

# **WEST LANCASHIRE BOROUGH COUNCIL**



## **PROPOSED CONTRACT FOR ORMSKIRK RAIL TO BUS STATIONS CYCLE LINK WORKS**

### **CONTENTS**

Section 1	Instructions for Tenderers
Section 2	Preliminaries
Section 3	General Conditions
Section 4	General Preambles
Section 5	Health and Safety
Section 6	Insurance
Section 7	Bill of Quantities – Priced Section
Section 8	Specification
Section 9	Proposed Timescales
Section 10	Form of Tender
Section 11	Question bank

## **SECTION 1: INSTRUCTIONS FOR TENDERERS**

### **INSTRUCTIONS FOR TENDERERS**

- 1.1(i) This tender exercise is being conducted as an tender exercise below the thresholds for the Public Contracts Regulations 2015 (as amended) which has involved the appearance in the Contracts Finder portal [www.contractsfinder.service.gov.uk](http://www.contractsfinder.service.gov.uk) and The Chest [www.the-chest.org.uk](http://www.the-chest.org.uk) of an appropriate Contract Notice.
- (ii) The West Lancashire Borough Council (the “Council”) invites tenders for the carrying out of the Contract for works between Ormskirk bus and rail station.
- 1.2 Tenderers must ensure that they are fully conversant with the nature and extent of the obligations to be accepted by them in accordance with the Contract Documents if their tenders are accepted and must, furthermore, satisfy themselves as to the sufficiency of their tender before they submit it for consideration by the Council. Tenderers are advised to visit the site in order to understand the nature of the proposed works. Visits can be arranged by contacting Dominic Carr Senior Planning Officer (Regeneration) via the messaging system on [www.the-chest.org.uk](http://www.the-chest.org.uk).
- 1.3 All information supplied by the Council in connection with this invitation to tender shall be treated as confidential by prospective tenderers except that such information may be disclosed so far as is necessary for the purpose of obtaining sureties, guarantees and quotations necessary for the preparation and submission of the tender.
- 1.4 All documents requiring a signature shall be signed:
- Where the tenderer is an individual, by that individual.
- Where the tenderer is a partnership by two duly authorised partners.
- Where the tenderer is a company by two directors or by a director and the secretary of the company, such persons being duly authorised for that purpose.
- 1.5 Any company, organisation or individual who is invited by the Council to submit a tender but decides not to submit any tender must so notify the Council as soon as possible and in no case later than the date, detailed below, for the return of tenders.
- 1.6 Any queries regarding this tender can be raised by using the messaging facility on messaging system for this specific project on The Chest portal [www.the-chest.org.uk](http://www.the-chest.org.uk) prior to **25/9/2019 2.00pm.**
- All queries raised and all answers provided will be circulated to all tenderers.
- 1.7 Tenderers are strongly advised to familiarise themselves with the environment of the Borough of West Lancashire in which the Contract Works will be carried out.
- 1.8 Tenders must be submitted by uploading all required documents on to the specific project on The Chest portal [www.the-chest.org.uk](http://www.the-chest.org.uk) no later than **30/9/2019 2.00pm.**

Alternative methods of tender submission, for example postal delivery of paper copies, will not be accepted.

- 1.9 Tenders must remain open for acceptance for three months from the date set for submission of tenders.
- 1.10 In evaluating tenders the following points will be taken into account:-
- i) All Bidders will be required to pass all pass / fail criteria in order for their Bid to be considered. Each pass/fail question will be clearly marked and the criteria required for a pass will be detailed.
  - ii) Tenders will be marked out of 100 points as detailed in the tender questionnaire based on
    - i) 60 points based on price
    - ii) 40 points based on the answers to the Quality Questions in Section 11 using the scoring allocation method described in that section.
  - iii) The tenderer with the highest score will be considered for acceptance. Prior to any tender being accepted, any tenderer may be invited for a clarification meeting, the purpose of that meeting being to confirm the tenderer's suitability and clarify any aspects of their tender. Should the Council be of an opinion after a clarification meeting that any tenderer is unsuitable, that tender may be rejected or in less extreme circumstances their score may be amended.
  - iv) The Council reserves the right to require the tenderer to amplify or clarify any element of a tender at any time during the tender evaluation process.
- 1.11 The Council is not bound to accept the lowest or any tender and no allowance will be claimable for the costs of preparation of same. The Council reserves the right to disqualify any tender which it considers at its sole discretion does not meet the quality requirements, regardless of score
- 1.12 The successful tenderer will be required to execute a formal contract and until such execution, the successful tender together with the Council's written acceptance shall form a binding agreement in the terms of the Contract Documents and where there is any discrepancy or difference between the tender and the (other) Contract Documents the latter shall prevail.
- 1.13 The Council is currently operating in a challenging financial environment with anticipated reductions in government funding. In such circumstances the Council expects its contractors and suppliers to assist it in realising monetary savings which will result in a total net reduction in Council expenditure. Whilst the Council believes it can presently afford the services which are the subject of this contract, it may be that at some future date the Council requires to reduce its expenditure. At such a time the Council will approach the contractor and ask him/her to propose innovation, new ways of working and monetary savings. The Council expects its contractors to react positively to any such requests.

## **EVALUATION PROCESS AND CRITERIA**

- 1.14 The bids will first be evaluated using the following stages:
- 1.15 Preliminary compliance review – The information supplied in the Bid will be checked for completeness and compliance
- 1.16 Evaluation of the Pass / Fail criteria contained within the question bank– Bids will be evaluated against the pass / fail criteria
- 1.17 Evaluation of Scoring Criteria contained within the question bank – Bids which have achieved pass / fail criteria will be assessed against scoring criteria by individual evaluators who will review the bid in the areas of their specialty and expertise. Individual evaluators will determine their score for the response and will record their reasons for the score.

The weighting of the questionnaire are:

Price – 60%  
Quality – 40%

- 1.18 Where an individual evaluator is a sole specialist evaluator in the field that they are evaluating their score will be used for the response they have evaluated, and this will feed into the overall weighted score for that bid.
- 1.19 For sections which are being evaluated by multiple evaluators, a moderation meeting will be called.
- 1.20 At the moderation meeting individual evaluator scores will be compared along with the reasons given for each score for each applicable tender response by those who have scored. These scores will be discussed and a consensus for the score will be agreed. The reasons for awarding the score will be recorded. The score will be in line with the scoring criteria. The consensus score will be the score fed into the overall weighted score for the bid.
- 1.21 The Council have scheduled into the process the opportunity to conduct an interview to resolve clarifications if required.
- 1.22 Following the completed evaluation and moderation process, the Bidder having passed the pass / fail criteria and with the highest combined score will be deemed to the successful Bidder by the evaluation panel.

