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Swindon Borough Council

**Services Contract**

**Invitation to Tender for:**

**Swindon Domestic Abuse Support Service**

**Reference Number:**

**CAF1**



**www.swindon.gov.uk**

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Section 1 - General Information

## Instructions to Tenderers

## 1 Statement Of Purpose

1.1 Swindon Borough Council (SBC), wishes to submit to tender the requirements for the provision of services to support victims and survivors of Domestic Abuse in Swindon.

1.2 Companies are now being formally invited to meet these requirements and the purpose of this document is to provide the necessary information to enable Tenderers to submit a response.

1.3 All potential respondents receiving this Request for Prices (“Request”) are herein referred to as “Tenderer”.

## 2 Procurement Policy

2.1 It is SBC policy to reduce current and future business costs wherever possible. The cost benefits of any project must be economically justifiable after the objectives for Products/Services have been met. Individual Tenderers’ overall operations will be considered in determining which response is the most appropriate for SBC needs. Tenderers are therefore encouraged to submit the full range of value added services that they can offer within their tender response.

## 3 Liability

3.1 SBC shall incur no obligation or liability whatsoever to anyone by issuing the Request or action by any party relative hereto.

## 4 Notification Of Intent

4.1 On or before 16 September 2016 each Tenderer receiving this Request must notify the **Commissioner Supported Housing** (see 7.1 for details) by e-mail, of its intention to submit a Response. If you do not wish to tender, please ensure that all documents are returned, providing details of the reasons for not submitting a proposal.

## 5 Terms Of Validity

5.1 The Tenderer is required to keep tenders valid for acceptance for a period of 90 days from the closing date of receipt of tenders.

## 6 Questions/Clarification

6.1 Persons proposing to submit a tender are advised first to read the documentation carefully to ensure that they are fully familiar with the nature and extent of the obligations to be accepted by them if their tender is accepted. Where the word “shall” is used this is mandatory, where the word “should” is used this is to be regarded as desirable. In the event that a Tenderer is unable to fully comply this must be explicitly stated in the tender submitted.

6.2 The Tenderer should seek to clarify any points of doubt or difficulty before submitting a tender. For this purpose contact can be made, in writing, to the named authorised officer only as detailed in 7 below. Clarification should be sought in accordance with the timescales detailed in 12.3 below. If it is decided to amend the Tender Documents, then all Tenderers will be notified accordingly.

6.3 SBC will answer all questions from Tenderers and to ensure a consistent interpretation of the Request, all clarification statements will be made available in writing to all Tenderers.

6.4 SBC shall not conduct face to face meetings with responding Tenderers at any time during the period between issuing the Request and receiving the Response to the Request unless SBC conduct a site visit or hold a supplier forum during this period.

## 7 Swindon Borough Council Contact

7.1 Any questions, clarifications or other communication concerning this tender document must be directed in writing to the following: (please note that this address is not the delivery address for the final tender response, see clause 12.1 for tender delivery address). Please state “Tender Question Domestic Abuse” in the subject heading of the email.

Ian Stenner

Commissioner Supported Housing

Email: istenner@swindon.gov.uk

## 8 Conditions/Assumptions

8.1 The Tenderer is required to clearly explain any assumptions or conditions it imposes on or includes in its responses to the Request.

## 9 Tendering Procedure

9.1 The Tenderer is required to answer all questions of this ITT document; failure so to do may invalidate your tender.

9.2 Many of the clauses of the specification require you to give a detailed response as indicated, clearly stating all of the relevant information you wish to be considered as part of the evaluation process and where applicable, you must provide all appropriate supporting documentation. You are also requested to affirm either noted, compliant, partial compliant or non-compliant. In the case of partial or non-compliant the Tenderer must also state the reason.

9.3 From the completed tenders a short list of preferred Tenderers may be drawn up and those short listed may be invited to give the Authority a presentation or demonstration on their tender.

9.4 A Tenderer who submits a qualified tender shall be requested to withdraw the qualification without amendment to the tender sum otherwise the tender will be rejected if it is considered that such qualification affords the Tenderer an unfair advantage over other Tenderers.

9.5 Any costs incurred by the Tenderer in responding to this request or in support of activities associated with the response to this Request, are to be borne by the Tenderer and are not reimbursable by SBC.

9.6 Where the Tenderer is proposing to subcontract any part of the service to be provided, this must be clearly stated in all cases. The Tenderer will be expected to manage and control any sub-contractor services included in their proposal and provide evidence of how they intend to control the sub-contractor(s). This is particularly relevant to performance of and controlling confidentiality from subcontractors.

9.7 SBC logo, trademarks and other identifying marks are proprietary and may not be incorporated in Tenderers response without SBC written permission.

9.8 Only information provided as a direct response to the tender will be evaluated. Information and detail including marketing material, which forms part of general company literature or promotional brochures etc, will not form part of the evaluation process unless specifically requested in this document.

## 10 Code Of Conduct

10.1 It is the objective of SBC to obtain the best goods and services possible by giving fair and impartial consideration to all Tenderers invited to submit a response.

10.2 Every potential Tenderer will be evaluated on a fair and equal basis. Tenderers will be given the same information and treated equally with respect to the selection process. The granting of any advantage to one while excluding others is not permitted.

10.3 Any Tenderer who directly or indirectly canvasses any member or Officer of the SBC concerning the award of the Contract, or who directly or indirectly obtains or attempts to obtain information from any such member or officer or staff member concerning any other tender or proposed tender will be disqualified.

## 11 Collusive Tendering

11.1 Any Tenderer who: -

* fixes or adjusts the amount of their tender by or under or in accordance with any agreement or arrangement with any other person; or
* communicates to any person other than SBC the amount or approximate amount of the proposed tender except where the disclosure is made in confidence in order to obtain quotations for insurance necessary for the preparation of the tender; or
* enters into any agreement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted; or
* offers or agrees to pay or give, or does pay or gives, 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 tender or proposed tender for the services, any act or omission,

shall (without prejudice to any other civil remedies available to SBC and without prejudice to any criminal liability which such conduct by a Contractor may attract) be disqualified.

## 12 Receipt of Tender and Timescales

* 1. Responses must be submitted on paper and CDR, to

**Swindon Borough Council,**

**Law and Democratic Services,**

**Civic Offices,**

**Euclid Street,**

**Swindon,**

**SN1 2JH**

and returned in a plain envelope, using the address label enclosed. The envelope shall, **under no circumstances**, bear any name or mark indicating the name of the sender. In particular the practice of incorporating the name of the Tenderer by way of advertisement in the franking of the envelope violates this rule. The Tenderer should also ensure that any carrier (Royal Mail/Couriers etc.) engaged to deliver a tender does not violate this rule by identifying the Tenderer as the sender. **MARKED TENDERS WILL BE REJECTED**.

12.2 Responses must be sealed and submitted in **TRIPLICATE** with one Response clearly marked **MASTER**. 1 USB soft copy of the response shall support these documents. If discrepancies between the copies are found, the Master will be considered as the only response document. Response packages must be marked confidential - to be opened only by an authorised representative of SBC.

12.3 Tender documents, completed in full, shall be received no later than **1200hrs UK Local Time on Friday 7 October 2016**. Documentation not returned by the due date and time will be excluded from evaluation.

OJEU/Contract Finder Notice Publication 15 August 2016

Closing Date for Tender Clarifications 30 September 2016

Tender return by 7 October 2016

Evaluate Tenders 10-12 October 2016

Presentations/Interviews 17/20 October 2016 SBC Approval 2 November 2016 Issue reject/accept letters 3 November 2016

Standstill Period 7-18 November 2016

Award and seal contract 30 November 2016

Implement contract by 1 April 2017

12.4 No tender shall be considered if it reaches SBC premises, as detailed in 12.3, after the time specified, unless the closing date has formally been extended in writing.

12.5 Response openings will be conducted privately. All materials submitted in response to this Request will become SBC property and may be retained by SBC.

12.6 Specifications, data, documentation or other technical or business information (“information”) furnished or disclosed to the Tenderer hereunder shall be deemed SBC property.

## 13 Scope of Evaluation

13.1 The evaluation process will seek to appoint a Contractor(s) who can demonstrate the required skills, qualities, technical ability and capacity, commercial stability and experience to ensure successful performance of the Contract.

* 1. The evaluation process is separated into two separate stages as follows.

**Stage 1** – **Selection Criteria**

This stage concerns the evaluation of the information provided by tenderers in response to the Tender Questionniare (Section 4). This evaluation concentrates on economic and financial standing and technical and professional ability and will evaluated as follows:-

|  |  |
| --- | --- |
| **13.3.1 STAGE 1 – SUPPLIER SELECTION QUESTIONNIARE**  **EVALUATION MODEL** | |
| a) Selection Questionniare Mandatory ‘pass/fail’ sections - A Tenderer must achieve a pass  for **all** of the parts set out in 13.3.2  b) Selection Questionniare Scoring Criteria – For Tenderers who achieve in ‘pass’ as set  out above will have their responses to technical & professional ability assessed against the weighted criteria set out in 13.3.3.  Only Tenderers who achieve the minimum score of 6 for each scored questions, and pass all of the pass/fail sections will be eligible to have their bids assessed against the **Stage 2** - **Award Criteria**. | |
| **13.3.2 Mandatory Pass/Fail Selection Criteria** | |
| **Questionniare Section 4 Reference** | **Mandatory Requirements to pass** |
| General | Questionniare response in the correct format |
| General | Questionniare response received on time |
| General | All Sections fully completed |
| Section 2 – 2.2 – Terms and Conditions | Tenderer accepts the Terms & Conditions |
| Section 4  2 - Grounds for Mandatory Exclusion | All responses to part 2 (Grounds for mandatory exclusion) answered ‘No’ subject to any self-cleaning provisions set out in this document |
| Section 4  3 – Grounds for discretionary exclusion – Part 1 | All Section 3 answered No’ subject to any self-cleaning provisions set out in this document |
| Section 4  4 – Grounds for discretionary exclusion – Part 2 | All Section 4 answered No’ subject to any self-cleaning provisions set out in this document |
| Section 4  5.1 - Economic and Financial Standing | Select one option that you can provide to demonstrate your economic and financial standing |
| Section 4  5.2 - Economic and Financial Standing | Self-certifying ‘Yes’ you meet the minimum level of economic and financial standing and/or a minimum financial threshold as set out below:  Turnover £285,000 per year  Net Worth: Positive, if you do not have a positive net worth a performance bond or parent guarantee is required. |
| Section 4  5.3 - Economic and Financial Standing | If a subsidiary of a Parent/Holding Company, answer ‘Yes’ to providing Parent/Holding Company Accounts and ‘Yes’ to providing a guarantee |
| Section 4  6 – Technical and Professional Ability | Must provide detail of one relevant contract. |
| Section 4  7 – B - 1 - Insurance | Self-certifying ‘Yes’ commitment to meet the minimum Insurance requirements |
| Section 4  7-C-1 &2 - Equality Legislation | Self-certifying ‘No’ Automatic Pass  If answering ‘Yes’ you may be excluded if you are unable to demonstrate to the Authority’s satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring. |
| Section 4  7-D-1 Environmental Management | Self-certifying ‘No’ Automatic Pass  If answering ‘Yes’ please note the Authority will not select bidder(s) that have been prosecuted or served notice under environmental legislation in the last 3 years, unless the Authority is satisfied that appropriate remedial action has been taken to prevent future occurrences/breaches |
| Section 4  7-D–2 Environmental Management | Self-certifying ‘Yes’ Automatic Pass  If answering ‘No’ then please confirm that relevant procedures will be in place to perform this contract should you be successful. |
| Section 4  7-E-1 Health and Safety | Self-certifying ‘Yes’ your organisation has a Health and Safety Policy that complies with current legislative requirements |
| Section 4  7-E-2 Health and Safety | Self-certifying ‘No’ your organisation or any of its Directors or Executive Officer’s been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years.  If answering ‘Yes’ the authority will exclude bidder(s) that have been in receipt of enforcement/remedial action orders unless the bidder(s) can demonstrate to the authority’s satisfaction that appropriate remedial action has been taken to prevent future occurrences or breaches. |
| Section 4  7-E-3 Health and Safety | Self-certifying ‘Yes’, if you use sub-contractors, you have processes in place to check whether any of the above circumstances apply to these other organisations. |

|  |  |
| --- | --- |
| **13.3.3 Scoring Selection Criteria – Technical & Professional Ability** | |
| **Questionniare Section 4 Reference No.** | **Scoring Selection Criteria (Out of 10)** |
| Section 4  7-A-1 Additional Technical and Professional Ability questions | This question will be scored and weighted at 20% of the Selection Award score. The Tenderer must obtain a minimum score of **6** for each question to move to the Award Criteria Stage |
| Section 4  7-A-2 Additional Technical and Professional Ability questions | This question will be scored and weighted at 20% of the Selection Award score. The Tenderer must obtain a minimum score of **6** for each question to move to the Award Criteria Stage |
| Section 4  7-A-3 Additional Technical and Professional Ability questions | This question will be scored and weighted at 20% of the Selection Award score. The Tenderer must obtain a minimum score of **6** for each question to move to the Award Criteria Stage |
| Section 4  7-A-4 Additional Technical and Professional Ability questions | This question will be scored and weighted at 20% of the Selection Award score. The Tenderer must obtain a minimum score of **6** for each question to move to the Award Criteria Stage |
| Section 4  7-A-5 Additional Technical and Professional Ability questions | This question will be scored and weighted at 20% of the Selection Award score. The Tenderer must obtain a minimum score of **6** for each question to move to the Award Criteria Stage |

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| **Selection Evaluation Criteria – Scored Elements** | |
| **Scored elements** will be judged on a score from 0 to 10, with a score of 6 or more being required on each scored question to go through to **Stage 2 – Award Criteria** | |
| 0-1 | The Question is not answered or the response is completely unacceptable. It does not meet the minimum requirement or it has completely missed the point of the question. |
| 2-3 | Very poor response and not acceptable – fails to meet the minimum requirement/standard. Requires major revision to the proposal to make it acceptable. Only partially answers the requirement, with major deficiencies and little relevant detail proposed. |
| 4-5 | Poor response only partially satisfying requirement/standard with deficiencies apparent. Some useful evidence provided but response falls well short of minimum requirements. |
| 6-7 | Response is acceptable and meets minimum requirement but remains basic and could have been expanded upon. Response is sufficient but does not inspire. Good probability of success, weaknesses can be readily corrected. |
| 8-9 | Response meets our expected requirement/standard and exceeds minimum expectations including as level of detail, which adds value to the bid. Great probability of success, no significant weaknesses noted. |
| 10 | Excellent response – comprehensive and useful, which exceeds the specified performance or capability in a beneficial way. High probability of success, no weaknesses noted. The response is innovative and includes a full description of techniques and measurements to be employed. |

**13.4 Stage 2 – Award Criteria**

Tenderers who are successful at Stage 1 Selection Criteria qualify to have their submission assessed in the Award Criteria where we are seeking to identify the **M**ost **E**conomically **A**dvantageous **T**ender (MEAT) as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **13.4.1 STAGE 2 - AWARD CRITERIA**  **EVALUATION MODEL** | | | |
| The breakdown of questions and associated weightings from the Pricing Schedule and Tender Questionniare are identified below. | | | |
| **Item** | **No.** | **Pricing Schedule** | **Weighting (out of 100%)** |
| **Price** |  | Submitted Price | 50 |
|  | **Sub-total** | | **50** |
| **Section 6** | | | |
| **Tender Award Questions** | 6.1.1 | Staffing | 5 |
| 6.1.2 | Risk Management | 5 |
| 6.1.3 | Rents and Service Charges | 5 |
| 6.1.4 | Supporting Adults and Children | 10 |
| 6.1.5 | Evidencing Outcomes | 5 |
| 6.1.6 | Innovation | 5 |
| 6.1.7 | Social Value | 5 |
|  | **Sub-total** | **40** |
| **Presentation and Inteview** | Presentation | | 4 |
| Interview Question | | 2 |
| Interview Question | | 2 |
| Interview Question | | 2 |
| **Sub-total** | | **10** |
|  | **Total** | | **100** |

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| --- |
| **Evaluation Criteria – Price elements** |
| **Price elements** will be judged using the following methodology:  The lowest price for a response which meets the pass criteria shall score 10. All other bids shall be scored on a pro rata basis in relation to the lowest price.  For example - Bid 1 £100,000 scores 10, Bid 2 £120,000 differential £20,000 or 20% remove 20% from price scores 8, Bid 3 £150,000 differential £50,000 remove 50% from price scores 5, Bid 4 £175,000 differential £75,000 remove 75% from price scores 2.5. The lowest score possible is 0. All scores are then subjected to a multiplier e.g. if price has a scoring criteria of 50%, the multiplier will be 5. |

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| **Award Evaluation Criteria – Non-price elements** | |
| **Non-Price elements** will be judged on a score from 0 to 10, which shall be subjected to a multiplier so criteria worth 20% will have a 0-10 score and a multiplier of 2. The 0-10 score shall be based on: | |
| 0-1 | The Question is not answered or the response is completely unacceptable. It does not meet the minimum requirement or it has completely missed the point of the question. |
| 2-3 | Very poor response and not acceptable – fails to meet the minimum requirement/standard. Requires major revision to the proposal to make it acceptable. Only partially answers the requirement, with major deficiencies and little relevant detail proposed. |
| 4-5 | Poor response only partially satisfying requirement/standard with deficiencies apparent. Some useful evidence provided but response falls well short of minimum requirements. |
| 6-7 | Response is acceptable and meets minimum requirement but remains basic and could have been expanded upon. Response is sufficient but does not inspire. Good probability of success, weaknesses can be readily corrected. |
| 8-9 | Response meets our expected requirement/standard and exceeds minimum expectations including as level of detail, which adds value to the bid. Great probability of success, no significant weaknesses noted |
| 10 | Excellent response – comprehensive and useful, which exceeds the specified performance or capability in a beneficial way. High probability of success, no weaknesses noted. The response is innovative and includes a full description of techniques and measurements to be employed |

13.5 A detailed and numerically weighted evaluation matrix shall be used as part of the assessment, which will be determined to **two** (2) decimal places.

