-25.

The negotiation phase will provide the opportunity to develop how the service will be delivered. As a minimum the following 3 key areas of negotiation focus for the Council will be:

- Service principles and outcomes required by the Council
- The delivery model and how it achieves positive outcomes for children and young people
- The approach to test and learn, including how children, young people and their

wider network will be involved to better meet their needs and shape the service

Tenderers will need to submit an initial proposal in a presentation format outlining their service delivery prior to the start of the Negotiation meetings.

Tenderers will need to form their tender during the negotiation stage reflecting any agreed amendments or changes (due to time constraints of the project).

Once all negotiations are concluded, the negotiation stage will be closed and Tenderers will be requested to submit their tenders. Tenders will be formed of written method statements and a pricing schedule.

- 6.3 **Submission of Tenders:** Following completion of the Negotiation stage, the Council will finalise its requirements and invite the Tenderers to issue a Tender for the delivery of the Project. No negotiation is permitted in respect of Tenders, so Tenderers' responses must comprise a best and final offer for the delivery of the Project.
- 6.4 **Assessment of Tenders:** The Council will assess the financial, commercial and qualitative elements of the Tenders and identify the most economically advantageous tenderer in accordance with the award criteria set out in Section 2 of this Tender Pack.
- 6.5 **Award:** The Council will need to obtain formal approval from either the relevant Cabinet Member or Cabinet before awarding the Contract. Tenderers should note that the Council reserves the right at its absolute discretion to award or not award a Contract as it sees fit.
- 6.6 **Notification of decision:** Tenderers will be notified of the outcome of the Final Tender evaluation in accordance with Regulation 86 of the EU Regulations. Following notification of the outcome the Council will observe a mandatory 10 day standstill period in accordance with Regulation 87 of the Regulations and the Council's mandatory five (5) day call in period.
- 6.7 **Enter into Contract:** Following the successful completion of the standstill period without any formal legal challenges being raised, the Council will enter into a Contract with the successful Tenderer.
- 6.8 In regard to the tender process, the Council reserves the right at any time at its absolute discretion:
 - 6.9.1 to make whatever changes it sees fit to the content, process, timing and structure of the tender process and to issue amendments or modifications to this Invitation to Tender document; and
 - 6.9.2 to enter into Negotiation with one or more Tenderers to obtain arrangements which best meet its requirements; and
 - 6.9.3 to accept or not accept Tenders submitted pursuant to the ITT; and
 - 6.9.4 not to award a Contract and to withdraw from, suspend or terminate the

procurement procedure, any part of the procurement procedure and/or this ITT and to procure a Contract with a provider by any alternative means within the legal requirements which the Council is subject to (including by way of undertaking a new procurement process).

- 6.9.5 to reject the winning Tenderer's Final Tender and go to the next best Tenderer if the successful Tenderer makes any changes post-award decision.
- 6.10 The fact that a Tenderer has been invited to participate in Negotiation and submit a Final Tender does not necessarily mean that it has satisfied the Council regarding any matters raised in the SQ previously submitted. The Council makes no representation regarding any Tenderer's financial stability, technical competence or ability in any way to carry out the Project.

7. Information, Costs and Expenses

- 7.1 Tenderers are responsible for obtaining all information necessary for the preparation of their Tenders. All costs, expenses and liabilities incurred by any Tenderer in connection with the preparation and submission of a Tender, or in Clarification or Negotiation with the Council, and in providing any other information reasonably required by the Council to enable a detailed evaluation of their Tender, and in the case of acceptance of a Tender by the Council all cost, expenses and liabilities in connection with the execution of all and any contract documents, are to be borne by that Tenderer. Neither the Council nor any of its representatives (including its officers, members, employees and advisors) shall, under any circumstances, be liable in any way to any Tenderer for any costs, expenses or losses incurred by any Tenderer or other person in relation to their participation in this procurement or otherwise.
- 7.2 Tenderers shall ensure that they are fully familiar and have satisfied themselves as to the nature, extent and character of the Service and use of any location(s) (if applicable), the extent of the premises, employees, materials, equipment and machinery which may be required, and any other matter which may affect the obligations to be performed by them if their tender is accepted including, where relevant, the Council's Constitution which may be inspected on the Council's website at:

www.southwark.gov.uk/YourCouncil/HowTheCouncilWorks/councilconstitution.html and the Council's Policies (which may be inspected on the Council's website or requested from the Council).