Evaluation Criteria	
<b>Non-Price elements</b> will be judged on a score from 0 to 5, which shall be subjected to a multiplier so criteria worth 20% will have a 0 - 5 score and a multiplier of 4. The 0 - 5 score shall be based on:	
5	Excellent – The response is excellent in relation to the stated requirements of the question. The details provided demonstrate that the bidder's approach fully meets the requirements of the question and provide a very high level of confidence of the bidder's skills, expertise and understanding of the requirements. The response is exemplary and comprehensive, demonstrating that the requirement can significantly be exceeded.
4	Good – The response is good in relation to the stated requirements of the question. The details provided demonstrate the bidder's approach fully meets the requirements of the question and provide a high level of confidence of the bidder's skills, expertise and understanding of the requirements. No concerns were evident with the response.
3	Acceptable - The response is acceptable in relation to the stated requirements of the question. The details provided demonstrate the bidder's approach meets the requirements of the question (with only minor omissions) but would benefit from being more detailed and demonstrating further added value and/or contains minor concerns.
2	Poor – The response is poor in relation to the stated requirements of the question. The response provides a low level of detail and provides little evidence that the bidder has the expertise to satisfy the requirements of the question with weaknesses apparent in some areas and/or demonstrates some misunderstanding of the requirements.
1	Very poor – The response is very poor in relation to the stated requirements of the question. The response provides a very low level of detail. There is a significant lack of evidence presented to demonstrate that the bidder has the expertise to satisfy the requirements of the question.
0	Unacceptable - The response is either unacceptable as it fails to provide any evidence whatsoever that the bidder can meet the requirements set out in the question or is entirely lacking in detail or no answer has been given. The response does not comply with or has failed to demonstrate an understanding of the stated requirements of the question.

**Price elements** will be judged on a score from 0 to 5

A maximum of 60 points are available based on price, the methodology will be as follows:-

The lowest Bid price which meets all pass / fail criteria will score 5 and will be multiplied by 12 to provide a score out of 60%

Any other Bids which meet all pass / fail criteria will scored between 0 and 5 (on a pro rata basis in relation to the lowest Bid). The lowest score possible is 0.

All scores will be multiplied by 12 to receive a score out of 60 points.

For example

Bid 1 Lowest Bid - £10,000 scores 5 x multiplier 12 = 60 points

Bid 2 - £12,000 – differential of £2,000 (20% higher) score shall be 4 x multiplier 12 = 48 points

Bid 3 - £15,000 – differential of £5,000 (50% higher) score shall be 2.5 x multiplier 12 = 30 points

Bid 4 - £17,500 – differential of £7,500 (75% higher) score shall be 1.25 x multiplier 12 = 15 points

Bid 5 - £20,000 – differential of £10,000 (100% higher) score shall be 0 x multiplier 12 = 0 points

All prices shall be evaluated against the total price for years 1 to 3.

## **SECTION 2: PRELIMINARIES**

### **GENERAL**

- 2.1 These conditions are supplementary to those stated in the invitation to tender and on the Form of Tender.
- 2.2 Alterations and qualifications to the Specification must not be made without the written consent of the Contract Administrator. Tenders containing such alterations or qualifications may be rejected.
- 2.3 Costs relating to un-priced items will be deemed to have been included elsewhere in the Specification.

### **NAME OF PARTIES**

- 2.4 Employer shall mean West Lancashire Borough Council, 52 Derby Street, Ormskirk, Lancashire. L39 2DF.
- 2.5 Contract Administrator shall mean a representative of Arcus Consulting LLP or in the event of him ceasing to be Contract Administrator for the purpose of the Contract, such other person who shall be nominated for the purpose by the Employer.

### **DESCRIPTION OF WORKS**

- 2.6 The Contractor is referred to the pre-construction information and specification/works schedule.

### **CONTRACTOR TO VISIT SITE**

- 2.7 The Contractor is required to visit the site and ascertain the conditions under which the work will be carried out. The Contractor must take full account of the position of any Local Authorities, statutory undertakings, private or public Company's pipes, cables, manholes, inspection chambers, buildings and equipment on or adjacent to the site, or any condition which may influence his tender.

### **TENDER**

- 2.8 The Contractor's tender must include for the completion of all the Works and for total compliance with the Contract Documents. The tender should be completed, signed and uploaded on to The Chest portal at [www.the-chest.org.uk](http://www.the-chest.org.uk) no later than 2.00pm on the date shown in the Invitation to Tender section above, otherwise it will not be considered.
- 2.9 The Contractor will be required to submit a fully priced specification at the following time: **at the time of tender submission.** All items must be priced separately. The QS and CA reserve the right at this time to request further information and cost breakdown of specific Specification Clauses.

- 2.10 The tender procedure shall be in accordance with the "JCT Series 2 Practice Note 6, **Alternative 2**". In the event of an error in pricing or addition being discovered within the tender documents, the Employer shall give to the tenderer the opportunity to correct his offer as applicable in the code.

#### TYPE OF CONTRACT

- 2.11 The Contractor should note that this will be a FIXED PRICE CONTRACT with no provision for fluctuations in rates, wages or prices of materials.
- 2.12 The successful Contractor will be required to sign the **JCT Intermediate Building Contract 2016**
- 2.13 The Contractor will be held to have studied the Conditions of the above carefully and made himself fully conversant with the implications thereof and the under mentioned amendments and additions and to have allowed a price in his tender for compliance therewith.

#### RECITALS

##### 1<sup>st</sup> Recital

The works comprise: The Employer wishes to have the following work, (see the "Works Section" of this specification, the front cover of which gives the title of the project), (hereinafter called "The Works") carried out under the direction of Arcus Consulting LLP, (hereinafter called "Contract Administrator") and has caused a specification (hereinafter called "The Contract Specification") and schedules (which documents are together with the conditions annexed hereto hereinafter called "The Contract Documents") showing and describing the works to be prepared and which are attached to this Agreement.

##### 2<sup>nd</sup> Recital

The Contract Drawings and Schedule of Works will be as Section B and C of the Contract Documents and associated drawing register.

##### 3rd Recital

Reference to Bills of Quantities and Works Schedules will be deleted.

The whole of the text referring to a named person as a sub-contractor is to be deleted.