13.6 The evaluation panel of both stages may comprise the Authority, both commercial and operational (including commercial partners). Additionally depending on the contract, specific users of the works may also be invited to participate in the evaluation process, to which the Authority may consult such users during the procurement process.

13.7 After the initial tender evaluation the Tenderer with the Most Economically Advantageous Bid will become the Preferred Bidder and will be required to provide valid, complete documentation to support it’s bid as outlined in Section 4 Supplier Selection Questionniare. To support the Preferred Bidder status and finalise the evaluation process the Tenderer will be given 14 days to submit the information to validate it’s bid. Any delays in submitting this documentation will delay the contract award process and the issue of the contract award letter.

13.8 The Authority has the right to withdraw preferred bidder status should the documentation not be submitted by the deadline or does not support statements made in the preferred bidder’s tender.

13.9 There are a number of Pass/Fail elements which the Tenderer will be required to ‘Pass’ to be considered for this opportunity.

13.10 Failure to comply with the Authority’s requirements for these mandatory

sections **will** result in disqualification from the tender evaluation process.

Please note there may be individual word limits prescribed for certain responses within the Tender and these will be clearly identified after the relevant question. Should any response you provide within your Tender submission exceed the specified word limit then the Authority will only consider the response up to the word limit for evaluation purposes. Supporting information will not be included in the associated word count, but this must be both reasonable and relevant to the specific referenced question.

13.11 Those advising of their intention to submit a Response (see 4.1), will be given an appointment on either the 17th or 20th of October to give a Presentation and respond to Interview Questions.

## 14 Blank

## 15 Acceptance of Tender

15.1 SBC does not bind itself to accept the lowest or any tender. Power is reserved to accept a portion or portions of the tender. Tenderers will be notified of the outcome of their tender at the earliest possible opportunity and no useful purpose will be served by communication with SBC in the meantime, unless invited to do so.

## 16 Post Tender Clarification

16.1 SBC reserves the right to short-list one or more Tenderers for the purpose of discussing possible refinements to technical or contractual terms, which may in turn require adjustments to your tender. This process, if used, will be carried out under strict guidelines and will not put any Tenderer, whether short-listed or not, at a disadvantage.

## 17 Tender Compliance

17.1 Tenders must be based upon the Conditions set out in the documents, otherwise they may be rejected, technically, commercially or both on the grounds of non-compliance.

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THIS Agreement is made the ................... day of ........................ 2016

BETWEEN

1. **SWINDON BOROUGH COUNCIL** of Civic Offices Euclid Street Swindon SN1 2JH (“the Authority”); and
2. …………………………………………………………………………………………………………………………………….. (registered in England and Wales under number………….) (“the Contractor”)

(The Authority and the Contractor each being a Party and being together called the Parties)

Background:

1. The Contractor is providing housing related support services on behalf of the Authority.
2. The Parties intend that the Contractor will continue to provide housing related services on behalf of the Authority until the Authority is able to appoint a provider following a tender process.

**OPERATIVE PROVISIONS:**

**Part 1 - Preliminary**

**1.** **Definitions and Interpretations**

1.1 In this Agreement, unless the context otherwise requires, the following terms shall have the meanings given to them below:

|  |  |
| --- | --- |
| **“1999 Act”** | means the Local Government Act 1999 |
|  |  |
| **“Agreement”** | means this agreement between the Authority and the Contractor consisting of these clauses and any attached Schedules, the Invitation to Tender, the Tender and any other documents (or parts thereof) specified by the Authority. |
|  |  |
| **“Annual Service Report”** | means a written report provided to the Authority to the reasonable satisfaction of the Authority |
|  |  |
| **“Approval” and “Approved”** | means the written consent of the Contract Manager. |
|  |  |
| **“ Assessment”** | means an assessment, the purpose of which shall include:  (a) assessing the level of satisfaction among users of Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services; and/or  (b) assisting in the preparation of the Contractor’s Annual Service Report; |
|  |  |
| **“Authority”** | means Swindon Borough Council, its successors and assigns. |
| **“Authority’s Background IPR”** | means any and all Intellectual Property Rights owned by the Authority prior to the Commencement Date. |
|  |  |
| **“Authority Property”** | means any property, other than real property, issued or made available to the Contractor by the Authority in connection with this Agreement |
|  |  |
| **“Best Value Duty”** | means the duty imposed on the Authority by Part 1 of the 1999 Act and under which the Authority is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act. |
|  |  |
| **“Code”** | means Services, Public Functions and Associations: Code of Practice published by the Equality and Human Rights Commission as published from time to time or any code which may replace it. |
|  |  |
| **“Commencement Date”** | means the 1st day of April 2017 |
|  |  |
| **“Commercially Sensitive Information”** | means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information: |
|  | (a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or |
|  | (b) that constitutes a trade secret. |
|  |  |
| **“Commercially Sensitive Information Schedule”** | means the Schedule containing a list of the Commercially Sensitive Information. |
|  |  |
| **“Confidential Information”** | means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the DPA and the Commercially Sensitive Information. |
|  |  |
| **“Contract Manager”** | means the person for the time being appointed by the Authority as being authorised to administer this Agreement on behalf of the Authority or such person as may be nominated by the Contract Manager to act on its behalf. |
|  |  |
| **“Contracting Authority”** | means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Authority. |
|  |  |
| **“Contractor”** | means the person, firm, organisation or company with whom this Agreement is made. |
| **“Contractor’s Background IPR”** | means any and all Intellectual Property Rights owned by the Contractor prior to the Commencement Date. |
|  |  |
| **“Contractor’s Representative”** | means the individual from time-to-time authorised to act on behalf of the Contractor for the purposes of this Agreement. |
|  |  |
| **“Data Protection Officer”** | means the officer of the Authority holding the post of “Data Protection Officer”, or such other person as the Authority may elect. |
|  |  |
| **“Default”** | means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other. |
| **“Disclosure and**  **Barring Service”** | means the service established under the Protection of Freedoms Act 2012 for carrying out checks of a person`s suitability of working with children or vulnerable adults |
| **“DPA”** | means the Data Protection Act 1998 as amended from time to time. |
|  |  |
| **“Equipment”** | means the Contractor’s equipment, plant, materials, and such other items supplied and used by the Contractor in the performance of its obligations under this Agreement. |
|  |  |
| **“Environmental Information Regulations”** | means the Environmental Information Regulations 2004. |
|  |  |
| **“Expiry Date”** | means the 31st March 2020 or such other date where this Agreement is terminated or there is an Extension. |
| **“Extension”** | means the extension of the duration of the Agreement agreed in accordance with clause 2.2. |
|  |  |
| **“FOIA”** | means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation. |
|  |  |
| **“Force Majeure”** | means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster but does not include any industrial action occurring within the Contractor’s organisation or any sub-contractor’s organisation |
|  |  |
| **“General Change in Law”** | means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services. |
|  |  |
| **“Information”** | has the meaning given under section 84 of the FOIA. |
| **“Initial Term”** | means the period from the Commencement Date to the Expiry Date or such earlier date of termination or partial termination of the Agreement in accordance with clause 2.1 of the Agreement. |
|  |  |
| **“Intellectual Property Rights”** | means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. |
| **“Invitation to Tender”** | means an invitation for Contractors to bid for the Services required by the Authority. |
|  |  |
| **“Key Personnel”** | means those persons named in the Specification as being key personnel or agreed from time to time between the Parties in writing. |
| **“Lay Assessment”** | means a survey carried out with service users by current or former users of other supported housing services, the results of which are fed back to the Authority. |
|  |  |
| **“Local Commissioner”** | means the Local Commissioner/Ombudsman as appointed by the Commissioner for Local Administration in England or any successor body. |
| **“Monitoring Schedule”** | means the Schedule containing details of the monitoring arrangements. |
|  |  |
| **“Month”** | means calendar month. |
|  |  |
| **“Party”** | means a party to this Agreement and “Parties” shall be construed accordingly. |
| **“Payment Date”** | If a Working Day the 15th of each Month or the next Working Day thereafter. |
|  |  |
| **“Premises”** | means the location where the Services are to be performed, as specified in the Specification. |
|  |  |
| **“Price”** | means the price exclusive of any applicable Tax, payable to the Contractor by the Authority under this Agreement, as set out in the Specification Schedule, for the full and proper performance by the Contractor of its obligations under this Agreement but before taking into account the effect of any adjustment of price in accordance with clause 22. |
|  |  |
| **“Public Contracts Directive”** | means Public Contracts Directive 2014/24/EU |
|  |  |
| **“Replacement Contractor”** | means any third party appointed by the Authority from time to time, to provide any services which are substantially similar to any of the Services, and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party. |
|  |  |
| **“Request for Information”** | shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations. |
|  |  |
| **“Schedule”** | means a schedule attached to this Agreement. |
|  |  |
| **“Services”** | means the services to be provided as specified in the Specification Schedule. |
|  |  |
| **“Services Improvement Notice”** | means a written notice stating the nature and timing of changes to the provision, performance or delivery of the Services (or the relevant part) which the Authority desires. |
|  |  |
| **“Service Period”** | means the period, as set down in the Specification Schedule, for which any given Service is to be provided. |
|  |  |
| **“Service Plan”** | means a written statement containing the Contractor’s proposals to achieve the change to the Services (or a specific Service) in accordance with the Services Improvement Notice |
|  |  |
| **“Specification”** | means the description of the Services to be provided under this Agreement and attached as the Specification Schedule. |
|  |  |
| **“Specification Schedule”** | means the Schedule containing details of the Specification. |
|  |  |
| **“Specific Change in Law”** | means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services. |
|  |  |
| **“Staff”** | means all persons employed by the Contractor to perform this Agreement together with the Contractor’s servants, agents, volunteers and sub-contractors used in the performance of this Agreement. |
|  |  |
| **“Subject Access Request”** | means a request made under section 7 of the DPA. |
|  |  |
| **“Tax”** | means Value Added Tax or any tax of a similar nature which replaces it. |
| **“Tender”** | means the Contractor’s response to the Invitation to Tender (and any subsequent clarifications) and attached as the Tender Schedule. |
|  |  |
| **“Term”** | means the period beginning on the Commencement Date and finishing on the Expiry Date. |
|  |  |
| **“TUPE”** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended. |
|  |  |
| **“Variation”** | means any addition to, or modification of, any provision of this Agreement. |
|  |  |
| **“Working Day”** | means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London. |

1.2 **Interpretation**

In this Agreement except where the context otherwise requires:

1. the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
2. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
3. words importing the masculine include the feminine and the neuter;
4. reference to a clause is a reference to the whole of that clause unless stated otherwise;
5. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
6. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
8. headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

**2** **Term**

2.1 This Agreement shall take effect on the Commencement Date and shall expire automatically on the Expiry Date unless it is otherwise terminated in accordance with this Agreement, or otherwise lawfully terminated.

2.2 The Authority may seek to extend the duration of the Agreement in accordance with clause 52A. During the Extension, the obligations under the Agreement shall continue (subject to any Variation) until the expiry of the period specified in accordance with clause 52A.

**3** **Authority’s Obligations**

3.1 Save as otherwise expressly provided, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Authority to the Contractor.

**4** **Entire Agreement**

4.1 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. This Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

4.2 In the event of and only to the extent of any conflict between the body of this Agreement, the Invitation to Tender, the Tender, the Schedules and any other document mentioned or referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:

1. the body of this Agreement shall prevail over;
2. the Schedules;
3. the Invitation to Tender;
4. the Tender
5. any other document referred to in the Agreement.

Unless expressly agreed, a document varied pursuant to clause 47 shall not take higher precedence than specified here.

4.3 This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

4.4 Without prejudice to any other term of this Agreement no omission from, addition to, or Variation of these terms and conditions shall be valid or of any effect unless it is agreed in writing and signed by the Contract Manager

**5** **Scope of Agreement**

5.1 Nothing in this Agreement shall be construed as creating a partnership or a contract of employment between the Authority and the Contractor as defined by the Partnership Act 1890.

5.2 In carrying out its obligations under this Agreement, the Contractor shall be acting as principal and not as the agent of the Authority and the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority.

**6** **Notices**

6.1 Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party concerned.

6.2 Any notice or other communication, which is to be given by either Party to the other shall be given by letter (sent by hand or post). Such letters shall be addressed to the other Party in the manner referred to in clause 6.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given:

(a) in the case of a letter 2 Working Days after the day on which the letter was posted; or

(b) in the case of a letter delivered by hand:

(i) where it is delivered on a Working Day before 16:00 hours, on that day

(ii) in any other case, on the first Working Day after the day on which it is delivered or transmitted; or

(c) such sooner time where the other Party acknowledges receipt of such letters.

6.3 For the purposes of clause 6.2, the address of each Party shall be

(a) For the Authority:

|  |  |
| --- | --- |
| For the attention of | Commissioner Supported Housing |
| Address | Ground Floor, Civic Annexe |
|  | Beckhampton Street |
|  | Swindon |
| Postcode | SN1 2JG |
| Tel | 01793 466709 |

1. For the Contractor:

|  |  |
| --- | --- |
| For the attention of |  |
| Address |  |
|  |  |
|  |  |
| Postcode |  |
| Tel |  |
|  |  |

6.4 Either Party may change its address for service by serving a notice in accordance with this clause.

**7** **Authorised Representatives**

7.1 The Contract Manager shall be as defined in clause 6.3(a). The Contractor will be notified in writing if there is a change to the person who is its Contract Manager.

7.2 The Contractor’s Representative shall be as defined in clause 6.3(b) and who shall have the power on behalf of the Contractor in connection with any matter relating to the performance of this Agreement. The Contractor shall notify the Contract Manager in writing if there is a change in the person who is the Contractors Representative.

7.3 The Contract Manager and the Contractor’s Representative will hold contract meetings in accordance with the Monitoring Schedule to monitor the Contractor’s performance under this Agreement.

7.4 The Authority reserves the right to change the Contract Manager at any time by giving notice as per clause 6.

1. **Mistakes in Information**
   1. The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the provision of the Services and shall pay the Authority any extra costs in connection with the Services occasioned by any discrepancies, errors or omissions therein.

**9** **Conflicts of Interest**

9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where in the reasonable opinion of the Authority there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Authority under the provisions of this Agreement. The Contractor will disclose to the Authority full particulars of any such conflict of interest, which may arise.

9.2 The provisions of this clause shall apply during the continuance of this Agreement.

**10** **Fraud & Exclusion Grounds**

10.1 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, directors) and/or any of the Contractor’s suppliers, in connection with the receipt of monies from the Authority. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

10.2 The Contractor confirms that it has no reason to believe that it is excluded from participating in any tenders by virtue of the exclusion grounds set down in the Public Contracts Regulations 2015.

**Part 2 – The Provision of the Services**

**11** **The Services**

11.1 The Contractor shall provide the Services for the respective Service Period(s) in accordance with the Authority’s requirements as set out in the Specification and the terms of this Agreement. The Authority shall have the power to inspect and examine the performance of the Services at the Premises at any reasonable time provided it complies with the Contractor’s reasonable health and safety and security requirements. Where the Contractor has access to the Premises by virtue of any agreement it has with any third party property owner, the Contractor shall, at the request of the Authority, grant or procure such access as may be reasonable for the purpose referred to in clause 11.1.