Council's Rental Payment

- 7.3 As part of this project the Council has identified a location for the Open Access Drop-in service and is currently in the process of finalising the agreement. The provider will be charged a nominal rental charge which is tba.

Table 2: Council's Rental Payment

Service	Payment in £
Open Access for Children & Young People	TBA

- 7.4 The Council in no way warrants the information given to Tenderers by the Council and Tenderers must satisfy themselves of the accuracy of any information provided by the Council. Save in the case of fraud, under no circumstances will the Council, its officers, members, employees, agents or advisers accept any responsibility or liability whatsoever for any loss or damage of whatever kind and howsoever caused arising from or in consequence of the use by Tenderers of such information.
- 7.5 Tenderers should note that:
- 7.6.1 any information provided by or on behalf of the Council including, without limitation, the particulars of their properties are a general outline, for the guidance of the Tenderers and do not constitute the whole or any part of an offer or contract; and
 - 7.6.2 neither the Council nor their professional advisers guarantee the accuracy of any description, dimensions, references to condition, necessary permissions for use and occupation and other details forming part of or appended to this ITT and Tenderers must not rely on them as statements of fact or representations and must satisfy themselves as to their accuracy; and
 - 7.6.3 neither the Council nor their professional advisers will be liable, in negligence or otherwise, for any loss arising from the use of the relevant information.
 - 7.6.4 all descriptions, dimensions, references to condition and necessary permissions for use and occupation, and other details are given without responsibility and any Tenderer should not rely on them as statements or representations of fact but must satisfy themselves by inspection or otherwise as to the correctness of each of them.
 - 7.6.5 the Council expects Tenderers' to conduct their own due diligence and not totally rely on the information the Council provides.
- 7.7 Tenderers' attention is drawn to the Conditions of Contract set out in Section 4 of the Tender Pack. It is essential that Tenderers are completely familiar with the contents of the Conditions of Contract before compiling their Tenders. Tenderers considering entering into a contractual relationship with the Council should make their own enquires and investigations of the Council's requirements beforehand. The subject matter of this Tender Pack shall only have contractual effect when it is contained in the express terms of an executed form of Contract or such other agreement properly entered into and executed by the Council.

8. Communications Protocol

- 8.1 All queries and other relevant permitted correspondence should be submitted via the messaging/clarification service on ProContract3, Southwark Council's e-procurement portal.
- 8.2 Any communication or attempt to contact any other member of the Council's staff, officers, consultants or members may result in your organisation being disqualified from the procurement process and not considered further.

8.3 Queries and Answers during the Tender Period

- 8.3.1 The Tenderer is requested to read the Tender Documents prior to submitting any query.
- 8.3.2 Where Tenderers have a query they must submit the query via ProContract3, Southwark Council's e-procurement portal.
- 8.3.3 All queries must be submitted through the portal at least two (2) working days before the final date for receipt of Tenders as detailed in Table 4 (or as subsequently advised by the Council).
- 8.3.4 Tenderers must clearly indicate, when submitting a question, which (if any) part of their question they view as confidential and applicable only to the Tenderer submitting the question. If the Council does not agree that the question is confidential and applicable only to the Tenderer, the Tenderer will be given the right to withdraw the question without it being answered, and if the question is not withdrawn within 2 working days provide the response to all Tenderers.
- 8.3.5 The query and response will be posted on Procontract3, Southwark Council's e-procurement Portal. The Tenderer will receive notification by email via Procontract3 that the query list has been updated, and the query and response document will be uploaded on the portal for all Tenderers to view.
- 8.3.6 The Tenderer is advised to check their 'spam'/'junk mail/quarantined' inbox for correspondence from ProContract3, Southwark Council's e-procurement portal, to ensure that all emails are received.

8.4 Negotiation sessions

- 8.4.1 The Negotiation sessions are expected to start on the dates set out in Table 4 and may last up to five days. The Council reserves the right at its discretion to amend the Negotiation timetable by notice to the Tenderers.
- 8.4.2 The Negotiation sessions are designed to provide shortlisted Tenderers with the opportunity to discuss their proposal with representatives of the Council and the Council's advisers so that a solution capable of meeting the Council's requirements is reached.