##### 4<sup>th</sup> Recital

Alternative A will apply: Alternative B will be deleted.

Within Alternative A the following words will be deleted: "Bill of Quantities/Works Schedules (as prices, called the Contract Bills)". The words "The Contractor has provided the Employer with a priced Activity Schedule" will be deleted.

##### 6<sup>th</sup> Recital



Information Release Schedule - not applicable delete complete.

8<sup>th</sup> Recital

The following words will be deleted: "Bill of Quantities/Works Schedules.

<b>Clause No.</b>	<b>Description</b>	<b>Insertion/Deletion</b>
5 <sup>th</sup> Recital & Clause 4.5	Construction Industry Scheme (CIS)	Contractor
7 <sup>th</sup> Recital	CDM Regulations	The works are not notifiable
10 <sup>th</sup> Recital & Schedules		
1.1	Base Date	Ten days before the date of tender return as stated in tender invitation letter
1.1	Date for Completion	As section A, unless otherwise agreed at pre-start meeting
2.4	Date of Possession of sections	Not applicable
2.5 & 2.20.3	Deferment of Possession of the site	Clause 2.5 does not apply
2.23.2	Liquidated Damages	£100 per week or part thereof
2.30	Rectification Period	12 Months
4.5	Advance Payment	Clause 4.5 does not apply
4.9.4	Listed items - uniquely identified	Not applicable
4.9.5	Listed items off site not uniquely identified	Not applicable
4.15 & Schedule 4	Percentage addition for fluctuations option	Nil %
6.4.1.2	Contractor's Insurance - injury to persons or property	£5,000,000.00 (Five Million)
6.5.1	Insurance - liability of Employer	May be required (amount of indemnity for one occurrence to be £10,000,000.00 (Ten Million))
6.7 & Schedule 1	Insurance of works	Option C applies
6.7C.2	Percentage to cover Professional Fees	15%
6.7 & Schedule 1 Insurance Option A	Insurance Renewal Date	Insert 'to be confirmed on appointment of Contractor'

## **ARTICLES 1-9**

### **Article 3**

Architect/Contract Administrator: Arcus Consulting LLP

### **Article 4**

Quantity Surveyor: Arcus Consulting LLP

### **Article 5**

Principal Designer: Arcus Consulting LLP

## **CONTRACT PARTICULARS**

### **PART 1: GENERAL**

The following insertions/deletions are to be made to the Contract:

<b>Clause No.</b>	<b>Description</b>	<b>Insertion/Deletion</b>
6.12	The Joint Fire Code	Does not apply
	Adjudication Nomination of Adjudicator	Delete "Royal Institute of British Architects Construction Confederation National Specialist Contractors Council Chartered Institute of Arbitrators"
9.4.1	Arbitrator appointer of Arbitrator	Delete "RIBA and Chartered Institute of Arbitrators"

## **THE CONDITIONS**

A schedule of section headings (rather than Clause headings) is given.

1. Definitions and interpretation.
2. Carrying out the works.
3. Control of the Works.
4. Payment.

4.7.2 Delete “100% and substitute 95% retention.

4.9.1 Delete “100%” and substitute “97.5%” retention.

5. Variations.
6. Injury, damage and insurance.
7. Assignment and Collateral Warranties.
8. Termination.
9. Settlement of Disputes.

## AVOIDANCE OF FRAUD

2.14 Avoidance of Fraud – The Council may terminate this Contract 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 relation to the improper performance of any function or activity in respect of this or any other Council 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 Council contract whether alone or in conjunction with Council members, contractors or employees

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

## CONTRACTOR’S ARRANGEMENTS

### 2.15 Equality Act 2010

Where under the requirements of The Equality Act 2010 the contractor is required to make any arrangements in respect of a disabled contract worker and the Contractor requires the co-operation of the Council to ensure the effectiveness of those arrangements, and then the Contractor shall notify the Council accordingly.

### 2.16 Human Rights Act

Where a public function is being carried out, the Contractor shall carry out his/its obligations hereunder at all times in accordance with the requirements of the Human Rights Act 1998 and hereby indemnifies the Council against any loss,

claims, costs or proceedings arising out of a breach of his/its obligations (without prejudice to any indemnity provided under this Contract) PROVIDED ALWAYS that the Contractor shall not be responsible for any breach hereunder where such a breach results from any act or default of the Council.

## 2.17 Third Parties

Notwithstanding any other provision of this contract, nothing in this contract confers or purports to confer any right to enforce any of its terms of any person who is not a party to it.

## 2.18 Data Protection

### **DATA PROTECTION**

2.19 The Contractor hereby undertakes that any personal data provided under this Agreement shall be dealt with by him/her only in accordance with the instructions of the Council and at all times within the requirements of the Data Protection Act 2018, the General Data Protection Regulation and Law Enforcement Directive (as amended from time to time) without prejudice to the generality of the foregoing the Contractor shall:

- (a) The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the following Schedule by the Customer and may not be determined by the Contractor.
- (b) The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation
- (c) The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
  - i. a systematic description of the envisaged processing operations and the purpose of the processing;
  - ii. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- (d) The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
  - i) process that Personal Data only in accordance with the following Schedule, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - ii) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

iii) ensure that:

- (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the following Schedule);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
  - (A) are aware of and comply with the Contractor's duties under this clause;
  - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- iv) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- v) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

- (e) Subject to clause f, the Contractor shall notify the Customer immediately if it:
  - i) receives a Data Subject Access Request (or purported Data Subject Access Request);

- ii) receives a request to rectify, block or erase any Personal Data;
  - iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - v) receives a request from any Third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - vi) becomes aware of a Data Loss Event or Data Breach.
- (f) The Contractor's obligation to notify under clause e shall include the provision of further information to the Customer in phases, as details become available.
- (g) Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause e (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
  - i) the Customer with full details and copies of the complaint, communication or request;
  - ii) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - iii) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - iv) assistance as requested by the Customer following any Data Loss Event or Data Breach;
  - v) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- (h) The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
  - i) the Customer determines that the processing is not occasional;
  - ii) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - iii) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- (i) The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- (j) The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

- (k) Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
  - i) notify the Customer in writing of the intended Sub-processor and processing;
  - ii) obtain the written consent of the Customer;
  - iii) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
  - iv) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- (l) The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- (m) The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- (n) The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

**Schedule: Processing, Personal Data and Data Subjects**

1. **The Contractor shall comply with any further written instructions with respect to processing by the Customer.**
2. **Any such further instructions shall be incorporated into this Schedule.**