11.2 The Contractor shall at all times deliver the Services in accordance with the Law.

11.3 If the Authority informs the Contractor that the Authority in its reasonable opinion considers that any part of the Services do not meet the requirements of this Agreement or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Authority, the Contractor shall (i) at its own expense re-schedule and re-perform the Services in accordance with the requirements of this Agreement within such reasonable time as may be specified by the Authority (ii) from the date of receipt of receiving such information the Contractor will immediately render Services as required by the Authority.

11.4 Timely provision of the Services shall be of the essence of this Agreement,including in relation to commencing the provision of the Services within the time agreed or on a specified date.

11.5 Without prejudice to any other rights and remedies the Authority may have pursuant to this Agreement, the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Contractor’s delay in the performance of its obligations under this Agreement and which delay the Contractor has failed to remedy following reasonable notice from the Authority.

**12** **Manner of Carrying Out the Services**

12.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.

12.2 All Equipment brought onto the Premises shall be at the Contractor’s own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

12.3 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

12.4 All Equipment shall be at the risk of the Contractor. Neither the Authority nor any third party owner of the Premises shall have any liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority or any third party owner of the Premises.

12.5 The Authority or any third party owner of the Premises shall have the power at any time during the performance of the Services to order in writing that the Contractor remove from the Authority’s Premises or any Premises owned by a third party any Equipment which in the opinion of the Authority is either hazardous, noxious or additionally in the case of the Authority not in accordance with this Agreement and if the Authority may order the Contractor to replace such item of Equipment with a suitable substitute item of Equipment.

**13** **Sufficiency of Information**

13.1 The Contractor shall be deemed to have satisfied itself before submitting the Tender as to the accuracy and sufficiency of the rates, prices and discount structures stated by it in the Tender which shall (except insofar as it is otherwise provided in the Agreement) cover all its obligations under the Agreement and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Tender.

**14** **Quality and Standards**

14.1 To the extent the standard of Services has not been specified in this Agreement, the Contractor shall use its best endeavours to agree the relevant standard of Services with the Contract Manager prior to execution, and shall execute this Agreement with reasonable care and skill and in accordance with best industry practice.

14.2 The introduction of new methods or systems, which impinge on the provision of the Services shall be subject to prior Approval in writing by the Contract Manager.

14.3 Where an appropriate European or British Standard or Code of Practice issued by the European Commission or British Standards Institution is current at the Commencement Date of this Agreement or of any tender relating to this Agreement, all goods, Services and materials supplied shall be at least in accordance with that Standard in the absence of any direction to the contrary from the Authority.

**15** **Non Exclusivity**

15.1 This Agreement shall be awarded on a non-exclusive basis and the Authority reserves the right to seek to purchase any or all items/Services from other sources.

15.2 Where the Authority has provided information regarding data, volumes or forecast quantities, then the Authority does not guarantee any specific quantity unless otherwise stated within the Specification.

**16** **Key Personnel**

16.1 Any changes to Key Personnel shall be notified to the Authority in writing as soon as is reasonably practicable.

16.2 Any replacements to the Key Personnel shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

**17** **Contractor’s Staff**

17.1 The Authority reserves the right under this Agreement to require the Contractor to remove from the Services or refuse to admit to, or to withdraw permission to remain on, any Premises

(a) any member of the Staff; or

(b) any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Authority or any third party owner of the Premises, undesirable.

17.3 The Contractor’s Staff, engaged within the boundaries of any Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) of the Authority and/or any third party owner of the Premises as may be in force from time to time for the conduct of personnel when at that establishment and when in the immediate vicinity of that establishment.

17.4 The decision of the Authority as to whether any person is to be refused access to any Premises shall be final and conclusive.

17.5 The Contractor shall bear the cost of any notice, instruction or decision of the Authority under this clause 17.

**18** **Inspection of Premises & All Other Relevant Matters**

18.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises and considered all other relevant matters before entering into this Agreement so as to have understood the nature and extent of this Agreement to be carried out and be satisfied in relation to all matters connected with the performance of this Agreement.

**19** **Agreement to Occupy Authority’s Premises**

19.1 Where any land or Premises (including temporary buildings) or part thereof are owned by and made available by the Authority for occupation by the Contractor in connection with this Agreement, those Premises shall be made available to the Contractor on the terms contained in an agreement regulating the occupation of those Premises. For the avoidance of doubt and subject to the requirements of this Agreement, any agreement for premises in connection with the provision of the Services between a third party and the Contractor shall be negotiated directly between that third party and the Contractor,

**20** **Sub-Contracting for the Delivery of the Services**

20.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing this Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

**21** **Offers of Employment**

21.1 For the duration of this Agreement and for a period of 12 months thereafter the Contractor shall not employ or offer employment to any of the Authority’s staff who have been associated with the procurement and/or the contract management of the Services without the Authority’s prior Approval save that the restriction in this clause shall not apply to any member of the Authority’s staff who has responded to a published job advert (that is available to any suitably qualified person to apply for) and has been offered employment as a result.

**Part 3 – Payment and Price**

**22 Price**

22.1In consideration of the performance of the Contractor’s obligations under this Agreement by the Contractor, the Authority shall pay the Price in accordance with clause 23.

22.2 In the event that the cost to the Contractor of performing its obligations under this Agreement increases or decreases as a result of a change of Law, the provisions of clause 26 shall apply.

22.3 The Authority shall pay the Contractor, on the production of a valid Tax invoice, in addition to the Price, a sum equal to the Tax chargeable on the value of the Services provided in accordance with this Agreement.

22.4 Prices shall be fixed for the term of the contract.

**23** **Payment and Tax**

23.1 The Authority shall pay the undisputed sums due to the Contractor in cleared funds in accordance with the Specification Schedule and in any case within 30 days of Payment Date. The Price payable on each Payment Date shall be half in arrears (in respect of Services correctly performed by the Contractor) and half in advance (in respect of Services to be performed by the Contractor).

23.2 The Contract Manager may require production of any other documentation he reasonably believes is necessary to substantiate the basis any or all payments.

23.3 Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge. Tax invoices are to be issued by the Contractor before the end of each financial year and upon termination.

23.4 The Authority may reduce payment in respect of any Services, which the Contractor has either failed to provide or, in the reasonable opinion of the Authority, has provided inadequately. Any such reduction shall be without prejudice to any other rights or remedies of the Authority.

23.5 Subject to the provisions of clause 63.1, the Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate this Agreement under clause 57.3 for failure to pay undisputed charges.

23.6 The Contractor shall pay all the invoices of its sub-contractors within 30 days of receipt and shall ensure that the same timescale for payment is passed down its supply chain

**24** **Recovery of Sums Due**

24.1 Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of this Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under this Agreement or under any other agreement or contract with the Authority.

24.2 Any overpayment by the Authority to the Contractor, whether of the Price or Tax, shall be a sum of money recoverable by the Authority from the Contractor pursuant to clause 24.1 above.

24.3 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

**25 Currency**

25.1 Any requirement of Law to account for the Services in any currency (or to prepare for such accounting), instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.

25.2 The Authority shall provide all reasonable assistance to facilitate compliance by the Contractor under clause 25.1.

**26 Change of Law**

26.1 The Contractor shall neither be relieved of its obligations to perform the Services in accordance with the terms of this Agreement nor be entitled to an increase in the Price and/or any charges payable by the Contractor as the result of:

1. a General Change in Law; or
2. a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.

26.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 26.1), the Contractor shall notify the Authority of the likely effects of that change, including:

1. whether any change is required to the Services, the Price or this Agreement; and
2. whether any relief from compliance with the Contractor’s obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

26.3 As soon as practicable after any notification in accordance with clause 26.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including

a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors

b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;

c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

26.4 Any increase in the Price or relief from the Contractor’s obligations agreed by the Parties pursuant to this clause 26 shall be implemented in accordance with clause 47.

**Part 4 - Statutory Obligations, Codes of Practice and Regulations**

**27** **Prevention of Corruption**

27.1 The Authority may terminate this Agreement and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things

a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Authority contract (even if the Contractor does not know what has been done); or

b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or

(c) commit any fraud in connection with this or any other Authority contract whether alone or in conjunction with Authority Members, contractors or employees.

27.2 Any clause limiting the Contractor's liability shall not apply to this clause.

**28** **Discrimination**

28.1 The Contractor must:

(a) operate an equal opportunities policy for as long as this Agreement is in force;

(b) provide the Authority with a copy of any such policy at the Authority’s request

28.2 The Contractor must use all reasonable endeavours to make sure that its equal opportunities policy complies with all statutory obligations as regards discrimination on the grounds of colour, race, nationality, cultural or ethnic origin, marital status, gender, age, disability, religion or sexual orientation in relation to:

* 1. decisions made by it in the recruitment, training or promotion of Staff employed or to be employed in the provision of the Services; and
  2. the carrying out of its obligations under this Agreement.

28.3 In providing the Services, the Contractor must observe as far as possible the Code and the Human Rights Act 1998.

28.4 The Contractor must provide the Authority with such information as it may reasonably require in order for the Authority to assess the Contractor’s compliance with the Code.

28.5 If any Court or Tribunal, or the Equality and Human rights Commission (or any body which may replace the Commission) makes a finding that the Contractor has unlawfully discriminated against any person in the provision of the Services then the Contractor must:

(a) take all necessary steps to make sure that the unlawful discrimination does not happen again and

(b) notify the Authority in writing of the finding and the steps taken to prevent its re-occurrence.

**29** **The Contracts (Rights of Third Parties) Act 1999**

29.1 Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement and for the avoidance of doubt the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement.

**30** **Environmental, Social and Labour Requirements**

30.1 The Contractor shall, when working on the Authority’s Premises, perform this Agreement in accordance with the Authority’s environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

30.2 In performance of their obligations under this Agreement the Contractor shall comply with applicable obligations in the field of environmental, social and labour law, collective agreements and the international environmental social and labour law provisions listed in Annex X of the Public Contracts Directive.

**31 Health and Safety**

31.1 The Contractor shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of this Agreement.

31.2 The Contractor shall notify the Contract Manager as soon as reasonably practicable in the event of any incident occurring in the performance of this Agreement on the Premises where that incident causes any personal injury, damage to property which could give rise to personal injury or any incident falling into scope of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

31.3 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of this Agreement.

31.4 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

31.5 The Contractor shall at all times during the Term, provide and maintain all such vehicles, plant, machinery and equipment (hereinafter together referred to as “plant”) as are necessary for the proper performance of this Agreement. Vehicles used on this Agreement shall comply with the Supply of Machinery Regulations 1992 and be of a design, which is entirely suitable for the performance of this Agreement.

**32 Disclosure and Barring Service**

32.1 To the extent that the same is permitted by law, the Contractor shall procure that in respect of all potential Staff who will be undertaking a regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012 and in any regulations or guidance made thereunder, before the member of Staff begins to perform any of the Services:

a) each member of Staff is questioned as to whether he or she has any convictions or cautions: and

(b) the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in respect of each member of Staff and without prejudice to clause 32.2 the results of such checks are notified to the Authority in such manner and at such times reasonably prescribed by the Authority.  The check for each member of Staff shall include:

(i) a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Services may involve contact with children including any new list replacing the same in accordance with the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012); and/or

(ii) a search of the list held pursuant to Part VII of the Care Standards Act 2000where the performance of the Services may involve contact with vulnerable adults (as defined in the Care Standards Act) including any new list replacing the same in accordance with the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.

32.2 The Contractor shall procure that no person who discloses any convictions or cautions, or who is found to have any convictions or cautions or other disclosed information following the results of a Disclosure and Barring Service check, is employed or engaged by the Contractor or on the Contractor’s behalf without Approval where that conviction or other disclosed information is incompatible with the type of work being undertaken by the member of Staff in providing the Services.

35.3 The Contractor must provide the Authority with written confirmation that a Disclosure and Barring Service check has been completed and that this has not revealed any matter affecting the suitability of the person to work with children or vulnerable adults as referred to in clause 32.2.

32.4 The Contractor shall procure that the Authority is kept advised at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or caution or whose previous convictions become known to the Contractor (in each case where this may affect their suitability to work with children or vulnerable adults or affect their ability to undertake any regulated activity for the purposes of the Safeguarding Vulnerable Groups (SVG) Act 2006 as such may be amended or replaced from time to time) or in respect of which information relating to other disclosed information that may affect their suitability to work with children or vulnerable adults becomes known to the Contractor. It is the responsibility of the Contractor to obtain any necessary consent to disclose such evidence to the Authority.

32.5 For the avoidance of doubt the provisions of this clause also apply to the Contractor`s use of any volunteers in the performance of the Services

**33 TUPE**

33.1 The Contractor recognises that TUPE may apply in respect of this Agreement, and should they so apply that for the purposes of TUPE, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of full operations.

33.2 During the period of six months preceding the expiry of this Agreement or after the Authority has given notice to terminate this Agreement or the Contractor stops trading, and within 20 working days of being so requested by the Authority, the Contractor shall fully and accurately disclose to the Authority for the purposes of TUPE all information relating to its employees engaged in providing Services under this Agreement, in particular, but not necessarily restricted to, the following:

(a) the total number of Staff whose employment with the Contractor is liable to be terminated at the expiry of this Agreement but for any operation of land

(b) for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given); and

(c) full information about the other terms and conditions on which the affected Staff are employed (including but not limited to their working arrangements), or about where that information can be found and

(d) details of pensions entitlements, if any and

(e) job titles of the members of Staff affected and the qualifications required for each position.

33.3 The Contractor shall permit the Authority to use the information for the purposes of TUPE and of re-tendering. The Contractor will co-operate with the re-tendering of this Agreement by allowing the Transferee to communicate with and meet the affected employees and/or their representatives.

33.4 The Contractor agrees to indemnify the Authority fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 33.2.

33.5 The Contractor agrees to indemnify the Authority from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or person claiming to be an employee on any date upon which this Agreement is terminated and/or transferred to any third party (“Relevant Transfer Date”) arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date, provided that the grounds for the claim arise prior to the Relevant Transfer Date.

33.6 In the event that the information provided by the Contractor in accordance with clause 33.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Authority of the inaccuracies and provide the amended information.

33.7 The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its termination.

**Part 5 - Protection of Information**

**34** **Data Protection Act**

34.1 Both Parties shall (and shall procure that any of their Staff involved in the provision of this Agreement) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA, which arise in connection with this Agreement.

34.2 Notwithstanding the general obligation in clause 34.1, where the Contractor is processing personal data (as defined by the DPA) as a data processor for the Authority (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

1. provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;

(b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 34.2; and

(c) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority’s obligations under the DPA.

34.3 The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

34.4 The Contractor acknowledges that the Authority, as the data controller under the DPA, may receive a Subject Access Request and as such shall assist and co-operate (at the Contractor’s expense) with the Data Protection Officer to enable the Authority to comply with the Subject Access Request.

34.5 The Contractor shall and shall procure that its sub-contractors shall:

(a) transfer any Subject Access Request to the Authority as soon as practicable after receipt and in any event within 2 Working Days of receiving the request;

(b) provide the Data Protection Officer with a copy of all information required in respect of the Subject Access Request in its possession or power in the form that the Authority requires within 27 Calendar Days (or such other period as the Authority may specify) of the Authority requesting that information; and

(c) provide all necessary assistance as reasonably requested by the Data Protection Officer to enable the Authority to respond to a Subject Access Request within the timescale stipulated under the DPA.

34.6 Where the Contractor is acting as a joint data controller or a data processor and a third party request is made for personal information from governmental and public bodies including but not limited to the Police or HM Revenue and Customs, is received, the Contractor shall:

(a) transfer the request to the Data Protection Officer who will register the request and undertake the necessary checks to ensure the authenticity of requester

(b) transfer the information requested to the Data Protection Officer within 5 Working Days of receiving the request

**35** **Confidentiality**

35.1 Each Party:-

1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

(b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

35.2 The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor’s confidentiality obligations under this Agreement. Additionally, where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

35.2A The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of this Agreement.

35.3 The provisions of clauses 35.1 to 35.2A shall not apply to any Confidential Information received by one Party from the other:

(a) which is or becomes public knowledge (otherwise than by breach of this clause);

(b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

(d) which is independently developed without access to the Confidential Information; or

(e) which must be disclosed pursuant to a statutory, regulatory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 38.