8.4.3 Ahead of these negotiation sessions the Council requires Tenderers to submit an outline of the service they are proposing to deliver covering the following aspects as a minimum:

- An understanding of the service principles and outcomes required by the Council.
- A model of delivery and how it achieves positive outcomes for children and young people.
- An approach to test and learn including how they will involve children, young people and their wider network to meet their needs and shape the service.

8.4.4 If selected to Negotiate, the Tenderer will be required to present their service vision before discussing the pricing, risk and their delivery approach for the Contract they have tendered for. Tenderers will be expected to discuss innovative solutions, to enable the Council to identify its requirements in respect of the delivery of the Project.

8.4.5 The onus is on Tenderers to ensure that they are available on the dates proposed for the Negotiation meetings, as alternative dates may not be available.

8.4.6 All queries raised by Tenderers during the Negotiation will be fully documented, either by Tenderers raising questions and the Council responding to queries via ProContract3, Southwark Council's e-procurement portal, or by the Council compiling a full note of the query and corresponding answer following negotiation sessions. Where such queries and/or responses are not of a commercially confidential nature, they will be circulated to all Tenderers.

8.5 At the close of the Negotiation

8.5.1 All queries must be submitted by the deadline as detailed in Table 3, to allow the Council sufficient time to address the questions and circulate answers to the Tenderers in time for the deadline for submission of Tenders.

8.5.2 The Council reserves the right not to address any questions raised after 17:00 hours on the date detailed in Table 4.

8.6 Requests for Clarification

Once Tenders have been initially screened and evaluated by the Council, the Council may have questions that they wish to raise with the individual Tenderers. These will be raised by the Council, in writing, to the individual Tenderers.

8.7 Negotiation Protocol

Tenderers' attention is drawn to the Negotiation Protocol set out at Section 3. Failure to comply with this Protocol at any point during the Negotiation process may result in instant dismissal of a Tenderer from this procurement process.

9. Submission of Tenders

- 9.1 The final date for receipt of Tenders is by **15:00** on the date detailed in Table 4 (or such later date as the Council may subsequently advise).
- 9.2 All entries in the tender must be written in ink or typed in English, and must be clearly referenced according to the heading and number for each of the question.
- 9.3 Tenders should be submitted in Arial, font size 11.
- 9.4 Tenderers should not cross reference any questions i.e. 'see answer to question x in question x'. If Tenderers only respond with a cross-reference to a question they will receive a score of 0 for that question; where Tenderers include a cross-reference as part of their response they will also not be awarded any marks for that part.
- 9.5 All sums in the Price Schedule shall be stated in pounds sterling (£).
- 9.6 The Price Schedule must be provided in exactly the same format as provided, unless otherwise stated.
- 9.7 Tenderers should read all the documents forming this Invitation to Tender Document carefully and ensure that they submit the mandatory documents detailed in Table 3 in the manner described in condition 9 of Section 1 (this document) and by the date and time stated in Table 4 (or such other date notified by the Council) .

Table 3: Mandatory Documents to be submitted

Tender Documents to be completed and returned		
1	Form of Tender - signed and completed and including: <ul style="list-style-type: none"> - Certificate of Non-Collusion, Non-Canvassing Certificate and Conflict of Interest Certificate - completed and signed - Offences Certificate - completed and signed - Negotiation Protocol - completed and signed 	Section 3
2	Completed Delivery Proposals/Qualitative Response	Section 2
3	Financial Implications Responses <ul style="list-style-type: none"> - Including the Price Schedule 	Section 2
4	SQ Information (if required)	Section 3
5	Parent company guarantee and PCG (where applicable) – duly executed and witnessed in accordance with the Articles of Association or other constitution of the Tenderer's ultimate holding company. Bond and bond undertaking duly executed by the organisation providing the bond.	Section 3
Supporting documents to be supplied by the Tenderer		
6	Such further details or information reasonably requested by the Council.	