Description	Details



Subject matter of the processing	<i>Personal data relating to the Ormskirk bus to rail station cycle project</i>
Duration of the processing	<i>September to December 2019</i>
Nature and purposes of the processing	<p><i>Nature: Any operation such as collection, recording, organisation , structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data</i></p> <p><i>Purpose: liaison with the Council</i></p>
Type of Personal Data	<i>Name, telephone number, email contacts</i>
Categories of Data Subject	<i>Staff (including representatives from external agencies including Network Rail, agents, and temporary workers), customers/ clients, suppliers.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>Any personal data should be destroyed as soon as practicable after the completion of the project</i>

## Transparency Clause

- 2.20 The Contractor acknowledges that the Council adheres to the Communities and Local Government Code of Recommended Practice for Local Authorities on Data Transparency ("the Code") in particular but not limited to the obligation to publish data (which includes costs, Contractor information and transaction information) on all expenditure over £500. Notwithstanding any other term in this Contract the Contractor hereby consents to the Council publishing this information relating to this Contract with the Contractor for public inspection and the Council shall not be held liable for any loss, damage, harm or other detriment caused to the Contractor howsoever arising from the publishing of this information or from the Council adhering to any other provision in the Code or other applicable legislation.

## Whistleblowing

- 2.21 (a) The Council is determined that all its contractual dealings shall be carried out without any malpractice. This principle applies equally to all persons associated with Council contracts including Council Officers and Members.
- (b) Where the Contractor becomes aware at any time of any dealings which fall short of the above principle they are encouraged to report the matter in confidence to the Council's Monitoring Officer (Mrs. G. Rowe, Director People and Places, Tel. 01695 585004). The Council hereby gives an undertaking that should any Contractor bonefide report any such matter as described in this clause then irrespective of the outcome of any resulting investigations the fact that the Contractor took the action of reporting that matter will not prejudice any future dealing the Council will have with the Contractor, rather, the Council will respect the Contractor's concern to maintain probity in respect of the Council's contractual dealings.
- (c) The Contractor hereby undertakes to promote the principles and reporting procedures set out at 29 (a) and 29 (b) above to all its employees, sub-contractors, suppliers and others who he engages in relation to the discharge of his duties and obligations under this Contract.

## Freedom of Information

- 2.22 (a) The Contractor recognises that the Council is subject to legal duties which may require the release of information under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 or any other applicable legislation or codes governing access to information and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Agreement in any way.
- (b) The Contractor recognises that each request for information must be considered individually and that any decision to disclose information will be the decision of the Council.
- (c) Notwithstanding anything in the Agreement to the contrary including, but without limitation, the general obligation of confidentiality imposed on the Parties pursuant to the clause(s) dealing with confidentiality elsewhere in this agreement (if any), in the event that the Council receives a request for information under the FOIA or any other applicable legislation governing access to information, the

Council shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOIA or other applicable legislation governing access to information.

- (d) The Council shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any information relating to this Agreement under FOIA or other applicable legislation governing access to information.
- (e) The Contractor will assist the Council to enable the Council to comply with its obligations under the FOIA or other applicable legislation governing access to information. (In particular it acknowledges that the Council is entitled to any and all information relating to the performance of this Agreement or arising in the course of performing this Agreement). In the event that the Council receives a request for information under the FOIA or any other applicable legislation governing access to information and requires the Contractor's assistance in obtaining the information that is the subject of such request or otherwise, the Contractor will respond to any such request for assistance from the Council at its own cost and promptly and in any event within 10 days of receiving the Council's request.

## **Equal Opportunities**

- 2.23
- (i) The Council is committed to promoting equality of opportunity. We aim to create a working environment in which all individuals are able to make best use of their skills, free from discrimination or harassment of any kind, and in which all decisions are based on merit.
  - (ii) As a public authority, the Council must ensure that it adheres to the provisions set out in s.149 of the Equalities Act 2010 (the Act) in performing all its functions, as well as all those actions undertaken by its employees and those with whom it has working relationships. This includes taking steps to:
    - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; and
    - (b) advance equality of opportunity and foster good relations between persons who share a relevant 'protected characteristic' (e.g. race, gender, disability) and persons who do not share it.
  - (iii) The Contractor shall assist the Council in fulfilling its duty to promote equality in the performance of all its functions and in particular shall ensure the Council is given every assistance in doing so in carrying out the Contract Works. Where co-operation from the Council is needed in order to achieve this, then the Contractor shall notify the Council accordingly.
  - (iv) Without prejudice to Clause 17 (iii) the Contractor shall carry out the Contract Works at all times in accordance with the requirements of the Equalities Act 2010.
  - (v) The Contractor shall have in place and maintain an Equal Opportunities Policy and shall provide a copy of the same to the Council upon request.

## BRIBERY ACT

### DEFINITIONS

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Default:** any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement

(a) in the case of the Authority, of its employees, servants, agents; or

(b) in the case of the Supplier, of its Sub-Contractors or any Supplier's Personnel, 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.

**Effective Date:** the date on which this Agreement is signed by both Parties

**Prohibited Act:** the following constitute Prohibited Acts:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

(a) induce that person to perform improperly a relevant function or activity; or

(a) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

(c) committing any offence:

(c) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

(c) under legislation or common law concerning fraudulent acts;

(c) defrauding, attempting to defraud or conspiring to defraud the Authority.

(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

**Services:** the services to be delivered by or on behalf of the Supplier under this agreement.

**Sub-Contract:** any contract or agreement, or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services.

**Sub-Contractor:** the third parties that enter into a Sub-Contract with the Supplier.

**Supplier's Personnel:** all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

## 1. PREVENTION OF FRAUD AND BRIBERY

*1.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Effective Date:*

(a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

*1.2 The Supplier shall not during the term of this Agreement:*

(a) commit a Prohibited Act; and/or

(b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

*1.3 The Supplier shall during the term of this Agreement:*

(a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

(b) keep appropriate records of its compliance with its obligations under Clause 1.3(a) and make such records available to the Authority on request.

*1.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 1.1 and/or 1.2, or has reason to believe that it has or any of the Supplier's Personnel have:*

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

(c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

*1.5 If the Supplier makes a notification to the Authority pursuant to Clause 1.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.*

*1.6 If the Supplier is in Default under Clauses 1.1 and/or 1.2, the Authority may by notice:*

(a) require the Supplier to remove from performance of this Agreement any Supplier's Personnel whose acts or omissions have caused the Default; or

(b) immediately terminate this Agreement.