35.4 Nothing in this clause shall prevent the Authority:

(a) disclosing any Confidential Information for the purpose of:

(i) the examination and certification of the Authority’s accounts; or

(ii) any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

(b) disclosing any Confidential Information obtained from the Contractor:

(i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or

(ii) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to this Agreement;

(c) provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

35.5 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

35.6 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the text of this Agreement, and any Schedules to this Agreement, are not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any part of this Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the Act

35.7 Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Authority to publish this Agreement and its Schedules in its entirety (but with any information which the Authority considers in its absolute discretion to be exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Agreement, to the general public in whatever form the Authority decides.

**36** **Security of Confidential Information**

36.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of this Agreement, the Contractor undertakes to maintain security systems Approved by the Authority. Where necessary to prevent such access, the Authority may require the Contractor to alter any security systems at any time during the Term at the Contractor’s expense.

36.2 The Contractor will as soon as reasonably practicable (and in any event within one hour of becoming aware of it) notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the performance of this Agreement and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor’s obligations under clause 35. The Contractor will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

**37** **Authority Policies**

37.1 The Authority has a whistle blowing policy to encourage its employees and the public to bring into the open issues concerning dishonesty involving the Authority. The Contractor shall ensure that its staff are made aware of this policy which is available on the Authority's website.

**38** **Freedom of Information**

38.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor’s expense) to enable the Authority to comply with these Information disclosure requirements.

38.2 The Contractor shall and shall procure that its sub-contractors shall:

(a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

(b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

(c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

38.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or other Information:

(a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

(b) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

38.4 The Contractor acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

(a) without consulting with the Contractor, or

(b) following consultation with the Contractor and having taken its views into account.

38.5 The Contractor shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure during the course of this Agreement and for a period of 6 years after its termination or expiry and, where necessary to enable the Authority to comply with the FOIA, the Environmental Information Regulations or any other legislation requiring access to or disclosure of information, the Contractor shall permit the Authority to inspect such records as requested from time to time.

38.6 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 38.4.

**39** **Publicity, Media and Official Enquiries**

39.1 The Contractor shall not make any press announcements or publicise this Agreement or any part thereof in any way, except with the Approval of the Contract Manager.

39.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 39.1 by their Staff.

39.3 The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

**40** **Security**

40.1 The Contractor shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Authority or any third party owner while on the Premises, and shall procure that all of its Staff shall likewise comply with such requirements.

**41** **Intellectual Property Rights**

41.1 Save in respect of any Authority’s Background IPR or any Contractor’s Background IPR which shall, subject to clauses 41.2 and 41.3 below, remain vested in their respective owners at all times, all Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, drawings or other material:

(a) furnished to or made available to the Contractor by the Authority shall remain the property of the Authority;

(b) prepared by or for the Contractor for use, or intended use, in relation to the performance of this Agreement shall belong to the Authority and the Contractor shall not, and shall procure that the Contractor’s employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of this Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to this Agreement) which the Contractor may obtain in performing this Agreement except information which is in the public domain.

41.2 The Contractor hereby grants to the Authority a perpetual, royalty-free, irrevocable and non-exclusive licence to use the Contractor’s background IPR for any purpose relating to the Services (or substantially equivalent services) and/or for any purpose relating to the exercise of the Authority’s business or function.

41.3 The Authority hereby grants to the Contractor a royalty-free and non-exclusive licence to use the Authority’s Background IPR provided to the Contractor by the Authority for the purposes of performing this Agreement. The licence granted by the Authority in this clause 41.3 to use the Authority’s Background IPR is restricted to the provision of the Services by the Contractor and shall automatically expire on the expiry or, if earlier, the termination of this Agreement.

41.3 It is a condition of this Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Term on written demand indemnify and keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:

(a) designs or other information furnished by the Authority;

(b) the use of data supplied by the Authority.

41.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor to the Authority as part of the Services. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided that the Contractor:

(a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Authority; and

(c) shall not settle or compromise any claim without the Authority’s prior written consent (not to be unreasonably withheld or delayed).

41.5 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Agreement or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed) either:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to substitute Services; or

(b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

41.6 At the termination of this Agreement the Contractor shall immediately return to the Authority all materials, work or records held, including any back-up media.

**42** **Copyright**

42.1 Copyright in the documents comprising this Agreement shall vest in the Authority but the Contractor may obtain or make at their own expense any further copies required for use by them for performing this Agreement.

**43** **Audit and the Audit Commission**

43.1 The Contractor shall keep and maintain until six years after this Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of this Agreement including the Services provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority, the Contract Manager or the Authority’s representatives such access to those records as may be reasonably required by the Authority in connection with this Agreement.

**44** **Local Commissioner**

44.1 Where the Local Commissioner conducts an investigation into a complaint out of or in connection with the provision of the Services or any part of them, the Contractor shall at its own cost:-

(a) provide any information requested by the Local Commissioner or by the Authority within the timescale allotted; and

(b) attend any meetings with the Local Commissioner and/or the Authority as required for the purposes of the investigation; and

(c) promptly allow access to and investigation of any relevant documents and data and if requested provide copies; and

(d) permit the Local Commissioner and/or the Authority to interview any members of its Staff in connection with the investigation; and

(e) arrange for relevant members of its Staff to appear as witnesses in any ensuing legal proceedings or internal proceedings of the Authority; and

(f) co-operate fully and promptly in every way required by the Local Commissioner during the course of the investigation; and

(g) at the reasonable request of the Authority, issue a suitable apology to the complainant.

44.2 The Authority and the Contractor agree that the Authority shall take action in response:-

(a) to reports of the Local Commissioner in respect of the Services which conclude that injustice has been caused to a person aggrieved in consequence of maladministration, such action to be commensurate with findings of such reports; or

(b) if, following a report referred to in clause 44.2(a), recommendations are made by the Local Commissioner, to comply with such recommendations.

44.3 The Contractor shall be liable for and shall fully and promptly indemnify the Authority against all costs, expenses and losses properly incurred or suffered arising, be it directly or indirectly, out of or in connection with the compliance with, or the implementation of any actions in response to, a report of, or recommendations by, the Local Commissioner pursuant to clause 44.2 to the extent that the said costs, expenses and losses are due to the Contractor's failure (through act or omission) to exercise the level of skill, care and diligence which would be reasonably expected from an efficient and effective Contractor of the Services.

**Part 6 – Control of this Agreement**

**45** **Assignment and Sub-Contracting**

45.1 The Contractor shall not assign, sub-contract or in any other way dispose of this Agreement or any part of it without prior Approval. Sub-contracting any part of this Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Agreement.

45.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

**46** **Waiver**

46.1 The failure of either Party to insist upon strict performance of any provision of this Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.

46.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 6.

46.3 A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

**47** **Variation of the Services**

47.1 Subject to the provisions of clause 47.2, the Authority reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever.

47.2 In the event that the Contractor, acting reasonably and taking into account the provisions of clause 47.4, considers that the proposed Variation would make the provision of the Services financially unviable for the Contractor, the Contractor shall notify the Authority accordingly and shall provide the Authority with such evidence as it may reasonably require to satisfy itself that the proposed Variation will have this affect. Upon the receipt of such a notification, the Authority shall have the option of withdrawing its proposed variation, proposing a new variation or terminating this Agreement.

47.3 Any such Variation shall be communicated in writing by the Contract Manager to the Contractor’s Representative in accordance with the notice provisions of clause 6. All Variations shall be in the form of an addendum to this Agreement.

47.4 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Contractor and agreed in writing with Authority and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of clause 68.

47.5 The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

**48** **Severability**

48.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

48.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

**49** **Remedies in the Event of Inadequate Performance**

49.1 Where a complaint is received or a problem indicated in any Lay Assessment about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of this Agreement, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, they may uphold the complaint, and/or take further action in accordance with the provisions of clause 57 of this Agreement.

49.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of this Agreement by the Contractor, or the Contractor’s performance of its obligations under this Agreement has failed to meet the requirement set out in the Specification Schedule, then the Authority may, without prejudice to its rights under clause 57 of this Agreement, do any of the following:

(a ) make such deduction from the Price to be paid to the Contractor as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Contractor shall have failed to provide or performed inadequately;

(b) without terminating this Agreement, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will be able to perform such part of the Services accordance with this Agreement;

(c) without terminating the whole of this Agreement, terminate this Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such of the relevant Services; and/or

(d) terminate, in accordance with clause 57, the whole of this Agreement.

49.3 The Authority may charge to the Contractor any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Authority or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Contractor for such part of the relevant Services.

49.4 If the Contractor fails to perform any of the Services to the reasonable satisfaction of the Authority and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

49.5 In the event that:

(a) the Contractor fails to comply with clause 49.4 above and the failure, is materially adverse to the commercial interests of the Authority or prevent the Authority discharging a statutory duty; or

(b) the Contractor persistently fails to comply with clause 49.4 above,

the Authority reserves the right to terminate this Agreement by notice writing with immediate effect.

49.6 The remedies of the Authority under this clause may be exercised successively in respect of any one or more failures by the Contractor.

**50** **Remedies Cumulative**

50.1 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**51** **Monitoring of Performance**

51.1 The Contractor shall comply with the monitoring arrangements set out in Monitoring Schedule including, but not limited to, providing such data and information as the Contractor may be reasonably required to produce under this Agreement.

**52****Novation**

52.1 The Authority shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority, private sector body or any other body established under statute (“Transferee”) provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor’s obligations under this Agreement.

52.2 The Authority shall be entitled to disclose to any Transferee any Confidential Information of the Contractor, which relates to the performance of this Agreement by the Contractor. In such circumstances, the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of this Agreement and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

52A **Possible Extension of Term**

52A.1 Subject to satisfactory performance by the Contractor during the Initial Term, the Authority shall be entitled by written notice to the Contractor given not less than three (3) Months prior to the last day of the Term to extend the Agreement for two further periods of up to 2 years (giving a total potential extension period of 4 further years). The provisions in this Agreement will apply throughout any such extended period.

**Part 7 - Liabilities**

**53** **Indemnity and Insurance**

53.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 12 of the Sale of Goods and Services Act 1982, or for fraudulent misrepresentation.

53.2 The Contractor shall take out and maintain with a reputable insurance company, and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain with a reputable insurance company, employers liability and public liability insurance in a minimum amount of five million pounds (£5,000,000) for each and every claim, act or occurrence or series of acts, claims or occurrences with unlimited cover in each period of insurance. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of this Agreement.

53.3 The Contractor shall fully and promptly indemnify the Authority against all direct losses, injury, damages, costs, expenses, liabilities, claims or proceedings incurred by the Authority as a result of any act, default or negligence by the Contractor or any of its employees in carrying out its obligations under this Agreement except and to the extent that it is due to the act, default or negligence of the Authority or any of its employees in the course of their employment.

53.4 Where the Contractor is required to come onto Premises, the Contractor shall not do or omit to do anything that could cause any insurance policy held by the Authority or any third party owner on or in relation to the Premises to become wholly or partly void or voidable, or do or omit anything by which additional insurance premiums may become payable.

53.5 Subject always to clause 53.1, in no event shall either Party be liable to the other for:

(a) loss of profits, business, revenue or goodwill and/ or

(b) indirect or consequential loss or damage.

53.6 The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies it and/or any of its professional consultants or sub-contractors are required to hold under this Agreement or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premia due under those policies.

53.7 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

53.8 The requirement to effect insurance by the Contractor under clause 53.2 shall not in any way be deemed to amend or restrict the liability of the Contractor arising under clause 53.1.

**54** **Not Used**

**55** **Warranties and Representations**

55.1 The Contractor warrants and represents that:

(a) the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Contractor;

(b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but nominated to best industry practice;

(c) all obligations of the Contractor pursuant to this Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff all due skill, care and diligence;

(d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement.

**Part 8 – Default, Disruption and Termination**

**56** **Termination on Change of Control and Insolvency**

56.1 The Authority may terminate this Agreement by notice in writing with immediate effect where:

(a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially the performance of this Agreement; or

(b) the Contractor is an individual or a firm and a petition is presented for the Contractor’s bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor’s or firm’s affairs; or

(c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under terms of a fixed or floating charge; or

(d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(e) any similar event occurs under the law of any other jurisdiction.

56.2 The Authority may only exercise its right under clause 56.1(a) within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Contract Manager immediately when any change of control occurs.

56.3 If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Authority shall be entitled to terminate this Agreement by notice to the Contractor or the Contractor’s Representative with immediate effect.

**57** **Termination on Default**

57.1 The Authority may terminate this Agreement, or terminate the provision of any part of the Services provided under this Agreement by written notice to the Contractor or the Contractor’s Representative with immediate effect the Contractor commits a Default and if:

(a) the Contractor has not remedied the Default to the reasonable satisfaction of the Authority within twenty one Days, or such other period (whether longer or shorter having regard to the need or otherwise for urgent remedial action) as may be specified by the Authority, after issue of a written notice specifying the fault and requesting it to be remedied; or

(b) the Default is material and is not, in the opinion of the Authority, capable of remedy; or

(c) the Default is a fundamental or material breach of this Agreement.

57.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with this Agreement is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Authority for any costs charged in connection with such Default of the Contractor.

57.3 The Contractor may terminate this Agreement if the Authority commits a default which is a fundamental breach of this Agreement under clauses 34 (Data Protection), 35 (Confidentiality) and 41 (Intellectual Property) or the Authority is in material breach of its obligations to pay undisputed charges by giving the Authority at least 30 Working Days’ notice specifying the breach and requiring its remedy. The Contractor’s right of termination under this clause 57.3 shall not apply to non payment of the charges or Price where such non payment is due to the Authority exercising its rights under clauses 24.1 and 49.2(a).

**58** **Break**

58.1 Either Party shall have the right to terminate this Agreement, or to terminate the provision of any part of this Agreement at any time by giving three months’ written notice to the other Party.

**59 Termination under Public Contracts Directive**

59.1 The Authority shall be entitled by notice having immediate effect if any of the following grounds apply:

(a) Where this Agreement has been subject to a substantial modification that constitutes a new contract award

(b) Where it is discovered that the Contractor confirmation in clause 10.2 is incorrect.

(c) Where the Court of Justice of the European Union has declared a serious infringement by the Authority meaning that this Agreement should not have been awarded by the Authority to the Contractor.

**60** **Consequences of Termination**

60.1 Where the Authority terminates this Agreement under clause 57, or terminates the provision of any part of this Agreement under that clause, or terminates this Agreement under clause 59.1 and then makes other arrangements for the provision of Services, the Authority shall be entitled to recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where this Agreement is terminated under clause 57 or 59.1(b), no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.

60.2 Where the Authority terminates this Agreement under clause 58, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure, which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of this Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 58.

60.3 The Authority shall not be liable under clause 60.2 to pay any sum which:

(a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

(b) when added to any sums paid or due to the Contractor under this Agreement, exceeds the total sum that would have been payable to the Contractor if this Agreement had not been terminated prior to the expiry of the Term.

60.4 In respect of any termination under clause 59.1(b) any clause limiting the Contractor's liability shall not apply.

**61** **Business Continuity and Disruption**

61.1 The Contractor shall have a business continuity Plan to ensure the continuation of delivery of the Services in the event of serious disruption to either the Premises or the Authority’s or the Contractor’s supplier’s premises and/or working arrangements. The plan should focus upon the continuation of delivery of the Services and communication with users of the Services, the Authority and where required third party owners of the Premises. The plan should detail the resources available to the branch from other sources in the company.

61.2 Any significant changes to the business continuity plan shall be notified to the Contract Manager as per clause 7.

61.3 The Contractor shall take reasonable care to ensure that in the execution of this Agreement it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority or any third party owner of the Premises such any third party owner’s employees or any other contractor employed by the latter or any neighbours of the Authority or neighbours third party owners of Premises.

61.4 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Agreement.

61.5 In the event of industrial action by the Staff or the Contractor’s suppliers the Contractor shall seek Approval of its proposals for the continuance of the Contractor’s performance of the Services in accordance with its obligations under this Agreement.

61.6 If the Contractor’s proposals referred to in clause 61.5 are considered insufficient or unacceptable by the Authority, then this Agreement may be terminated by the Authority by notice in writing with immediate effect.

61.7 If the Contractor is temporarily unable to fulfil the requirements of this Agreement owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be Approved by the Authority. In addition, the Authority will reimburse any reasonable additional expense incurred by the Contractor in fulfilling the provisions of this Agreement as a result of such disruption.