9.8 Tenderers should include in their Tenders all information required by the Invitation to Tender document and all costs necessary to undertake the Project safely and in compliance with all statutory provisions and other rules or regulations relating to the Conditions of Contract.

9.9 No unauthorised alteration or addition (save for the inclusion of the relevant information) should be made to the Form of Tender or any other part of the ITT Documents. Tenders must not be qualified in any way apart from as allowed under the ITT Document and must be submitted strictly in accordance with the ITT Document, including these Instructions. Tenders must not be accompanied by any covering letter or any statement that could be construed as rendering the Tenders equivocal and/or placing it on a different footing from other Tenders.

9.10 Any further amendment or proposal introduced at the Final Tender stage which does not reflect developments during the Negotiation process and which does not maintain or improve the bid to the Council will not be considered by the Council and may lead to rejection at the Council's sole discretion of the relevant Tenderer's Final Tender and their exclusion from this procurement process.

9.11 The Council reserves the right, at its sole discretion, to supplement this Invitation to

Tender Document at any time throughout this process in order to identify and define the means best suited to satisfy its needs in relation to the Project.

9.12 The Form of Tender must be signed:

- a) where the Tenderer is an individual, by that individual;
- b) where the Tenderer is a partnership, by 2 authorised partners;
- c) where the Tenderer is a company, by 2 directors, or by a director and the secretary of the company, such persons being authorised for that purpose;

9.13 Tenderers shall produce forthwith on the request of the Council documentary evidence of any authorisation referred to in 9.11.

9.14 The Tender must be uploaded onto ProContract3, Southwark Council's e-procurement portal, by the time and date detailed in Table 4.

9.15 Each file must be uploaded separately. The Tender Pricing Document must be uploaded in Excel (unprotected cells), do not use PDF files. Folders cannot be uploaded. Other documents can be uploaded in Excel/Word/PDF. All signed documents must be with manual signatures and scanned in a PDF format. Zip files may be uploaded.

9.16 Please allow ample time to upload your documents as the tender will close at 15:00 precisely on the Tender Deadline date stated in Table 4. The Council reserves the right to reject any Tenders received after 15:00 on the date for the Tender Deadline detailed in Table 4.

9.17 The uploaded documents must have each page numbered consecutively with a footer using the following format – Attachment [A-Z] page [number] of [total page number] the question number and the name of the Tenderer]. Each attachment shall contain a contents list for that volume on the immediate inside the cover. Any drawings or diagrams included within the Tender shall be numbered.

Table 4: Indicative Procurement Timetable with Tender Deadline Dates

	Service	Anticipated Negotiation Meeting Dates	Tenderers complete final proposals	Deadline for submission of Tender
	Open Access for Children & Young People	28/10/2019 – 01/11/2019	04/11/2019 – 15/11/2019	15/11/2019 15:00hrs

- 9.18 It is the Tenderer's responsibility to ensure that the Final Tender is uploaded onto the Southwark Council e-procurement portal by the date and time specified above (or such other deadline as the Council may notify to Tenderers).
- 9.19 Tenderers must follow the same steps as detailed in this condition 9 when submitting their Tenders, for which the indicative dates are detailed in Table 4 and will be confirmed when the Council concludes negotiations and invites Final Tenders.
- 9.20 The Tenderer must keep their Tender valid for acceptance 180 days from the tender return date set out in Table 4 (or such other deadline as the Council may notify to Tenderers). If the Council has not accepted the Tender within this period it shall remain in force without variation. The Tenderer may at any time after this 180 day period however give notice in writing to the Council to accept their Tender. Such notice must be sent via the Council's e-procurement portal, ProContract3.
- 9.21 Following the service of such a notice, the Council will have 14 days, not including the day of service, within which it may accept the Final Tender. If it does not do so within that time then the Final Tender will be deemed to be withdrawn. The Tenderer shall not withdraw their Final Tender except in the manner provided in this paragraph.
- 9.22 Tenderers may decline to tender, and if they choose not to tender, they should notify the Council promptly through ProContract3, the e-procurement portal, giving reasons.
- 9.23 As detailed in condition 5 of Section 1 (this document) if at any time during the tender period there are any material changes to the information provided by Tenderers in their response to the Standard Selection Questionnaire or the Final Tender, they must advise the Council promptly through ProContract3, the e-procurement portal, giving reasons.