*1.7 Any notice served by the Authority under Clause 1.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).*

## 2.24 Electronic Transmission

Where this Agreement requires anything to be communicated in writing then the transmission of the relevant information by electronic means shall be deemed to satisfy this requirement.

## 2.25 Duty of Care – Transportation and Tipping

Contractors are reminded of “The Duty of Care” requirements of the Environmental Protection Act 1990 and of the Pollution Prevention and Control Act 1999 which defines “Controlled Waste”. The Contractor must ensure that they comply with these pieces of legislation so far as they apply to the execution of the Contract Works and in connection with which:

- (i) Prior to the commencement of the Contract the Contractor must provide to the Contract Administrator the names of all those who the Contractor intends to use to transport “Controlled Waste” together with documented proof that such persons are properly registered to transport such waste.
- (ii) The Contract Administrator will require a copy of all “Controlled Waste Transfer Notes” both received and issued by the Contractor in connection with this Contract.
- (iii) The Contractor shall also comply with any requirement of the Contract Administrator to provide details of the final disposal of any “Controlled Waste” which has in any way been connected with this Contract.

## GENERAL GUIDANCE TO CONTRACTORS AND TENDERERS ON ACCESS TO INFORMATION ABOUT OR ARISING UNDER CONTRACTS.

### **Background**

- 2.26 With the introduction of the Freedom of Information Act 2000 (the Act) from January 2005 the Council will, potentially at least, have a legal obligation to disclose all information relating to any tender made to the Council or any contract to which the Council is party, including information arising under the contract or about its performance, unless an exemption applies. The legal obligation to respond to a request for information falls on the Council. The Council must determine whether an exemption applies to information and whether the request should be refused. The Council may also be subject to disclosure obligations under other legislation or codes of practice. This Guidance sets out the approach of the Council to the disclosure of information about contracts.

### **General rules on disclosure**

- 2.27 The following rules will apply except where special circumstances dictate otherwise.

The Invitation to Tender (ITT) will always be available under the Act to those who enquire upon payment of the prevailing fee at the time of the request.

Responses to tenders will be held in confidence until the award of the contract.

- 2.28 Any person tendering for or entering into a contract with the Council shall when required to do so, inform the Council of information which it regards as being eligible for a claim for exemption from disclosure by the Council under the Act. Such information is referred to below as **potentially exempt information (PEI)**. Information about all tenders will be made available under the Act to those who enquire unless, the Council considers that it regards any of the information supplied with the tender as falling within the categories indicated below.
- 2.29 The Council will make information about the global pricing of the bid available under the act after award of the contract.

### **Potentially Exempt Information**

- 2.30 If the contractor wishes to prohibit information from disclosure under the Act he must put forward any information or classes of information which it is wished to have reserved and the grounds of the exemption which relate to the information which may be one or more of the following:
- That the information constitutes a trade secret and is eligible for exemption under section 43(1)
  - That the disclosure of the information would prejudice the commercial interest of any person (section 43(2)).
  - That the information will be disclosed by the contractor to the Council **and** that the nature of the information, or the circumstances in which it is imparted or the

circumstances are otherwise such as to justify the acceptance by the Council of an obligation of confidence in respect of it (section 41 (1))

- That the information is personal data or otherwise relates to the private life of any individual which is appropriate for protection (section 40)
- Any other specific exemption under the Act.

- 2.31 Information which is agreed between the parties to be exempt information from disclosure will only be disclosed where required by law. In each case the parties shall agree when it is likely that the information can be made available under the Act or if the information is unlikely ever to be made so available, if that is the case. Where such information is exempt under the rules governing commercial matters (section 43(2)) then unless special circumstances apply, it will not be withheld under the Act for more than five years after completion of the contract works.
- 2.32 Information relating to the overall value, performance or completion of the contract will not be accepted as exempt information. The Council may however withhold access to such information under the Act in appropriate cases. The decision as to whether to withhold information shall be for the Council alone to determine. It shall have no obligation to consult the contractor.
- 2.33 Information relating to contract records and administration will not be accepted as exempt information. The Council may however withhold access to such information under the act in appropriate cases. The decision as to whether to withhold information shall be for the Council alone to determine. It shall have no obligation to consult the contractor.
- 2.34 The Council will make information available under the Act from 5 years after award of the contract, in the absence of specific agreement to the contrary. In the event that the Council receives a request for such information before the expiry of the 5 year period which it considers it may be appropriate to provide it will, wherever possible, notify the tenderer and take account of any representations made by the tenderer within 7 days of receipt of the notice by the tenderer. Notices to the tenderer will be sent to the last notified e-mail, Fax or 1<sup>st</sup> class post contact point. In the case of e-mail or Fax will be deemed to have been received upon transmission and on the next working day by post.

#### **Handling requests for information and notice to those affected**

- 2.35 Other than set out above the Council shall have no obligation to consult the contractor where any request for information, whether under the Act or otherwise, touches or concerns the contract.

#### **Information about the provision of the service, which is the subject matter of the contract, which arises in the course of performance of the contract.**

- 2.36 The Council will have obligations to respond to the Act and other requests for information and the contract will include appropriate terms required the contractor to supply information as requested by the Council.

#### **PRECEDENT**



- 2.37 The Contractor recognises that the Council is subject to legal duties, which may require the release of information under the Freedom of Information Act 2000 or the Environmental Information Regulations 1992 or any applicable legislation or codes governing access to information and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Agreement in any way.
- 2.38 The Contractor recognises that each request for information must be considered individually and that any decision to disclose information will be the decision of the Council.
- 2.39 Notwithstanding anything in the Agreement to the contrary including, but without limitation, the general obligation of confidentiality imposed on the parties pursuant to the clause(s) dealing with confidentiality elsewhere in this agreement (if any), in the event that the Council receives a request for information under FOIA or any other applicable legislation governing access to information, the Council shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOIA or other applicable legislation governing access to information.
- 2.40 The Council shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any information relating to this agreement under FOIA or other applicable legislation governing access to information.
- 2.41 The Contractor will assist the Council to enable the Council to comply with its obligations under the Freedom of Information Act 2000 (FOIA) or other applicable legislation governing access to information. (In particular it acknowledges that the Council is entitled to any and all information relating to the performance of this agreement or arising in the course of performing this Agreement.) In the event that the Council receives a request for information under the FOIA or any other applicable legislation governing access to information, and requires the Contractor's assistance in obtaining the information that is the subject of such request or otherwise, the Contractor will respond to any such request for assistance from the Council at its own cost and promptly and in any event within 10 days of receiving the Council's request.