**62** **Recovery upon Termination**

62.1 Termination or expiry of this Agreement shall be without prejudice to any rights and remedies of the Contractor and the Authority accrued before such termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

62.2 At the Expiry Date (and howsoever arising) the Contractor shall forthwith deliver to the Authority upon request all the Authority’s Property (including but not limited to materials, documents, information, access keys) relating to this Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the Authority may recover possession thereof and the Contractor grants licence to or shall procure a licence for the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

62.3 At the Expiry Date (howsoever arising) the Contractor shall forthwith provide assistance to the Authority and any new contractor appointed by the Authority to continue or take over the performance of this Agreement in order to ensure an effective handover of all work then in progress. The Contractor will transfer all records necessary to the new contractor for the latter to continue or take over the performance of this Agreement in such format as the Authority may reasonably request. The Contractor shall provide such assistance free of charge.

62.4 The provisions of this clause shall survive the continuance of this Agreement and indefinitely after its termination.

**63** **Force Majeure**

63.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under this Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under this Agreement for a period in excess of 2 Months, either Party may terminate this Agreement by notice in writing with immediate effect.

63.2 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of this Agreement shall be any event qualifying for Force Majeure hereunder.

**Part 9 – Best Value Duty**

**64** **Authority’s Best Value Duty**

64.1 The Parties agree and acknowledge that the 1999 Act applies to the Services provided under this Agreement and the Contractor shall, at no cost to the Authority, provide all reasonably necessary assistance to allow the Authority to comply with its Best Value Duty.

**65** **Assessment**

65.1 The Authority may conduct Assessments of the Services using lay or other assessors from time to time during the Term.

65.2 The Contractor shall provide reasonable assistance and information to any assessors to enable them to undertake Assessments.

65.3 Within one month of each Assessment, the Authority shall prepare a summary of the results of that Assessment and provide a copy to the summary to the Contractor. The Authority shall provide feedback to the Contractor on the results of each lay assessment either at or before the next contract meeting.

**66** **Quarterly Provider Return & Service Plan**

66.1 Without prejudice to any other provision in this Agreement the Contractor shall at its own cost, provide to the Authority a quarterly provider return with such fields and in such format as the Authority may determine.

66.2 The Contractor shall upon a written request from the Authority promptly provide such written evidence or other supporting information as the Authority may reasonably require to verify and audit the information and other material contained in the quarterly provider return.

66.3 If, in the Authority’s reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the quarterly provider return, the Assessments and the Best Value Duty, then the Authority may serve upon the Contractor a Services Improvement Notice.

66.4 The Contractor shall, within 10 Working Days of the date of receipt of the Services Improvement Notice, provide the Authority at its own cost with a Service Plan containing the Contractor’s proposals to achieve the change to the Services (or the relevant part) in accordance with the Services Improvement Notice.

66.5 As soon as practicable after the content of the Service Plan has been agreed or otherwise determined pursuant to the clause 68 the Authority shall:

(a) confirm in writing the Service Plan; or

(b) withdraw the Services Improvement Notice.

66.6 If the Authority confirms the Service Plan the Authority shall propose a change in the Services in accordance with clause 47.

66.7 The Contractor shall take all reasonable steps to mitigate any costs arising as a consequence of a Services Improvement Notice and an Authority proposal of change served pursuant to clause 66.6.

**Part 10 – Dispute and Law**

**67** **Governing Law and Language**

67.1 This Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the jurisdiction of the courts of England and Wales.

67.2 The language of this Agreement is English and all design data, documents, correspondence and any other information shall be provided in English unless otherwise specified by the Authority in writing.

**68** **Dispute Resolution**

68.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within forty five Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the relevant Group Director of the Authority and a senior manager or director of the Contractor (or equivalent) of each Party.

68.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

68.3 If the dispute cannot be resolved by the Parties pursuant to clause 68.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 68.5 unless both parties agree to the dispute being referred to mediation under a different procedure.

68.4 The performance of this Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of this Agreement at all times.

68.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree within a reasonable period of time, then either Party may apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.

(b) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

**IN WITNESS** whereof the parties hereto have executed this deed in the manner hereinafter the day and the year first before written

The Common Seal of )

**SWINDON** **BOROUGH COUNCIL** )

was hereunto affixed in the presence of: )

Authorised Signatory

EXECUTED AS A DEED by

**[INSERT COMPANY NAME]**

acting by one director

in the presence of:-

Signature:………………………………………….

Director

Name (PRINT):……………………………………

Signature:………………………………………….

Witness

Name (PRINT):………………………………….

**Commercially Sensitive Information Schedule**

|  |  |
| --- | --- |
| **Commercially Sensitive Information** | None |
| **Sensitivity Period** | None |

**Monitoring Schedule**

|  |  |
| --- | --- |
| **Monitoring**  **Arrangements** | The Contract Manager will issue a Provider Return (as described in clause 66) to the Contractor’s Representative to be completed and returned within 30 days of the end of each quarter. The Contract Manager reserves the right to alter the Provider Return. |

**TENDER SCHEDULE**

|  |  |
| --- | --- |
| **2.2 Acceptance of Terms & Conditions** | |
| The Tenderer confirms acceptance of the Terms & Conditions (Pass/Fail) | Please confirm acceptance of this by adding an X to the box.  Yes |

Section 3 - Background Information

**About Swindon**

Swindon is an urban town located north of Junction 15/16 of the M4. The town is located at the midpoint between the South West and South East of England. Swindon has a population of 220,000 and this is forecast to rise to 240,000 by 2023.

Swindon Borough Council is a unitary authority having separated from Wiltshire County Council in 1997. Swindon Borough Council and Wiltshire Council are both unitary authorities but maintain strategic partnerships in areas including the Swindon and Wiltshire Local Enterprise Partnership (LEP), Dorset and Wiltshire Fire and Rescue Service, the Office of the Police and Crime Commissioner and Wiltshire Police.

Economically, Swindon benefits from being located on the M4 corridor, with good rail connections with London and Bristol. Major employers in Swindon include Honda, BMW, Alcaltel Lucent, Nokia Networks, Nationwide Building Society and Zurich Financial Services.

Swindon ranks in 201 out of 326 in the Indices of Multiple Deprivation based on the average ranks across all domain indices. Swindon has nine Local Super Output Areas (LSOA) that feature in the top 10% of most deprived areas in England and seventeen areas in the top 10% of least deprived areas in England.

**Vision for Swindon**

On 24th September 2015, the Council adopted its Vision for Swindon

By 2030, Swindon will have all of the positive characteristics of a British city with one of the UK’s most successful economies, a low-carbon environment with compelling cultural, retail and leisure opportunities and excellent infrastructure. It will be a model of well managed housing growth that supports and improves new and existing communities.

Swindon will be physically transformed with existing heritage and landmarks complemented by new ones that people who live, work and visit here would recognise and admire. It will remain, at heart, a place of fairness and opportunity where people can aspire to and achieve prosperity, supported by strong civic and community leadership.

In order to deliver the vision the Council has established four priorities, which all Council staff and all providers of services commissioned by the Council will work together to achieve. These are:

1. Improve infrastructure and housing to support a growing, low carbon economy
2. Offer education opportunities that lead to the right skills and right jobs in the right places
3. Ensure clean and safe streets and improve our public spaces and local culture
4. Help people to help themselves, while always protecting our most vulnerable children and adults

More details of the Council’s Vision, Priorities and the 30 pledges which give more detail about how the Council will deliver the Vision and Priorities can be found on the Council’s website at <https://www.swindon.gov.uk/vision>

**Police and Crime Commissioner**

The role of the  Police and Crime Commissioner for Wiltshire (PCC) is to keep Wiltshire and Swindon safe.  The PCC makes sure that the police and justice system meet the needs of local people and that Wiltshire Police are held to account for delivering an efficient, effective and trusted service.

The Commissioner’s Police and crime plan sets out his key priorities including:

Protect the most vulnerable in society.  The PCC recognises that all public agencies need to work together to protect vulnerable people in our society.  Often the most vulnerable in society are particularly susceptible to becoming victims of crime, and becoming a victim can have a profound affect that touches on many aspects of a person’s life.

Put victims and witnesses at the heart of everything we do.  The PCC recognises that victims of crime have been through a challenging and sometimes traumatic experience.  Victims should be supported to cope with what has happened, and as far as possible to recover from their experience.  Giving evidence as a witness can be equally challenging but it is vital in helping to deliver justice.  At all stages of their journey from reporting an incident through the justice system victims and witnesses are the central focus of Wiltshire Police and its partner agencies.

From 2015, the Police PCC was given responsibility for commissioning services for local victims of crime.    His commissioning model includes an in house victim and witness care unit ‘Horizon’, a practical and emotional support service for victims and investment in specialist services which support victims of domestic and sexual abuse.   The office of the police and crime commissioner (OPCC) is working with Swindon Borough Council in setting out this contract to ensure victims of domestic abuse receive the best possible and most appropriate support.  The OPCC will take an active role in monitoring delivery alongside SBC colleagues.

**Domestic Abuse**

Domestic Abuse (DA) is a serious and challenging issue. DA does not just cover domestic violence but also includes psychological, emotional and financial abuse to partners, family and children. DA is a largely unreported crime, takes place in all cultural groups and can have an indirect impact on many people beyond the victim.

Between April 2015 and March 2016, Wiltshire Police recorded 2,400 incidents of DA in Swindon. The table below shows the spread of reported incidents over the course of the year.

Source: Wiltshire Police April 2016

The Crime Survey for England and Wales conducted in 2011/2012 reported that 7.4% of women and 4.8% men aged between 16 and 59 said they had experienced domestic abuse within the past year. Based on this estimate and using the projection population for 2016, we can predict that 8,000 people in Swindon were a victim of domestic abuse during 2015/16, which demonstrates the low level of reporting taking place.

**Domestic Abuse Strategy**

Swindon Borough Council and Wiltshire Council have jointly developed the Swindon and Wiltshire Strategy to Reduce Domestic Abuse 2015-2017 ([link](http://www.swindonjsna.co.uk/Files/Files/Strategy_to_reduce_Domestic_Abuse_2015-17.pdf)), which sets the joint strategy in addressing domestic abuse. In 2014, Public Health Swindon produced a Joint Strategic Need Assessment for Domestic Violence and Abuse ([link](http://www.swindonjsna.co.uk/dna/domestic-violence-and-abuse-needs-assessment)). This needs assessment provided an insight into domestic abuse in Swindon and includes a number of recommendations that were incorporated into the above strategy.

In Swindon, the responsibility for overseeing work to address domestic abuse falls to the Community Safety Partnership ([link](http://www.swindon-csp.org.uk/Pages/Home.aspx)), which is overseen by the Community Safety Partnership Board. There is also a Domestic Abuse Board and Domestic Abuse Management Group in place to support the Community Safety Partnership Board in overseeing this work. The current provider is a member of the Domestic Abuse Management Group.

**Homelessness Strategy**

Swindon Borough Council produced the Swindon Homelessness Strategy 2008-2013 ([link](http://www.swindon.gov.uk/download/downloads/id/494/swindon_homelessness_strategy_2008-13.pdf)) in which the need to support victims of Domestic Violence was referenced frequently. Swindon Borough Council is currently consulting on a new Homelessness Strategy for Swindon where it is expected that supporting victims of Domestic Abuse will feature prominently within the priorities.

**Multi Agency Risk Assessment Conference**

A Multi Agency Risk Assessment Conference (MARAC) is meeting to share information on those at the highest risk of domestic abuse with the aim of protecting those at risk of immediate or serious harm from domestic abuse. The meeting will focus on both the victim and children involved. More information on the MARAC can be found on the SafeLives website ([link](http://www.safelives.org.uk/practice-support/resources-marac-meetings)).

The MARAC in Swindon meets every two weeks and is chaired by Wiltshire Police and attended by agencies such as (and not limited to) the Police, Childrens and Adults Social Care, housing providers, homelessness services, drug & alcohol services, mental health services and Independent Domestic Violence Advisors (IDVAs).

In 2015, the MARAC reviewed and discussed 438 individual cases that had been assessed as “high risk” through the Domestic Abuse, Stalking and Honour Based Violence (DASH) Risk Identification, Assessment and Management Model, a tool used in Swindon by agencies to assess the facts and risks involved. More information on the DASH Risk Checklist can be found on the SafeLives website ([link](http://www.safelives.org.uk/practice-support/resources-identifying-risk-victims-face)).

The number of cases discussed by the MARAC has risen by 16% since 2014. This much higher than the 6% increase see nationally. Swindon also has a higher than average number of repeat referrals at 45% compared the national average of 24%.

The people and families discussed at the meeting are referred into by those agencies taking part but other agencies can also refer those that meet the criteria for this meeting. The referring agency will take the lead in presenting the case at the meeting before the other agencies present information they have. Wiltshire Police make the majority or referrals to MARAC with 75% of referrals.

**Existing Contractual Arrangements**

In 2011, Swindon Borough Council decided to consolide a number of domestic abuse services into one contract. This contract consisted of four distinct, but connected, services; a Women’s Refuge, an IDVA Service, an Outreach Service, and a 24 Hour Helpline. This contract began in 2012 and will end on the 31st of March 2017 to be suceeded by the contract obtained through this tender.

As well as Swindon Borough Council, the Wiltshire and Swindon Police and Crime Commissioner (PCC) also commission services to support victims of domestic abuse. These services were commissioned in 2015 and due to end on the 31st of March 2017 to be succeeded by this tender.

Women’s Refuge

The Women’s Refuge is a building that was purpose built in 2011 to accommodate and support victims of domestic abuse. The building was developed and is owned by GreenSquare, a regional Registered Provider, and sensitively located within one of their residential developments. The location of this building is not publicised in order to safeguard vulnerable victims and children although it is acknowledged that over time this may become more widely known as more people use the service.

The building contains four one-bedroom apartments, ten two-bedroom apartments, two two-bedroom apartments adapted for people with physical disabilities, four three-bedroom apartments and two emergency rooms. These are all self-contained. The building also contains a laundry room, communal lounges designated for adults and children, office space, reception facilities and security measures. The building is used as the office base for the staff working in the community.

The service is staffed 24 hours a day, seven days a week with staff providing a sleep-in service during the night hours. The Director and Operational Manager provide on call support in shifts which operate to support night shift workers between 6pm and 9am if advice is needed or there is an out of hours emergency at the refuge premises. On call is defined as telephone support with the ability to attend refuge in an emergency within 40 minutes.

The staff provide both support and housing management. Therefore, the staff costs related to providing housing management and service charges are covered by the rent charged to the service users, which is eligible for Housing Benefit. The current eligible rent charge is between £290 and £350 per week.

The average length of stay for victims and their children within the refuge is three months. Between April 2015 and March 2016, 40 of the 70 women leaving the refuge returned to the family home, 22 were supported find longer term housing and 8 were supported into shorter term accommodation or other refuge accommodation. Research carried out between 2014 and 2015, suggested that half of those returning to the family home, returned to their partner.

The refuge accept victims with children and have accommodated 178 children within the refuge between the April 2015 and the March 2016. The victims receive support with parenting from two Children’s Workers employed by the Contractor.

The refuge accepted 84 new women between the April 2015 and the March 2016. The largest referral source was from women contacting the service direct without the support of any agency. This was followed by referrals from the Police and the Homelessness Team.

Community Independent Domestic Violence Advisor (IDVA)

The IDVA is trained to provide support to victims who are at the highest risk of domestic abuse. The IDVA works office hours and will provide support to victims in their own homes, which includes the development of safety plans. The support may result in a victim and their children moving into the refuge when it is expected their risk level will reduce and support transfers to staff within the refuge. The IDVA will normally be the representative for the service at the MARAC as they will take the lead for supporting high risk victims on behalf of the service.

The IDVA supported 275 women and 19 men between the April 2015 and the March 2016.

Community Outreach

Despite the number of high risk victims of domestic abuse in Swindon, there are many more victims considered with a standard or medium risk. These victims are supported by the two Community Outreach Workers. These work office hours and support victims within their own homes. If the level of risk increases, then victims (and their children) have moved into the refuge and then the support transfers to the staff within the refuge.

24 Hour Helpline

The service operates a helpline that can be contacted 24/7 for local information and advice related to domestic abuse. The helpline is delivered through the staff of the individual services listed above. The helpline receives an average of 24 calls per week either from an individual needing support or a supporting organisation.

Health IDVA

The Health IDVA is based at the Great Western Hospital to provide support to health care professsionals and patients on domestic abuse. It has been recognised that health professionals, particularly those with in a hospital, may notice injuries or patterns of injuries that could be caused by domestic abuse so having advice available on site could mean that victims can receive the advice and support they need at the same time.

Health Outreach Worker

The Health Outreach Worker provides advice and support to health professionals and patients within GP surgeries. The GP or nurse can refer patients to the Health Outreach Worker who can arrange to visit the surgery or arrange to meet victims in other reasonable locations.

Website

The service provides a dedicated website to provide information and advice on domestic abuse, how to access services and general information on the work being carried out. The current Contractor provides data on activity connected to the website including number of times accessed, popular times and length spent on the website. The website has also been improved to improve the viewing of those using a mobile device.