10 Evaluation of Tenders

10.1 Following the screening assessment Tenders will be evaluated based on the evaluation criteria as detailed in Section 2 and in proportion to the following weightings:

(a) Quality (method statements) – 60%

(b) Price (Price Schedule) – 40%

10.2 During this part of the evaluation process the Council reserves the right to call for further information or clarification from Tenders, as appropriate, to assist in their consideration of the Tenders.

10.3 The Council may without limitation undertake site visits, seek references, require presentations to be given and undertake interviews as part of the evaluation process. All information and documents submitted by Tenderers in accordance with this ITT document by the closing date will be considered, as well as any other information that the Council requires to be submitted.

11 Non-Consideration of Tenders

11.1 The Council may, in its absolute discretion, refrain from considering any Tenders if either:

11.1.1 the whole of the scope of the Service Specification and the Key Deliverables are not tendered for or there are omissions in the Tender;

11.1.2 it does not comply in any respect with the requirements of this Invitation to Tender document; or

11.1.3 it contains any significant omissions or qualifications.

12 Rejection of Tenders

12.1 Any Tenders submitted by any Tenderer in respect of which the Tenderer does any of the following may not be considered for acceptance and may, accordingly, be rejected by the Council and the relevant Tenderer excluded from further participation:

- 12.1.1 submits any Tenders or other supporting documents after the closing date and time; or
- 12.1.2 submits an abnormally low bid; or
- 12.1.3 fixes or adjusts the amount, prices, charges and rates shown:
 - a) by or in connection with any agreement or arrangement with any other person; or
 - b) by reference to any other Tenders; or
- 12.1.4 breaches the terms of:
 - a) the certificate of non-collusion, non-canvassing certificate and conflict of interest certificate; and/or;
 - b) the offences certificate.
- 12.1.5 communicates to any person other than the Council any information except in accordance with this Invitation to Tender document; or
- 12.1.6 enters into any agreement or arrangement with any other person that such other person shall refrain from submitting a Final Tender or shall limit or restrict the amounts, prices, charges, and rates to be shown by any other Tenderer in its Tenders and other documents; or
- 12.1.7 offers or agrees to pay or give, or does pay or give, any sum of money, inducement or valuable consideration, directly or indirectly, to any person for doing, or having done, or causing, or having caused, to be done in relation to any other Tenderer, or any other proposed Tenders, or other documents, any act or omission; or
- 12.1.8 fails to use the English language; or
- 12.1.9 fails to state monetary amounts in Pounds Sterling; or
- 12.1.10 fails to comply with these Instructions and/or the Negotiation Protocol; or
- 12.1.11 fails to provide any further information that the Council has requested at any point up to the entry into the Contract either as part of this Invitation to Tender

or at Contract award stage; or

- 12.1.12 if the Council becomes aware that the Tenderer did not qualify at the time their SQ or Tenders were submitted or if it no longer qualifies at any point before the formal entry into the Contract.

12.2 Such non-acceptance or rejection by the Council shall be without prejudice to any other civil remedies available to the Council in respect thereof or to any criminal liability that such conduct by a Tenderer may attract.

13 Acceptance of Tender

13.1 The Council is not bound to accept the lowest or any Tender and reserves to itself the right at its absolute discretion to accept or not accept any Tender.

13.2 An acceptance of a Tender by the Council shall be issued to the successful Tenderers via the Council's e-procurement portal, following which the Contract shall then be entered into and become binding. The Tenderer shall at the request of the Council execute and deliver to the Council the Contract, Bond and Parent Company Guarantee (where applicable).

13.3 Nothing contained in these Conditions of Tendering or in any other communication between the Council and the Tenderer shall be taken as constituting a contract, agreement or representation between the Council and the Tenderer.

13.4 The Council reserves the right:

- 13.4.1 To cancel or withdraw from the procurement process at any time prior to the award of the Contract;

- 13.4.2 To amend the terms and conditions of the procurement process and to amend any of the documents issued with the ITT, including without limitation, these Conditions of Tendering.