## **SCHEDULE 2 OF THE CDM 2015 REGULATIONS**

**Refer to the Pre-Construction Information, or where not discussed the below applies as a minimum:**

### **Sanitary conveniences**

1. Suitable and sufficient sanitary conveniences shall be provided or made available at readily accessible places. So far as is reasonably practicable, rooms containing sanitary conveniences shall be adequately ventilated and lit.
2. So far as is reasonably practicable, sanitary conveniences and the rooms containing them shall be kept in a clean and orderly condition.
3. Separate rooms containing sanitary conveniences shall be provided for men and women, except where and so far as each convenience is in a separate room, the door of which is capable of being secured from the inside.

### **Washing facilities**

4. Suitable and sufficient washing facilities, including showers if required by the nature of the work or for health reasons, shall so far as is reasonably practicable be provided or made available at readily accessible places.
5. Washing facilities shall be provided:
  - (a) in the immediate vicinity of every sanitary convenience, whether or not provided elsewhere; and
  - (b) in the vicinity of any changing rooms required by paragraph 14 whether or not provided elsewhere.
6. Washing facilities shall include:
  - (a) a supply of clean hot and cold, or warm, water (which shall be running water so far as is reasonably practicable);
  - (b) soap or other suitable means of cleaning; and
  - (c) towels or other suitable means of drying.
7. Rooms containing washing facilities shall be sufficiently ventilated and lit.
8. Washing facilities and the rooms containing them shall be kept in a clean and orderly condition.
9. Subject to paragraph 10 below, separate washing facilities shall be provided for men and women, except where and so far as they are provided in a room the door of which is capable of being secured from inside and the facilities in each such room are intended to be used by only one person at a time.
10. Paragraph 9 above shall not apply to facilities which are provided for washing hands, forearms and face only.

### **Drinking water**

11. An adequate supply of wholesome drinking water shall be provided or made available at readily accessible and suitable places.
12. Every supply of drinking water shall be conspicuously marked by an appropriate sign where necessary for reasons of health and safety.

13. Where a supply of drinking water is provided, there shall also be provided a sufficient number of suitable cups or other drinking vessels unless the supply of drinking water is in a jet from which persons can drink easily.

### **Changing rooms and lockers**

14. (1) Suitable and sufficient changing rooms shall be provided or made available at readily accessible places if:
- (a) a worker has to wear special clothing for the purposes of his work; and
  - (b) he cannot, for reasons of health or propriety, be expected to change elsewhere, being separate rooms for, or separate use of rooms by, men and women where necessary for reasons of propriety.
- (2) Changing rooms shall—
- (a) be provided with seating; and
  - (b) include, where necessary, facilities to enable a person to dry any such special clothing and his own clothing and personal effects.
- (3) Suitable and sufficient facilities shall, where necessary, be provided or made available at readily accessible places to enable persons to lock away—
- (a) any such special clothing which is not taken home;
  - (b) their own clothing which is not worn during working hours; and
  - (c) their personal effects.

### **Facilities for rest**

15. (1) Suitable and sufficient rest rooms or rest areas shall be provided or made available at readily accessible places.
- (2) Rest rooms and rest areas shall:
- (a) include suitable arrangements to protect non-smokers from discomfort caused by tobacco smoke;
  - (b) be equipped with an adequate number of tables and adequate seating with backs for the number of persons at work likely to use them at any one time;
  - (c) where necessary, include suitable facilities for any person at work who is a pregnant woman or nursing mother to rest lying down;
  - (d) include suitable arrangements to ensure that meals can be prepared and eaten;
  - (e) include the means for boiling water; and
  - (f) be maintained at an appropriate temperature

## **SECTION 3: GENERAL CONDITIONS**

### **INTRODUCTION**

- 3.1 The following conditions shall be read and construed as supplementary to the preliminary particulars and shall be priced accordingly.

### **SUPERVISION**

- 3.2 The Contractor shall be responsible for co-ordination, supervision and administration of the works, including all sub-contractors.

### **PROGRAMME**

- 3.3 Prior to commencement of the works the Contractor shall attend a Pre-Contract meeting with the Contract Administrator. A programme of work, indicating regular and diligent progress, shall be presented by the Contractor for agreement. Any claim arising from delays directly or indirectly caused by lack of consultation with the Contract Administrator will not be entertained.

### **PROCEDURE OF WORK**

- 3.4 The Contractor must notify the Contract Administrator when work is to be carried out, in order that an inspection can be made. Any work not properly carried out, whether it be due to faulty workmanship, faulty materials or whatsoever, will be rejected and the Contractor required to have it re-done in the specified manner at his own expense and to the satisfaction of the Contract Administrator.

### **ADVERTISING**

- 3.5 Advertising rights on the site are to be strictly reserved by the Employer and advertisements affixed without the written consent of the Contract Administrator must be removed immediately. The employer reserves the right to advertise in any way upon the site should he so desire.

### **OPERATIONS WITHIN THE LIMITS DEFINED**

- 3.6 Operations must be kept within the limits of the boundaries of the site. The Contractor must not use the site for any other purposes and must confine his operations to the immediate precincts of the works and take all necessary measures to prevent trespass by his own or Sub-Contractors' workmen into any other building or portions of existing buildings or site not affected by this Contract and must prevent interference in any way with equipment or materials etc., belonging to the Employer or third parties.

### **CLAIMS AGAINST THE CONTRACTOR BY TENANTS OR THIRD PARTIES**

- 3.7 Should any claim be made against the Contractor by any third party and should that claim be associated in any way with the Contractor's execution of "The Works" then the Contractor shall forthwith so notify the Contract Administrator who shall similarly be notified when that claim is settled or failing settlement

within nine months of the commencement of the claim, the Contract Administrator shall also be notified of such development.

### ORDERING MATERIALS

- 3.8 Particulars of quantities or dimensions required for ordering materials shall be taken from site. Claims for over ordering or for incorrect sizes resulting from neglect in this direction will not be entertained.

### RESPONSIBILITY AND CARE OF WORKS

- 3.9 All damage to the works, together with all damage to unfixed materials, shall be the responsibility of the Contractor who shall bear all costs of repair and replacement.