**TUPE**

It is anticipated that there will be TUPE implications as a result of this retendering exercise. The below information is provided for tendering purposes only as the Authority does not take responsibility for the accuracy of this information and it will be between any relevant parties to agree the TUPE liability involved. This information is correct as of July 2016.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Job Title** | **Type of Contract** | **Length of Continuous Service (Years)** | **Weekly Hours** | **Holiday Entitlement (Days)** | **Shift Pattern** | **Annual Salary Range**  **(£)** |
| Director | Permanent | 4-6 | 37 | 35 | Mon-Sun | 45000-50000 |
| Operational Manager | Vacant | N/a | 37 | 25 | Mon-Sun | 30000-35000 |
| Residential Support Worker | Permanent | 6-8 | 40 | 30 | Mon-Sun | 20000-25000 |
| Residential Support Worker | Permanent | 4-6 | 40 | 30 | Mon-Sun | 20000-25000 |
| Residential Support Worker | Permanent | 1-3 | 24 | 15 | Mon-Sun | 10000-15000 |
| Assistant Support Worker | Permanent | 16-18 | 40 | 30 | Mon-Sun | 15000-20000 |
| Assistant Support Worker | Permanent | 2-4 | 16 | 10 | Tue-Thur | 5000-10000 |
| RSA Night Worker | Permanent | 2-4 | 35 | 25 | Mon-Sun | 20000-25000 |
| RSA Night Worker | Permanent | 0-2 | 35 | 25 | Mon-Sun | 20000-25000 |
| RSA Night Worker | Permanent | 2-4 | 35 | 25 | Mon-Sun | 20000-25000 |
| Community IDVA | Permanent | 4-6 | 37 | 30 | Mon-Fri | 20000 – 25000 |
| Health IDVA | Fixed Term until 31.3.17 | 0-2 | 37 | 25 | Mon-Fri | 20000 – 25000 |
| Health Outreach Worker | Fixed Term until  31.3.17 | 0-2 | 35 | 25 | Mon-Fri | 20000 – 25000 |
| Community Outreach Worker | Permanent | 4-6 | 37 | 30 | Mon-Fri | 20000- 25000 |
| Community Outreach Worker | Permanent | 1-3 | 37 | 30 | Mon-Fri | 20000- 25000 |
| Office Manager & Admin | Permanent | 4-6 | 37 | 30 | Mon-Sun | 15000-20000 |
| Senior Children’s Worker | Permanent | 4-6 | 40 | 30 | Mon-Sat | 20000-25000 |
| Children’s Worker | Permanent | 2-4 | 40 | 30 | Mon-Sat | 15000-20000 |

The total annual salary cost excluding on costs is £357,235, which equates to £465,905 when including on costs.

Each staff member has signed an agreement to opt out of the EU 48 working hours regulations and their contracts states they can be called into work at any time including evenings and weekends if there is an operational need.

There is currently no pension costs incurred but pension scheme staging is expected to begin in October 2016.

Section 4 - Tender Questionniare

Note to Tenderers on Supplier Selection Questionniare

**Notes for completion**

The “authority” means the public sector contracting authority, or anyone acting on behalf of the contracting authority, that is seeking to invite suitable Suppliers to participate in this procurement process.

“You”/ “Your” or “Supplier” means the body completing these questions **i.e. the legal**

**entity seeking to be invited to the next stage of the procurement process and responsible for the information provided.** The ‘Supplier’ is intended to cover any economic operator as defined by the Public Contracts Regulations 2015 and could be a registered company; charitable organisation; Voluntary Community and Social Enterprise (VCSE); Special Purpose Vehicle; or other form of entity.

The Supplier Selection Questionniare has been designed to assess the suitability of a Supplier to deliver the authority’s contract requirement(s). If you are successful at this stage of the process, your bid will be assessed against the award criteria.

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 the question does not apply to you, please state clearly ‘N/A’.

Should you need to provide additional Appendices in response to the questions, these should be numbered clearly and listed. A template for providing additional information is provided at the end of this document.

**Verification of Information Provided**

Whilst reserving the right to request information at any time throughout the procurement process, the authority may enable the Supplier to self-certify that there are no mandatory/ discretionary grounds for excluding their organisation. When requesting evidence that the Supplier can meet the specified requirements the authority may only obtain such evidence after the final tender evaluation decision i.e. from the winning Supplier only.

**Sub-contracting arrangements**

Where the Supplier proposes to use one or more sub-contractors to deliver some or all of the contract requirements, a separate Appendix should be used to provide details of the proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.

The authority recognises that arrangements in relation to sub-contracting may be subject to future change, and may not be finalised until a later date. However, Suppliers should be aware that where information provided to the authority indicates that sub-contractors are to play a significant role in delivering key contract requirements, any changes to those sub-contracting arrangements may affect the ability of the Supplier to proceed with the procurement process or to provide the supplies and/or services required. Suppliers should therefore notify the authority immediately of any change in the proposed sub-contractor arrangements. The authority reserves the right to deselect the Supplier prior to any award of contract, based on an assessment of the updated information.

**Consortia arrangements**

If the Supplier completing this Questionniare is doing so as part of a proposed consortium, the following information must be provided;

* names of all consortium members;
* the lead member of the consortium who will be contractually responsible for delivery of the contract (if a separate legal entity is not being created); and
* if the consortium is not proposing to form a legal entity, full details of proposed arrangements within a separate Appendix.

Please note that the authority may require the consortium to assume a specific legal form if awarded the contract, to the extent that a specific legal form is deemed by the authority as being necessary for the satisfactory performance of the contract.

All members of the consortium will be required to provide the information required in all sections of the Questionniare as part of a single composite response to the authority i.e. each member of the consortium is required to complete the form.

Where you are proposing to create a separate legal entity, such as a Special Purpose Vehicle (SPV), you should provide details of the actual or proposed percentage shareholding of the constituent members within the new legal entity in a separate Appendix.

The authority recognises that arrangements in relation to a consortium bid may be subject to future change. Suppliers should therefore respond on the basis of the arrangements as currently envisaged. Suppliers are reminded that the authority must be immediately notified of any changes, or proposed changes, in relation to the bidding model so that a further assessment can be carried out by applying the selection criteria to the new information provided. The authority reserves the right to deselect the Supplier prior to any award of contract, based on an assessment of the updated information.

**Confidentiality**

When providing details of contracts in answering Part 4(Technical and Professional Ability), the Supplier agrees to waive any contractual or other confidentiality rights and obligations associated with these contracts.

The authority reserves the right to contact the named customer contact in section 4 regarding the contracts included in section 4. The named customer contact does not owe the authority any duty of care or have any legal liability, except for any deceitful or maliciously false statements of fact.

The authority 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 Contracts Regulations.

Section 4 - Supplier Selection Questionniare

## 1 - Supplier information

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **1.1 Supplier details** | **Answer** | | | |
| Full name of the Supplier completing the Questionniare |  | | | |
| Registered company address |  | | | |
| Registered company number |  | | | |
| Registered charity number |  | | | |
| Registered VAT number |  | | | |
| Name of immediate parent company |  | | | |
| Name of ultimate parent company |  | | | |
| Please mark ‘X’ in the relevant box to indicate your trading status | i) a public limited company | Yes | | |
| ii) a limited company | Yes | | |
| iii) a limited liability partnership | Yes | | |
| iv) other partnership | Yes | | |
| v) sole trader | Yes | | |
| vi) other (please specify) | 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) | Yes | | |
| ii) Small or Medium Enterprise (SME) [[1]](#footnote-1) | Yes | | |
| iii) Sheltered workshop | Yes | | |
| iv) Public service mutual | Yes | | |
| **1.2 Bidding model** | | | |  |
| **Please mark ‘X’ in the relevant box to indicate whether you are;** | | | |  |
| a)      Bidding as a Prime Contractor and will deliver 100% of the key contract deliverables yourself | | | Yes |  |
| b)      Bidding as a Prime Contractor and will use third parties to deliver some of the services  If yes, please provide details of your proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for. | | | Yes |  |
| c)       Bidding as Prime Contractor but will operate as a Managing Agent and will use third parties to deliver all of the services  If yes, please provide details of your proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for. | | | Yes |  |
| d)      Bidding as a consortium but not proposing to create a new legal entity.  If yes, please include details of your consortium in the next column and use a separate Appendix to explain the alternative arrangements i.e. why a new legal entity is not being created.  Please note that the authority may require the consortium to assume a specific legal form if awarded the contract, to the extent that it is necessary for the satisfactory performance of the contract. | | | Yes  **Consortium members**  **Lead member** |  |
| e)      Bidding as a consortium and intend to create a Special Purpose Vehicle (SPV).  If yes, please include details of your consortium, current lead member and intended SPV in the next column and provide full details of the bidding model using a separate Appendix. | | | Yes  **Consortium members**  **Current lead member**  **Name of Special Purpose Vehicle** |  |

|  |  |
| --- | --- |
| **1.3 Contact details** | |
| Supplier contact details for enquiries about this Questionniare | |
| Name |  |
| Postal address |  |
| Country |  |
| Phone |  |
| Mobile |  |
| E-mail |  |

|  |  |  |
| --- | --- | --- |
| **1.4 Licensing and registration (please mark ‘X’ in the relevant box)** | | |
| 1.4.1 | Registration with a professional body  If applicable, is your business registered with the appropriate trade or professional register(s) in the EU member state where it is established (as set out in Annex XI of directive 2014/24/EU) under the conditions laid down by that member state). | Yes  No  If Yes, please provide the registration number in this box. |
| 1.4.2 | Is it a legal requirement in the state where you are established for you to be licensed or a member of a relevant organisation in order to provide the requirement in this procurement? | Yes  No  If Yes, please provide additional details within this box of what is required and confirmation that you have complied with this. |

**2 - Grounds for mandatory exclusion**

You will be excluded from the procurement process if there is evidence of convictions relating to specific criminal offences including, but not limited to, bribery, corruption, conspiracy, terrorism, fraud and money laundering, or if you have been the subject of a binding legal decision which found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate e.g. only minor amounts involved).

If you have answered “yes” to question 2.2 on the non-payment of taxes or social security contributions, and have not paid or entered into a binding arrangement to pay the full amount, you may still avoid exclusion if only minor tax or social security contributions are unpaid or if you have not yet had time to fulfil your obligations since learning of the exact amount due. If your organisation is in that position please provide details using a separate Appendix. You may contact the authority for advice before completing this form.

|  |  |  |
| --- | --- | --- |
| **2.1 Within the past five years, has your organisation (or any member of your proposed consortium, if applicable), Directors or partner or any other person who has powers of representation, decision or control been convicted of any of the following offences?** | **Please indicate your answer by marking ‘X’ in the relevant box.** | |
| **Yes** | **No** |
| 1. conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime; |  |  |
| 1. corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906; |  |  |
| 1. the common law offence of bribery; |  |  |
| 1. bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010; or section 113 of the Representation of the People Act 1983; |  |  |
| 1. any of the following offences, where the offence relates to fraud affecting the European Communities’ financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities: |  |  |
| (i) the offence of cheating the Revenue; |  |  |
| (ii) the offence of conspiracy to defraud; |  |  |
| (iii) fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978; |  |  |
| (iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006; |  |  |
| (v) fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994; |  |  |
| (vi) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993; |  |  |
| (vii) destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969; |  |  |
| (viii) fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006; or |  |  |
| (ix) the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act; |  |  |
| 1. any offence listed— |  |  |
| (i) in section 41 of the Counter Terrorism Act 2008; or |  |  |
| (ii) in Schedule 2 to that Act where the court has determined that there is a terrorist connection; |  |  |
| 1. any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by subparagraph (f); |  |  |
| 1. money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002; |  |  |
| 1. an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996; |  |  |
| 1. an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004; |  |  |
| 1. an offence under section 59A of the Sexual Offences Act 2003; |  |  |
| 1. an offence under section 71 of the Coroners and Justice Act 2009 |  |  |
| 1. an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994; or |  |  |
| 1. any other offence within the meaning of Article 57(1) of the Public Contracts Directive— |  |  |
| (i) as defined by the law of any jurisdiction outside England and Wales and Northern Ireland; or |  |  |
| (ii) created, after the day on which these Regulations were made, in the law of England and Wales or Northern Ireland. |  |  |
| **Non-payment of taxes**  **2.2 Has it been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which your organisation is established (if outside the UK), that your organisation is in breach of obligations related to the payment of tax or social security contributions?**  If you have answered Yes to this question, please use a separate Appendix to provide further details. Please also use this Appendix to confirm whether you have paid, or have entered into a binding arrangement with a view to paying, including, where applicable, any accrued interest and/or fines? |  |  |

## 3. Grounds for discretionary exclusion – Part 1

The authority may exclude any Supplier who answers ‘Yes’ in any of the following situations set out in paragraphs (a) to (i);

|  |  |  |
| --- | --- | --- |
| **3.1 Within the past three years, please indicate if any of the following situations have applied, or currently apply, to your organisation.** | **Please indicate your answer by marking ‘X’ in the relevant box.** | |
| **Yes** | **No** |
| 1. your organisation has violated applicable obligations referred to in regulation 56 (2) of the Public Contracts Regulations 2015 in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive as amended from time to time; |  |  |
| 1. your organisation is bankrupt or is the subject of insolvency or winding-up proceedings, where your assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State; |  |  |
| 1. your organisation is guilty of grave professional misconduct, which renders its integrity questionable; |  |  |
| 1. your organisation has entered into agreements with other economic operators aimed at distorting competition; |  |  |
| 1. your organisation has a conflict of interest within the meaning of regulation 24 of the Public Contracts Regulations 2015 that cannot be effectively remedied by other, less intrusive, measures; |  |  |
| 1. the prior involvement of your organisation in the preparation of the procurement procedure has resulted in a distortion of competition, as referred to in regulation 41, that cannot be remedied by other, less intrusive, measures; |  |  |
| 1. your organisation has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions; |  |  |
| 1. your organisation—   (i) has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or  (ii) has withheld such information or is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015; or |  |  |
| (i) your organisation has undertaken to |  |  |
| (aa) unduly influence the decision-making process of the contracting authority, or |  |  |
| (bb) obtain confidential information that may confer upon your organisation undue advantages in the procurement procedure; or |  |  |
| (j) your organisation has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award. |  |  |

**Conflicts of interest**

In accordance with question 3.1 (e), the authority may exclude the Supplier if 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.

Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Supplier to inform the authority, detailing the conflict in a separate Appendix. Provided that it has been carried out in a transparent manner, routine pre-market engagement carried out by the authority should not represent a conflict of interest for the Supplier.

**Taking Account of Bidders’ Past Performance**

In accordance with question (g), the authority may assess the past performance of a Supplier (through a Certificate of Performance provided by a Customer or other means of evidence). The authority may take into account any failure to discharge obligations under the previous principal relevant contracts of the Supplier completing this QUESTIONNIARE. The authority may also assess whether specified minimum standards for reliability for such contracts are met.

In addition, the authority may re-assess reliability based on past performance at key stages in the procurement process (i.e. Supplier selection, tender evaluation, contract award stage etc.). Suppliers may also be asked to update the evidence they provide in this section to reflect more recent performance on new or existing contracts (or to confirm that nothing has changed).

**‘Self-cleaning’**

Any Supplier that answers ‘Yes’ to questions 2.1, 2.2 and 3.1 should provide sufficient evidence, in a separate Appendix, that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively “self cleans” the situation referred to in that question. The Supplier has to demonstrate it has taken such remedial action, to the satisfaction of the authority in each case.

If such evidence is considered by the authority (whose decision will be final) as sufficient, the economic operator concerned shall be allowed to continue in the procurement process.

In order for the evidence referred to above to be sufficient, the Supplier shall, as a minimum, prove that it has;

* paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;
* clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
* taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the Supplier shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered by the authority to be insufficient, the Supplier shall be given a statement of the reasons for that decision.

## 4. Grounds for discretionary exclusion – Part 2

The authority reserves the right to use its discretion to exclude a Supplier where it can demonstrate the Supplier’s non-payment of taxes/social security contributions where no binding legal decision has been taken.

Please note that Section 4 relating to tax compliance only applies where the authority has indicated that the contract is over £5million in value, and the authority is a Central Government Department (including their Executive Agencies and Non-Departmental Public Bodies).