14 Confidentiality

- 14.1 Tenderers must treat this Invitation to Tender document (and all the documents forming part of or appended or scheduled to this Invitation Document) and all other information provided by or on behalf of the Council as private and confidential (and shall ensure that their employees, consultants, subcontractors, advisers, insurers and funders do the same). No Tenderer should disclose that it has been invited to participate in Negotiations with the Council or submit Tenders or release details of this Invitation to Tender document (and all the documents forming part of or appended or scheduled to this Invitation to Tender document) other than on a strictly confidential basis and to the extent strictly necessary to such parties as the Tenderer needs to consult in order to participate in Negotiation or submit a Final Tender.
- 14.2 Tenderers shall not, without the prior written consent of the Council, at any time make use of such information for its own purposes or disclose such information to any person, except:
- 14.2.1 where the disclosure is required by law or any court, regulatory or government authority competent to require the same; or
 - 14.2.2 to the extent where such information is brought within the public domain otherwise than by the breach of this paragraph by the relevant Tenderer; or
 - 14.2.3 to the extent that the information becomes available to a party (on a non-confidential basis) otherwise than pursuant to this procurement process; or
 - 14.2.4 where such information is disclosed for the purposes of obtaining sign-off from insurers and legal advisers on the Conditions of Contract, or for obtaining sureties, guarantees or commitments from proposed subcontractors or suppliers and other information required to be submitted with their Tenders.
- 14.3 Tenderers shall not at any time release any information concerning the Invitation to Tender document and/or their Tenders and/or any related documents and/or any negotiation and/or discussion with the Council in this connection for publication in the press or on radio, television, screen or any other medium.
- 14.4 This ITT Document is issued in confidence and remains the property of the Council. The copyright in this ITT Document is vested in the Council and may not be reproduced, copied or stored on any medium without the prior consent of the Council except in relation to the preparation of Final Tenders.
- 14.5 The Council may publish the amount of the tender and the name of the successful Tenderer, and to publish such other information regarding the Tenders as it may be required to publish in accordance with EU or other procurement rules or transparency requirements with which the Council must comply.
- 14.6 The Council may provide Tenderers with a list of the other Tenderers and the tender scores. On this list the Tenderers will not be associated with their respective tender score.

15 Warranties

15.1 In submitting any Tenders, each Tenderer warrants, represents and undertakes to the Council that:

- 15.1.1 it has not done any of the acts or matters referred to in paragraphs 12.1.1 to 12.1.12 (inclusive) of these Instructions and has complied in all respects with these Instructions; and
- 15.1.2 all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Tenderer, its employees or agents in connection with or arising out of the Final Tender are true, complete and accurate in all respects; and
- 15.1.3 it has made its own investigations and research and has satisfied itself in respect of all matters (whether actual or contingent) relating to the Final Tender documents and has not delivered their Final Tender and will not have entered into the Contract in reliance on any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council; and
- 15.1.4 it has satisfied itself as to the correctness and sufficiency of the information it has inserted in the Price Schedule and included in its Delivery Proposals; and
- 15.1.5 it has full power and authority to enter into the Contract and undertake the Project and will if requested produce evidence of that to the Council; and
- 15.1.6 it is of sound financial standing and its officers and employees are not aware of any circumstances (other than as may be disclosed in the audited accounts or other financial statements) which may adversely affect its financial standing in the future.
- 15.1.7 it has and will have sufficient premises, working capital, skilled personnel, vehicles, plant, goods and materials and other resources (if applicable) available to it to carry out the Project in accordance with the Contract; and
- 15.1.8 it will obtain all necessary consents, licences and permissions to enable it to carry out the Project and will from time to time obtain and maintain all further and other necessary consents, licences and permissions to enable it to continue to do so; and
- 15.1.9 it will not at any time claim or seek to enforce any lien, charge, or other encumbrances over property of whatever nature owned by the Council and that is for the time being in the possession of the Tenderer.

16 Conflicts of interest

- 16.1 The Council may exclude any Tenderer where there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.
- 16.2 Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Tenderer to inform the Council and provide details of the conflict. Please note that routine pre-market engagement carried out by the Council should not represent a conflict of interest for a Tenderer, provided that the engagement has been carried out in a transparent manner.