### INTERFERENCE WITH TRAFFIC ETC.

- 3.10 The Contractor must ensure that during the execution of the Works (or any temporary works) all operations are carried out so as not to interfere unnecessarily or improperly with the public's use of roads or footpaths. Any temporary diversions or exclusions of the public shall be signalled by the use of prominent signage (provided and installed by the Contractor).

The Contractor must indemnify the employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses, whatsoever, in relation to such matters.

### DAMAGE TO PUBLIC SERVICES

- 3.11 The Contractor shall carefully protect, maintain and uphold all gas and water pipes, electric, T.V. and telephone cables or other services which the Contractor may come into contact with during the works, and shall be responsible for and shall properly make good all or any damage to the satisfaction of the Organisation or Body concerned.

### NOISE CONTROL

- 3.12 The Contractor shall include for providing insulation mufflers to drills, silencers to compressors etc., to reduce noise levels and noise nuisance arising from building operations affecting the site operatives, adjoining owners and the general public. The Contractor shall include for siting noisy machinery and means of access for vehicles in positions which will cause the least noise and disturbance, and shall indemnify the Employer against any claim or proceeding made at Common Law or any Act of Parliament, including the Noise Abatement Act 1960.

### BRITISH STANDARDS AND THE EU

- 3.13 When in this Specification a material is required to comply with a British Standard then it is not the intention of this document to impose one national standard on the Contractor and preclude the Contractor providing material from other member nations of the EU.
- 3.14 Any material shall be deemed to satisfy this requirement providing the Contractor can prove to the reasonable satisfaction of the Contract Administrator that the

material in question, at least, complies with the requirements of the respective British Standard.

#### “DUTY OF CARE” - TRANSPORTATION AND TIPPING

- 3.15 Contractors are reminded of their obligations under “the Duty of Care” requirements of the Environmental Protection Act 1990.
- 3.16 Particular attention should be paid to The Control of Pollution (Amendment) Act 1989 and the Controlled Waste Regulations 1992 under which “Controlled Waste” (whose definition is so broad as to embrace almost anything removed from any location where these contract works are to be executed) is to be transported only by those who are properly registered under that Act to carry such waste.
- 3.17 Prior to the commencement of the Contract the Contractor must provide to the Contract Administrator the names of all those who the Contractor intends to use to transport  
  
“Controlled Waste” together with documented proof that such persons are properly registered to transport such waste.
- 3.18 Furthermore the Contract Administrator will require a copy of all ‘Controlled Waste Transfer Notes’ both received and issued by the Contractor in connection with this Contract.
- 3.19 The Contractor shall also comply with any requirement of the Contract Administrator to provide details of the final disposal of any “Controlled Waste” which has in any way been connected with this Contract.

#### WORKS IN INCLEMENT WEATHER

- 3.20 The Contractor will be required to maintain, whenever practicable, continuity of working productivity during inclement weather.
- 3.21 The Contractor will be expected to avail themselves of all reasonable means and aids to working in inclement weather which are currently available in using their best endeavours to prevent or minimise any delays (the extent to which the Contractor has done so will be taken into account when assessing any extension of time which may be given under the relevant clause of the Contract).

#### APPLICATIONS FOR PAYMENT

- 3.22 Further to the relevant clause of the Contract, the Contractor will be expected to submit an application for payment, in line with the terms of the contract, calculated from the date of commencement.
- 3.23 For the purpose of interim payments the Contractor shall submit to the Contract Administrator a full valuation. The valuation date will be 5 days prior to the Due Date.

#### SITE MEETINGS

- 3.33 Site meetings shall be held at weekly intervals as and when the Contract Administrator requires, in order to ensure smooth running of the contract. The Contractor shall allow for attending such meetings and ensuring that sub-contractors, whether nominated or otherwise, attend such meetings if the Contract Administrator should so desire.

#### VARIATIONS AND EXTRA WORK

- 3.34 Variations issued in accordance with the relevant clause of the Contract shall be the subject of a written official Contract Administrator's Instruction issued by the Contract Administrator. Claims for additional work will not be entertained unless an official Contract Administrator's Instruction has been issued.

#### CONDUCT OF WORKS

- 3.35 The Contractor should confine working hours from 8.00am to 6.00pm during the normal working week. No weekend or evening working will be allowed unless the contractor has the written permission of the Contract Administrator. If such permission is granted no overtime payments, etc., will be entertained by the Employer.
- 3.36 Extreme care is to be exercised in executing the works to ensure the complete safety of the Employer or his representatives, and any other person on or about the site. All partially completed items of work should be sufficiently protected so as to remove any danger that would otherwise exist.
- 3.37 Rubbish and debris must be removed from the works as soon as possible and in all cases rubbish and debris must be removed at the end of each working day. Noisy and dusty work shall be confined to a minimum and all precautions should be taken by the use of water and draped polythene sheeting or tarpaulins to lay dust.

#### 3.38 PAYMENTS TO SUBCONTRACTORS

- a. Upon receipt of an invoice from a Sub-Contractor, the Contractor shall consider and verify that invoice in a timely fashion. The Contractor shall pay the Sub-Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Contractor has determined that the invoice is valid and undisputed.
- b. Where the Contractor fails to comply with clause (a) above and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of this section after a reasonable time has passed.
- c. Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:
- (i) Provisions having the same effect as clauses (a) and (b) above; and
  - (ii) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses (a), (b) and (c) of this Agreement.

- (iii) In this Clause “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.



## **SECTION 4: GENERAL PREAMBLES**

### **PRICING**

- 4.1 The Contractor should visit the site to satisfy himself regarding conditions, and must make all necessary enquiries on any points, which, in his opinion, are not sufficiently elucidated in the description of work, as no extra payment of any kind will be made for lack of knowledge in this respect.
- 4.2 Allowance shall be made for all labour and material and incidental works of all kinds necessary to give effect to the Contract Administrator's intentions as described in this specification, including lowering or getting out and removal of all rubbish to an authorised tip. Burning of rubbish etc., on the site will not be permitted.

### **MATERIALS**

- 4.3 The materials to be used by the Contractor shall be of good quality and to the satisfaction of the Contract Administrator.
- 4.4 All materials delivered to site shall be in their original sealed containers or packaging, indicating contents and bearing Manufacturers trade names. Materials so delivered shall be clean and free from deleterious matters. Loose scale and rust shall be removed from ferrous metals. Damaged materials shall not be delivered to site.
- 4.5 Materials on site shall be protected from damage and stored under dry conditions if necessary.
- 4.6 Where British Standard Codes of Practice exist, the work is to be carried out in accordance with the latest code.
- 4.7 All materials shall be used or installed in accordance with the Manufacturer's instructions.