“Occasion of Tax Non-Compliance” means:

1. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
   * + 1. a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
       2. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
2. the Supplier’s tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a penalty for civil fraud or evasion

|  |  |  |
| --- | --- | --- |
| From 1 April 2013 onwards, have any of your company’s tax returns submitted on or after 1 October 2012; (Please indicate your answer by marking ‘X’ in the relevant box). | | |
| 4.1 | Given rise to a criminal conviction for tax related offences which is unspent, or to a civil penalty for fraud or evasion; | Yes  No |
| 4.2 | Been found to be incorrect as a result of:   * + - HMRC successfully challenging it under the General Anti-Abuse Rule (GAAR) or the “Halifax” abuse principle; or     - A Tax Authority in a jurisdiction in which the legal entity is established successfully challenging it  under any tax rules or legislation that have an effect equivalent or similar to the GAAR or the “Halifax” abuse principle; or     - the failure of an avoidance scheme which the Supplier was involved in and which was, or should have been, notified under the Disclosure of Tax Avoidance Scheme (DOTAS) or any equivalent or similar regime in a jurisdiction in which the Supplier is established. | Yes  No |
| If answering “Yes” to either 4.1 or 4.2 above, the Supplier may provide details of any mitigating factors that it considers relevant and that it wishes the authority to take into consideration.  This could include, for example:   * + Corrective action undertaken by the Supplier to date;   + Planned corrective action to be taken;   + Changes in personnel or ownership since the Occasion of Non-Compliance (OONC); or   + Changes in financial, accounting, audit or management procedures since the OONC.   In order that the authority can consider any factors raised by the Supplier, the following information should be provided:   * A brief description of the occasion, the tax to which it applied, and the type of “non-compliance” e.g. whether HMRC or the foreign Tax Authority has challenged pursuant to the GAAR, the “Halifax” abuse principle etc. * Where the OONC relates to a DOTAS, the number of the relevant scheme. * The date of the original “non-compliance” and the date of any judgement against the Supplier, or date when the return was amended. * The level of any penalty or criminal conviction applied. | | |

## 5 - Economic and Financial Standing

|  |  |  |
| --- | --- | --- |
|  | **FINANCIAL INFORMATION** | |
| 5.1 | **Please provide one of the following to demonstrate your economic/financial standing;**  Please indicate your answer with an ‘X’ in the relevant box. | |
| 1. A copy of the audited accounts for the most recent two years |  |
| 1. A statement of the turnover, profit & loss account, current liabilities and assets, and cash flow for the most recent year of trading for this organisation |  |
| 1. A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position |  |
| 1. Alternative means of demonstrating financial status if any of the above are not available (e.g. Forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status). |  |
| 5.2 | Where the authority has specified a minimum level of economic and financial standing and/or a minimum financial threshold within the evaluation criteria for this Questionniare, please self-certify by answering ‘Yes’ or ‘No’ that you meet the requirements set out here.  Minimum Turnover £285,000 per year  Net Worth: Positive, if you do not have a positive net worth a performance bond or parent guarantee is required. | Yes  No |
| 5.3 | **(a) Are you are part of a wider group (e.g. a subsidiary of a holding/parent company)?**  If yes, please provide the name below:  Name of the organisation:  Relationship to the Supplier completing  the Questionnaire:  If yes, please provide Ultimate / parent company accounts if available.  If yes, would the Ultimate / parent company be willing to provide a guarantee if necessary?  If no, would you be able to obtain a guarantee elsewhere (e.g from a bank?) | Yes  No  Yes  No  Yes  No |

## 6 – Technical and Professional Ability

|  |  |  |
| --- | --- | --- |
| 6 | **Relevant experience and contract examples** | |
| Please provide details of up one contract, from either the public or private sector, that is relevant to the authority’s requirement. Contracts for supplies or services should have been performed during the past three years.  The named customer contact provided should be prepared to provide written evidence to the authority to confirm the accuracy of the information provided below.  Consortia bids should provide relevant examples of where the consortium has delivered similar requirements; if this is not possible (e.g. the consortium is newly formed or a Special Purpose Vehicle will be created for this contract) then three separate examples should be provided between the principal member(s) of the proposed consortium or Special Purpose Vehicle (three examples are not required from each member).  Where the Supplier is a Special Purpose Vehicle, or a managing agent not intending to be the main provider of the supplies or services, the information requested should be provided in respect of the principal intended provider(s) or sub-contractor(s) who will deliver the supplies and services. | |
| 6.1 | Name of customer organisation |  |
| 6.2 | Point of contact in customer organisation  Position in the organisation  E-mail address |  |
| 6.3 | Contract start date  Contract completion date  Estimated Contract Value |  |
| 6.4 | In no more than 250 words, please provide a brief description of the contract delivered including evidence as to your technical capability in this market |  |
| 6.5 | If you cannot provide at least one example for questions 6.1 to 6.4, in no more than 250 words please provide an explanation for this e.g. your organisation is a new start-up. |  |

## 7. Additional Questionniare modules

Suppliers who self-certify that they meet the requirements for these additional modules will be required to provide evidence of this if they are successful at contract award stage. Please indicate your answer by marking ‘X’ in the relevant boxes.

## A – Project specific questions to assess Technical and Professional Ability

|  |  |  |
| --- | --- | --- |
| 1. | Describe your organisations experience in supporting victims and/or survivors of Domestic Abuse. (Maximum of 500 words) | 20% |
| Tenderer Response | | |
| 2. | Describe your organisations policy, procedure and practice in the recruitment, retention and management of staff including approach to dealing with performance and attendance. (Maximum of 250 words) | 20% |
| Tenderer Response | | |
| 3. | Describe your organisations experience in working with other organisations in the support of victims of Domestic Abuse or other vulnerable people. (Maximum of 250 words) | 20% |
| Tenderer Response | | |
| 4 | Describe the quality management systems of your organisation have that can demonstrate the quality of your organisation or service? For example, Investors in People or ISO9000. (Maximum of 250 words) | 20% |
| Tenderer Response | | |
| 5 | Describe your organisations policy, procedure and practice in the safeguarding adults at risk and children. (Maximum of 250 words) | 20% |
| Tenderer Response | | |

## B - Insurance

|  |  |  |
| --- | --- | --- |
| 1. | Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below:  Employer’s (Compulsory) Liability Insurance = £5 million \* Public Liability Insurance = £5 million  \* It is a legal requirement that all companies hold Employer’s (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders. | Yes  No |

## C – Compliance with equality legislation

|  |  |  |
| --- | --- | --- |
| For organisations working outside of the UK please refer to equivalent legislation in the country that you are located. | | |
| 1. | In the last three years, has any finding of unlawful discrimination been made against your organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or in comparable proceedings in any jurisdiction other than the UK)? | Yes  No |
| 2. | In the last three years, has your organisation had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds of alleged unlawful discrimination?  If you have answered “yes” to one or both of the questions in this module, please provide, as a separate Appendix, a summary of the nature of the investigation and an explanation of the outcome of the investigation to date.  If the investigation upheld the complaint against your organisation, please use the Appendix to explain what action (if any) you have taken to prevent unlawful discrimination from reoccurring.  You may be excluded if you are unable to demonstrate to the authority’s satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring. | Yes  No |
| 3. | If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations? | Yes  No |

## D - Environmental Management

|  |  |  |
| --- | --- | --- |
| 1. | Has your organisation been convicted of breaching environmental legislation, or had any notice served upon it, in the last three years by any environmental regulator or authority (including local authority)?  If your answer to this question is “Yes”, please provide details in a separate Appendix of the conviction or notice and details of any remedial action or changes you have made as a result of conviction or notices served.  The authority will not select bidder(s) that have been prosecuted or served notice under environmental legislation in the last 3 years, unless the authority is satisfied that appropriate remedial action has been taken to prevent future occurrences/breaches. | Yes  No |
| 2. | If you use sub-contractors, do you have processes in place to check whether any of these organisations have been convicted or had a notice served upon them for infringement of environmental legislation? | Yes  No |  |

## E - Health and Safety

|  |  |  |
| --- | --- | --- |
| 1. | Please self-certify that your organisation has a Health and Safety Policy that complies with current legislative requirements. | Yes  No |
| 2. | Has your organisation or any of its Directors or Executive Officers been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years?  If your answer to this question was “Yes”, please provide details in a separate Appendix of any enforcement/remedial orders served and give details of any remedial action or changes to procedures you have made as a result.    The authority will exclude bidder(s) that have been in receipt of enforcement/remedial action orders unless the bidder(s) can demonstrate to the authority’s satisfaction that appropriate remedial action has been taken to prevent future occurrences or breaches. | Yes  No |
| 3. | If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations? | Yes  No |

**Qustionnaire – Template for Appendices**

|  |
| --- |
| **Appendix Number -** |
| **Questionniare section -** |
| **Question number -** |
|  |

Section 5 - Specification

1. **Introduction**
   1. The Council is seeking an organisation to provide support to male and female victims of Domestic Abuse in Swindon that are over the age of 16. The Council is seeking to commission and outcomes based model but there are some mandatory requirements that are essential requirements and these are specified in more detail in this section. This specification may also cover some desirable requirements, which although not essential, they could be seen as beneficial to this service that tenderers may wish to consider in their submission.
   2. This specification is not an exhaustive list of all the requirements so the Council will be looking to form an effective partnership that could be developed during the course of the contract to include additional items following discussion and agreement and look to continue to innovate the service delivery model to take account of changing demand and changes in legislation.
   3. The contract is aiming to start on the 1st of April 2017 for an initial period of three years ending on the 31st of March 2020. The contract will contain two extension periods of two years to extend the contract until the 31st of March 2022 and then the 31st of March 2024. The extension will be on condition that both parties can agree to the terms of the extension and with the satisfactory performance of the Contractor.
   4. The Council is seeking to commission an outcomes based model. Therefore, we are seeking tenders that deliver the outcomes in the most economically advantageous way. The maximum cost for the provision of this service is £285,000 per financial year. The price to be assessed under this tender will be the total of the initial period of the contract (three years) as set out in the Pricing Schedule.
   5. Payments are made monthly to the Contractor and paid around the 15th of the month (two weeks in arrears and two weeks in advance). Where the 15th falls on weekend or public holiday, the payment will be altered to the nearest working day.
2. **Scope**
   1. The scope of support will be to support victims of Domestic Abuse and the children of victims who have been picked up for support. The service will recognise the need for a personalised victim-centred approach. The support provided will be free of charge (this does not include the cost of utilities for those residing in the refuge), is in a confidential manner and a non-discriminatary basis. Further details of this will be covered within this section.
   2. The scope of support to be provided is limited to Swindon but the service should be prepared to accept referrals that are from outside of Swindon for those victims seeking either a permanent or temporary move to Swindon as a result of Domestic Abuse. It is normal for victims who do not feel safe in their current location or authority to seek refuge in another local authority with or without the support of agencies such as the Police or other specialist Domestic Abuse services. This service should be prepared to accept referrals from outside of Swindon who are looking to utlise the Women’s Refuge included as part of this contract. This is on the understanding that other local authorities offer a reciprocal arrangement by accepting referrals from victims of Swindon looking to move out either on a permanent or temporary basis to escape abuse. This will be monitored over the course of the contract to ensure this policy remains manageable.
   3. There is also an expectation that this service will support those who have No Recourse to Public Funds (NRPF).
   4. The support to children of victims of Domestic Abuse will be limited to those residing in the Women’s Refuge. The support for children of victims being supported in the community is the remit of Children’s Social Care and support is not covered within this contract.
   5. It is anticipated that there will TUPE implications as a result of this tendering exercise. The Council has provided information on TUPE (see Section 3) for tendering purposes only and does not take responsibility for the accuracy of this information. It is expected that the details of TUPE eligibility is agreed between the parties involved.
3. **Functional Requirements**
   1. Women’s Refuge

It is a mandatory requirement to manage the Women’s Refuge to be used as temporary accommodation for women and children fleeing domestic abuse. Swindon Borough Council has a statutory duty to accommodate persons who meet the criteria as ‘statutorily homeless’. One of the criteria of being statutorily homeless is that someone is considered in ‘priority need’. The Homelessness (Priority Need for Accommodation) (England) Order 2002, expanded those considered as priority need to include “a person who is vulnerable as a result of ceasing to occupy accommodation by reason of violence from another person or threats of violence from another person which are likely to be carried out.”

The building is owned by GreenSquare, a Registered Provider, and is provided for the purpose of this contract. It is a mandatory requirement for the Contractor to manage this building. The Management Agreement (Appendix E) and Management Agreement Schedules (Appendix F) are contained within this ITT. The Contractor will agree to a Management Agreement with GreenSquare to take over the management of this building on the 1st of April 2017. The building is only partly furnished so the Contractor will be required to assess the furniture requirements for both the rooms and communal areas and have these in place by the opening. It is expected these can be included as an eligible charge within the rent. The tenderer should consider any office furniture and equipment within the total cost of providing this contract.

The Management Fees for 15/16 (Appendix G) have been included. The fees to be charged are reviewed annually with the fees for 16/17 yet to be set. Tenderers should give consideration to these fees and any reasonable increase in the tender.

The Contractor will act as Managing Agent for GreenSquare so the service users will ultimately be residents of GreenSquare. The Licence Agreement (Appendix H) to be used has been included in this ITT for information.

The plans for the building (Appendix I and Appendix J) have been included in the ITT for information. This should allow for tenderers to assess furniture requirements as part of this tender.

This specification does not specifiy the number or type of staff to employed in the Women’s Refuge and it will for tenderers to propose a staff structure that will ensure the safety of victims and children and provide the support needed to meet the desired outcomes.

* 1. Community Support

This service will be the main source of direct and specialist support to victims of Domestic Abuse in Swindon and so it is essential that this support is flexible and responsive to meet the needs of victims in Swindon. The service should be provided to victims even if they do not wish to report to the Police.

The majority of victims are referred by the Police on attendance to reports of abuse but referrals can be made by individuals themselves, their families or friends or by other agencies including health, social care or housing.

* 1. Multi Agency Risk Assessment Conference (MARAC)

It is a mandatory requirement that the service attends the MARAC that is held every two weeks in Swindon. It is desirable that this is attended by someone who can and will be supporting the high risk victims being discussed.

It is a mandatory requirement that every victim accepting support has a DASH Risk Assessment completed for them. It is a mandatory requirement that the service refers any victims that are considered as high risk to the MARAC.

It is a mandatory requirement that the service offers to support any victim discussed at the MARAC, which be jointly with other services supporting their needs in other areas. The service will then make a reasonable attempt to contact the victim and provide the necessary support required to prevent or minimise the risk of further abuse.

* 1. Early Help Record and Plan

It is a mandatory requirement for all children moving into the refuge or supported as part of the support provided to a victim, have an Early Help Record and Plan completed by competent person from within the service. The service will then determine whether a referral to Family Contact Point/MASH (the entry route to Children’s Service) is to be made.

* 1. Public Services (Social Value) Act

The Public Services (Social Value) Act 2013 requires public sector agencies, when commissioning a public service, to consider how the service they are procuring could bring added economic, environmental and social benefit.

There is an expectation that tenderers will consider how they can be achieve this in response to this tender and these are linked to the Swindon Borough Council Vision and Priorities ([link](https://www.swindon.gov.uk/vision)).

* 1. Partnership Working

The strategic responsibility for addressing Domestic Abuse in Swindon sits with the Community Safety Partnership (CSP) led by the CSP Board. The CSP Board is responsible for developing, in partnership with colleagues from Wiltshire, the Swindon and Wiltshire Strategy to Reduce Domestic Abuse. The CSP Board is supported by the Domestic Abuse Strategic Board to lead on the specific work of the CSP Board related to Domestic Abuse. Reporting to the Domestic Abuse Strategic Board is the Domestic Abuse and Quality Assurance Management Group, which is made up of relevant stakeholders from within Swindon dedicated to delivering the Action Plan resulting from the Strategy. The service will be a member of this group and it is a mandatory requirement that the service is adequately represented on this group and at group meetings, and commit to working jointly on actions that deliver this strategy.

There are other groups, forums and meetings held that it will be required for the service to participate in. There are forums such as the Domestic Abuse Forum that is expected the service is adequaletly represented at but there are also other adhoc meetings and groups that will be setup and there is an expectation that the service will provide reasonable support to participating in these meetings and groups where they work towards reducing or preventing Domestic Abuse.

The service will be expected to maintain an on-going relationship with other voluntary and public sector service providers who may support victims and survivors in order to maximise the value of local provision.

Where necessary the service will co-operate fully with any Domestic Homicide Review process.

* 1. Website

The use of the web to find information is very important and so the need to have information on the service, including what support is available and how to access this is essential. It is also essential that the ability to find this information can be quickly and easily found those not familiar with the service through reasonable web searching.

* 1. 24 Hour Helpline/24 Hour Access and Support

It is expected that the majority of staff will be working during office hours but the need to provide support outside of these hours, during weekends and public holidays is essential.