17 Data Protection Legislation

- 17.1 Tenderers shall at all times:

- 17.1.1 comply with the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR);
- 17.1.2 maintain the confidentiality of personal data to which they have authorised access pursuant to this Invitation Document;
- 17.1.3 indemnify the Council and keep the Council indemnified against loss, destruction or procuring of data contrary to the GDPR by the Tenderer, its servants or agents;
- 17.1.4 process any personal data supplied to the Tenderer by the Council only in accordance with the Council's written instructions; and
- 17.1.5 comply with obligations equivalent to those imposed by a data controller by the GDPR.

18 Freedom of Information Act

- 18.1 Tenderers are to note that the Council is subject to the Freedom of Information Act 2000 (the **FOIA**) and Code of Practice, the Environmental Information Regulations 2004 (**EIR**), Aarhus Convention and Audit Commission Act 1998. Under the FOIA and EIR, members of the public or any interested party may make a request for information held by the Council at the time of the request.
- 18.2 Following such request, the Council will consider the disclosure of any information, including price quotes, contained in Tenders both successful and unsuccessful, subject to the exemptions of the FOIA. Tenderers should be aware that attaching a blanket label of 'private and confidential', 'commercially confidential' or similar to Tenders may not exempt those Tenders from disclosure under the FOIA.
- 18.3 If a Tenderer considers that all or any part of its Final Tender and/or any specific information contained therein constitute a "trade secret", or that the Final Tender or information is commercially sensitive information disclosure of which would be likely to prejudice the commercial interests of any party, believes that a duty of confidentiality applies or otherwise considers that such documents and/or information falls within any other exemption set out in the FOIA, the Tenderer should:
- 18.3.1 attach information it considers to be commercially sensitive e.g. costing or trade secrets in a separate schedule marked 'commercially sensitive information' or 'trade secret' and include a time limit for the sensitivity of the information; and
 - 18.3.2 in respect of such schedule and/or specific information, identify the particular FOIA exemption that the Tenderer claims applies in the particular circumstances. Tenderers should do so in full knowledge of the relevant terms of the Lord Chancellor's Code of Practice (the Code) under Section 45 of the FOIA, giving advice to public authorities on the handling of requests under the FOIA. This will enable Tenderers to make such claims based on reasons that address the requirements of the Code. Further information about the FOIA and a copy of the Code is available from the Department of Constitutional Affairs' website at <https://ico.org.uk/media/for.../section-45- code-of-practice-request-handling-foia.pdf>.
- 18.4 Tenderers should be aware that, even when they have scheduled or identified relevant documents and/or information and claimed exemption pursuant to this paragraph 20 of these Instructions, the Council will have complete discretion in deciding whether such documents and/or information should be disclosed under the FOIA.
- 18.5 The Council shall not be liable for any loss or other detriment caused by the disclosure of any information.

19. Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") and Pensions (Does not Apply).

20. Small Business Enterprise and Employment Act 2015

20.1 Tenderers are to note that the Council is subject to the Small Business Enterprise and Employment Act 2015 (**SBEEA**). Under SBEEA, the Government's Mystery Shopper service is empowered to investigate concerns raised on the Mystery Shopper website about public sector procurement exercises. Contracting authorities are required to assist all investigations and to provide relevant information and/or documents within 30 calendar days of a formal notice. This may require the Council to disclose any information contained in any Tender submitted by Tenderers.

20.2 By submitting a Tender, the Tenderer acknowledges and agrees that the Council has complete discretion in deciding whether such documents and/or information should be disclosed under SBEEA (even where Tenderers have identified certain information in their submissions as confidential) and the Tenderer agrees to waive any contractual or other confidentiality rights and obligations associated with the disclosure of information under SBEEA.

21. Indicative Award Timetable

In addition to the dates set out for the procurement process in Table 4, once the Final Tenders have been submitted the following dates provide an indication of the approval process which will be undertaken prior to contract award.

Service	Tender Deadline Dates	Approval month by Cabinet or Cabinet Member	Month of Award of Contract confirmed	Month of Commencement of Project
Open Access for Children & Young People	15/11/2019	December 2019	December 2019	April 2020

This timetable is subject to amendment by the Council at its sole discretion.