We expect as a minimum that victims and children living in the refuge have access to on call support where necessary and that victims and referring agencies can refer into and access the refuge 24 hours a day, 7 days a week, including public holidays.

We would also expect that services provide reasonable access to advice and support and this is considered in line with support offered by national helpline services and statutory services.

3.9 Justice Support

The service will support victims and survivors engaged in the justice system, and work towards helping to reduce attrition from the criminal justice system. The service will also support the Police where necessary in the delivery of the Domestic Violence Disclosure Scheme (DVDS or Clare’s Law) and the Domestic Violence Protection Orders (DVPOs).

3.10 Support

Victims will be supported to achieve improved mental, emotional and physical health and the opportunity to maintain these improvements. By the time victims are no longer supported they will have increased financial stability and independence, and more stable accommodation, increased access to opportunities, hopes and goals for the future. Children will be safer and better equipped to remain safe and adult clients will be better equipped for parenting.

The contractor will deliver emotional and practical support to victims and work with the victim to develop a support/safety plan. The contractor will use an Empowerment Star or an negotiated equivalent system to demonstrate improvements in client perception, health, well-being and safety.

The contractor will ensure that appropriate and pro-active support is given to victims to safeguard them, reduce repeat victimisation and ensure they are aware of their rights.

The support offered by the service will encourage victims to retain/regain their sense of autonomy and control and develop and/or maintain strong resilient support networks so that victims can live free from abuse.

The contractor will work towards improving accessibility to the service from communities that are under-represented in coming forward to seek help.

The contractor will offer support and advice and sign-posting to family members or friends of victims where appropriate.

3.11 No Recourse to Public Funds

There will be times when victims applying for support will also have No Recourse to Public Funds. It is important that this service is able to provide equal access to service regardless of their ability to pay for the services. This will not impact support offered to victims within their own home or housing not provided through this contract as this will be funded through this contract. However, this will impact those requiring accommodation within the Women’s Refuge even though they do not have access to private funding or benefits such as Housing Benefit or Universal Credit. It is an essential requirement that services remain accessible so tenderers will need to consider how support can be provided to those without the financial support available to others.

1. **Performance Requirements**

There are a number of outcomes contained within the Wiltshire and Swindon Domestic Abuse Reduction Strategy that this service is aimed at supporting. However, it is recognised that this service does not and cannot be responsible for delivering these outcomes but it should influence these through the performance of this service.

|  |  |  |
| --- | --- | --- |
| **Area** | **Measurement** | **Frequency** |
| Referrals | Number of referrals to Women’s Refuge | Quarterly |
| Number of referrals to Community Support | Quarterly |
| Protected Characteristics of referrals | Quarterly |
| Number of referrals who are pregnant | Quarterly |
| Number of dependent children with referral | Quarterly |
| Outcome of referral (Accepted, Rejected by referral, rejected by provider) | Quarterly |
| Reason for rejections by provider | Quarterly |
| Number of repeat referrals | Quarterly |
| Risk level of referral | Quarterly |
| Time taken between referral and decision | Quarterly |
| Number of referrals who are due to DV, FGM, HBV, FM, Stalking and Harassment | Quarterly |
| Length of time abuse has been ongoing | Quarterly |
| Source of referral | Quarterly |
| Starters | Number of new service users in Women’s Refuge | Quarterly |
| Number of new service users in Community Support | Quarterly |
| Number referred to GP | Quarterly |
| Number referred to Mental Health services | Quarterly |
| Number referred to Drug and Alcohol services | Quarterly |
| Number referred to support around Female Genital Mutilation, Honour Based Violence or Forced Marriage | Quarterly |
| Number of children taken into the Women’s Refuge | Quarterly |
| Number of children referred to Family Contact Point (Children’s Social Care) |  |
| Number of children who have had an Early Help Record and Plan completed |  |
| Risk level of new starters | Quarterly |
| Number completing Outcomes Star, Empowerment Star or equivalent | Quarterly |
| Number of cases referred to MARAC | Quarterly |
| Number supported through the Domestic Violence Disclosure Scheme and the Domestic Violence Protection Orders | Quarterly |
| Number who are NEET, in Education, in employment or in Training | Quarterly |
| The average scores/responses to the Empowerment Star or equivilant system used. | Quarterly |
| Supported | Number of victims supported during the quarter | Quarterly |
| Number of children supported during the quarter | Quarterly |
| % Occupancy of the Women’s Refuge | Quarterly |
| % Occupancy of the Emergency Rooms | Quarterly |
| Average caseload of Community Workers | Quarterly |
| Number of victims receiving two contacts from a staff member | Quarterly |
| Number just receiving telephone support | Quarterly |
| Number who have referred | Quarterly |
| Leavers | Number of people leaving the Women’s Refuge | Quarterly |
| Average length of stay for those leaving the Refuge | Quarterly |
| Where those leaving the refuge have gone. For example, returned to partner, returned home without partner, private housing, social housing etc. | Quarterly |
| Number of people no longer receiving Community Support | Quarterly |
| Average length of support for those leaving Community Support | Quarterly |
| Reason for those leaving community support | Quarterly |
| Number of those leaving support who had been registered with GP | Quarterly |
| Number of those leaving support who are NEET, in education, in employment or in training | Quarterly |
| Number of people supported to report case to the police who hadn’t already had police involvement prior to support | Quarterly |
| The average scores/responses to the Empowerment Star or equivilant system used showing the change, reduced risk or improvement made. | Quarterly |
| Number of people supported to engage with criminal justice | Quarterly |
| 24 Hour Support | Number of calls outside of office hours | Quarterly |
| Reason for calls | Quarterly |
| Number of call outs or requiring further action from staff outside of hours | Quarterly |
| Number of call referred to another agency | Quarterly |
| Which agencies were referred to | Quarterly |
| Activity Report | Specific actions taken to raise awareness amongst other professionals | Quarterly |
| Specific actions taken to raise awareness amongst communities | Quarterly |
| User outcome/satisfaction surveys | Quarterly |
| Trends of violence and abuse | Quarterly |
| Analysis of the Outcome Star/Empowerment Star or equivalent scores | Quarterly |

Section 6 – Tender Award Questions

Please note your responses to section 6.1 Tender Award Questions form part of the award criteria relating to quality. You must provide full answers in accordance with each questions word count.

|  |  |
| --- | --- |
| 6.1 Tender Award Questions | |
| QUALITY QUESTIONS (40% OF TOTAL MARKS) | |
| 6.1.1 | Please provide a copy (as a separate attachement on one side of A4) of your proposed staff structure for the service. Please describe the work and responsibility of each role, hours worked, how you intend to manage performance, who will be the Contractor’s Representative and the relationship between this person and those attending Contract Meetings. (Maximum of 500 words) |
| Tenderer Response | |
| 6.1.2 | Please describe the risks that could prevent delivery of the outcomes sought and the control measures you will put into place to prevent or mitigate these risks? (Maximum 250 words) |
| Tenderer Response | |
| 6.1.3 | Please explain how you would approach providing support to victims outside of normal office hours, weekends and public holidays. (Maximum of 500 words) |
| Tenderer Response | |
| 6.1.4 | Please explain your proposed approach to supporting the adults and children in your service and the key areas of focus. (Maximum of 500 words) |
| Tenderer Response | |
| 6.1.5 | Please explain how you intend to evidence that your service is meeting the outcomes sought from this contract. (Maximum of 500 words) |
| Tenderer Response | |

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| --- | --- | --- | --- |
| 6.1.6 | Please describe how you intend to achieve innovation within the service to deliver further value for money and manage the demand within the resources available. (Maximum of 500 words) | | |
| Tenderer Response | | | |
| 6.1.7 | Please show how you will contribute to meeting the requirements of the Public Services (Social Value) Act and deliver added value to the contract linked to the Corporate Priorities of Swindon Borough Council. (Maximum of 250 words) | | |
| Tenderer Response | | | |
| 6.1.8 | | The Contractor must prepare a Early Help Record and Plan for every child (person under 18) moving into the Women’s Refuge. | Please confirm acceptance of this by adding an X to the box.  Yes |
| 6.1.9 | | The Contractor must attend the Multi-Agency Risk Assessment Conference (MARAC) and prepared to support any high risk victims in need of support. | Please confirm acceptance of this by adding an X to the box.  Yes |
| 6.1.10 | | The Contractor must work to deliver and report quarterly on the Performance Measures listed in the Specification. | Please confirm acceptance of this by adding an X to the box.  Yes |
| 6.1.11 | | The Contractor must agree to the Management Agreement to run and manage the Women’s Refuge. | Please confirm acceptance of this by adding an X to the box.  Yes |
| 6.1.12 | | The Contractor must agree to support women and children who have No Recourse to Public Funds requiring access to the Women’s Refuge to a maximum of 5% of the total occupancy. | Please confirm acceptance of this by adding an X to the box.  Yes |
| 6.1.13 | | The Contractor must agree to attend and participate in relevant groups and forums in Swindon setup to support victims of and address Domestic Abuse. | Please confirm acceptance of this by adding an X to the box.  Yes |

|  |  |  |
| --- | --- | --- |
| 6.1.14 | The Contractor must have a robust Complaints Policy and Procedure for users of the service. | Please confirm acceptance of this by adding an X to the box.  Yes |
| 6.1.15 | The Contractor must agree to ensure the services complies with the relevant safeguarding policies and procedures has set by the Authority. | Please confirm acceptance of this by adding an X to the box.  Yes |

|  |  |
| --- | --- |
| 6.2 Presentation and Interview | |
| 6.2.1 | **PRESENTATION (4% OF TOTAL MARK)**  The tenderer will be invited to deliver a presentation to last no longer than 15 minutes. The presentation should answer the question:  “Please explain your transition and implementation plan for your service. Please include timescales, risks involved in implementing this service and how you intend to mitigate against them.” |
| 6.2.2 | **INTERVIEW (6% OF TOTAL MARK)**  The tenderer will also be asked to answer three questions related to this service. These questions will relate to the Promotion of the Service, Partnership Working and Accessibility of the Service. This element will last 30 minutes. |

Section 7 – Pricing and Payment Schedule

|  |  |  |
| --- | --- | --- |
| **Pricing & Payment** | | |
| 7.1 | Tenderers are required to complete the Pricing Schedule, included in the ITT/Form of Contract, all prices quoted shall be inclusive of all costs associated in the delivery of this Contract but shall be exclusive of VAT. All costs must be included in this section, as costs appearing elsewhere in the proposal but not mentioned in this Pricing Schedule shall be presumed waived. | |
| **Tenderers to confirm compliance**  **Response (Pass/Fail)** | | Please confirm acceptance of this by adding an X to the box.  Yes |
| 7.2 | The Contractor shall at all times provide every assistance to the Authority in complying with the Local Government Act 1999 with regard to Best Value. | |
| **Tenderers to confirm compliance**  **Response (Pass/Fail)** | | Please confirm acceptance of this by adding an X to the box.  Yes |
| **Cost Elements** | | |
| 7.3 | Contractors at all times are to provide an open book policy and are to demonstrate how the annual charge is calculated e.g. staff, training, equipment, profit etc | |
| **Tenderers to confirm compliance**  **Response (Pass/Fail)** | | Please confirm acceptance of this by adding an X to the box.  Yes |

Pricing Schedule

Summary Page

|  |  |  |  |
| --- | --- | --- | --- |
| Year | Staff Costs  £ (GBP) | Other Costs  £ (GBP) | Total Costs  (Staff Costs + Other Costs) |
| 17/18 |  |  |  |
| 18/19 |  |  |  |
| 19/20 |  |  |  |
| Total |  |  |  |

**I/We can confirm to offer the goods/services specified in compliance with the tender document at the forgoing pricing schedules**

|  |  |
| --- | --- |
| Signed: |  |
| Date: |  |
| Print Name: |  |
| In the capacity of: |  |

APPENDIX A

Certificate of Bona Fide Tender

The essence of selective tendering is that the client shall receive bona fide competitive tenders, from all those tendering. In recognition of this principle, we certify that this is a bona fide tender, intended to be competitive and that we have not fixed or adjusted the amount of tender by or under or in accordance with any agreement with any other person.

We also certify that we have not done and we undertake that we will not do at any time before the hour and date specified for the return of this tender any of the following:

(a) Communicate to a person other than the person calling for these tenders the amount or approximate amount of the proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations for the preparation of the tender;

(b) Enter into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted;

(c) Offer to pay or agree to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or have caused to be done in relation to any other tender or proposed tender for the said supply / service any act or thing of the sort described above.

In this certificate, the word "person" includes any persons and any body or association, corporate or unincorporated, and any "agreement or arrangement" includes any such transaction, formal or informal, and whether legally binding or not.

We acknowledge that the Authorised Officer will be entitled to cancel the contract and to recover from us the amount of any loss resulting from such cancellation if we or our representatives (whether with our without our knowledge) shall have practiced collusion in tendering for this contract or any other contract with the Authority or shall employ any corrupt or illegal practices either in the obtaining or execution of this contract or any other contract with the Authority:

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Occupation/Profession:

For and on behalf of:

APPENDIX B

Freedom of Information Act 2000 (FOI)

Exemption Form

**GUIDANCE**

The Authority encourages its Contractors to take their own legal advice about the FoI Act. The Authority shall not be held liable for any actions claims or costs howsoever arising.

The Authority considers that the following information is likely to be captured by the “confidential” (s.41 absolute exemption) and/or “commercial interest” (s43 qualified exemption) and therefore maybe subject to the Public Interest test:

* Trade secrets; or
* Financial, commercial, scientific, technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates; or
* Where disclosure could prejudice the competitive position of that person in the conduct of his/her profession or business or otherwise in his/her occupation; or
* Where disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

NB: Contractors should note that claiming blanket confidentiality of tender documentation, breaches current Government guidelines provided to the Authority and will not be accepted, therefore rendering the entire tender documentation disclosable under the FoI Act.

As part of the government’s transparency agenda it is our intention to publish on line copies of contracts and tender documents. If you consider any information should not be released, you must make us aware of this during the procurement process. Advice on how the Freedom of Information Act 2000 exemptions may apply is available from the Information Commissioner’s website at:

<http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx>

## PROCEDURE

1. Please specify below the relevant clauses or documentation containing the information you claim is exempt.

We consider that pricing schedules and technical specifications are most likely to be covered by one or other of the above exemptions and would therefore not, normally, be disclosed.

Each document claimed under the exemptions should be clearly marked as “confidential” or “commercially sensitive”.

CONFIDENTIAL INFORMATION:

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |

COMMERCIALLY SENSITIVE INFORMATION:

|  |  |
| --- | --- |
|  |  |
|  |  |
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2. The Authority is obliged to consider whether something, which its Contractor claims is confidential, is truly confidential. In those instances where the Authority does not agree with the exemption claimed, it will always consult with the Contractor before disclosing the information.

Where the Authority decides to release such information, it will only do so in the following circumstances:

* Where the Contractor consents; or
* Where the information or information of a similar type is generally available to the public (e.g. where a Minister would give such information in answer to a Parliamentary Question);or
* Where the Contractor has been advised, at the time that the information is received, that the information will be released; or
* Where the Authority believes that the public interest would be better served by disclosing rather than by refusing to disclose the information. In this instance, the views of the Contractor will be sought in advance of a decision being made. Where the Contractor refuses to agree to disclosure of the information, the Contractor is able to refer the matter to the Information Commissioner at the Contractor’s expense.

|  |  |
| --- | --- |
| Signed | Position |
| Print Name | Date |

APPENDIX C

Form of Tender

To: Swindon Borough Council

Law and Democratic Services

Civic Offices

Euclid Street

Swindon SN1 2JH

## Swindon Domestic Abuse Support Service

Having examined the contents of the tender document, terms and conditions of Memorandum of Agreement, service level issues, and product specifications, we offer to carry out the work in conformity with the said conditions for the maximum fixed prices detailed in the attached schedules.

We undertake to carry out the works specified within the period stated in the enquiry letter.

Our tender offer shall be binding between us for a period of one hundred and twenty (120) days from the closing date for receipt of tenders.

Unless and until a formal agreement is prepared and executed this Tender and a written acceptance thereof shall constitute a binding contract between us.

We understand that you are not bound to accept the lowest or any Tender you may receive.

We further undertake, if our Tender is accepted, to comply with all the General Conditions of Contract and Specifications for the service comprising the contract.

Dated this       day       of       20

Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:       in the capacity of

duly authorised to sign tenders for and on behalf of:

Witness:

Address:

Occupation/Profession

1. See EU definition of SME: http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/ [↑](#footnote-ref-1)