### **WORKMANSHIP**

- 4.8 The Contractor shall require his employees and employees of any sub-contractors engaged upon the Works, to be properly and presentably dressed in appropriate uniforms or work-wear and wear identification badges at all times.
- 4.9 The Contractor shall ensure that his employees and employees of any sub-contractor shall perform their duties in an orderly and quiet manner as may be reasonable and practicable having regard to the nature of the duties being performed by them.
- 4.10 The need to maintain the highest standard of hygiene and courtesy whilst the Contractor's employees and any sub-contractors employees are engaged upon the Works is paramount and in particular, consideration must be given to the public generally and property occupiers in particular when working in or near occupied premises. The Contractor shall observe all of these provisions and also ensure that the said employees do not cause a nuisance and/or disturbance to

the public generally and property occupiers in particular when they are working in or near occupied premises.

#### PLANT TOOLS AND VEHICLES

- 4.11 The Contractor shall provide everything necessary for the safe, proper and expeditious execution of the work according to the true intent and meaning of the Specification, whether it be plant, tools, tackle, machinery, carriage, freightage, materials, work people, superintendence, scaffolding, etc. He shall also provide all necessary screens, guards, dust proof coverings, dust proof or other partitions, and other ample and adequate protection for the persons on or near the site and any premises' fixtures, fittings, equipment etc.

#### TEMPORARY FENCING

- 4.12 The Contractor is to allow for providing, altering and adapting any temporary fencings, hoardings, etc., that may be considered necessary for the proper protection of the buildings, materials, plant or to safeguard trespass for the safety of the public

#### TEMPORARY COMPOUND AREA

- 4.13 An area will be made available to the Contractor should he wish to set up a temporary compound area. The Contractor should allow for providing temporary access, making good and leaving clean and tidy upon completion, including re-seeding grassed area and renewing any damaged hard paved area and kerbing.

#### SITE SECURITY

- 4.14 The *Contractor* shall arrange and maintain site security during the construction period including preventing any trespass onto the railway from the site.

#### OVERLOADING STRUCTURES

- 4.15 Materials arising out of demolitions and alterations must not be stacked or allowed to accumulate on existing or temporary structures in such a way as to endanger their stability.

#### PROTECTING HIGHWAY STRUCTURES

- 4.16 The contractor must ensure that during construction period the stability of the Derby Street Bridge is not affected.

#### NETWORK RAIL

- 4.17 It will be important for the contractor to ensure that works do not affect the ongoing operation of the adjacent railway or effect any other Network Rail assets.

#### MATERIAL TESTING AND SUPPLY INFORMATION TO THE EMPLOYER

- 4.18 The testing of material is to be carried out by the Contractor. The contractor shall pass onto the Employer a copy of all material testing details on completion of the works.

#### GROUND CONDITIONS

- 4.19 The Employer has no information relating to the ground conditions on the site.
- 4.20 The *Contractor* will consider the existing erosion, settlement, soft ground and drainage issues that are evident and develop an appropriate design based on the performance of his proposed Flexible Styrene Butadiene Rubber Aggregate surfacing system.
- 4.21 The warranty for the SBRA surfacing system offered by the *Contractor* shall not be qualified in any way.
- 4.22 The existing route is well established and open to the public as a footpath with significant use by pedestrians as detailed on the pre-construction information.

#### **STATUTORY UNDERTAKERS**

- 4.23 The *Contractor* shall comply with the special requirements of statutory undertakers and other bodies identified in the *works*. The *Contractor* shall be responsible for ensuring that work is undertaken in accordance with statutory undertakers or other bodies' current special requirements. The main statutory undertakers and other bodies are listed below, although it may be necessary to contact additional statutory undertakers or bodies that are not listed below:

- British Telecommunications plc
- Electricity Generating and Distribution Companies
- Cadent
- Water and Sewerage Companies
- Virgin Media
- Network Rail
- Merseyrail
- Merseytravel



## **SECTION 5: HEALTH AND SAFETY**

### **HEALTH AND SAFETY AT WORK (ETC.) ACT, 1974**

#### **NOTES FOR GUIDANCE OF CONTRACTORS AND THEIR SUB-CONTRACTORS**

##### **INTRODUCTION**

- 5.1 These notes are intended to promote awareness of the health, safety and welfare of all persons engaged on contract works for the Council.
- 5.2 They are not intended to relieve Contractors and Sub-Contractors from any obligations, responsibility or duty imposed on them by law or the Conditions of Contract. Their intention is rather to ensure the effective implementation of all necessary safety measures by means of the co-operation of all those involved.
- 5.3 The Contractor and all persons (including Sub-Contractors) employed by him on Contract works shall comply fully with the Health and Safety at Work etc. Act 1974 and all the other relevant statutory provisions or otherwise, and with appropriate codes of practice.

This could include the:

Lifting Operations and Lifting Equipment Regulations 1998  
Construction, Design and Management Regulations 2015  
Noise at Work Regulations 2005  
Electricity at Work Regulations 1989  
Management of Health and Safety at Work Regulations 1999  
Manual Handling Regulations 1992  
Provision and Use of Work Equipment Regulations 1998  
Personal Protective Equipment Regulations 1992  
Workplace (Health, Safety and Welfare) Regulations 1992  
Control of Substances Hazardous to Health Regulations 2002(COSHH)  
Environmental Protection Act 1990 Part III.  
The Railway Safety Regulations 1997

- 5.4 The Contractor shall submit a copy of all relevant Health and Safety Documentation such as their Health and Safety Policy and example Construction Phase Plans, Method Statements and Risk Assessments as requested by the Client to demonstrate the provision and maintenance of a safe system of work. These should allow the Client/Contract Administrator to determine the adequacy of the Contractor's arrangements and methods of work for all aspects of the project. The Contractor should carry out suitable and sufficient risk assessments (as required by the Management of Health and Safety Regulations) to identify significant hazards, evaluate the magnitude of risk and to select suitable and adequate control measures to carry the work out in a manner, which is safe and not prejudicial to health. The Contractor will be required to update method statements in the event of a change in design and/or circumstances at no additional cost.

- 5.5 The Health and Safety Executive Guidance Note HS(G)150 - "Health and Safety in Construction" will also provide useful information on this subject.
- 5.6 Furthermore, the Contractor shall make arrangements to provide the necessary information, instruction and training for his employees and others who may require it to ensure a safe work environment. This will include adequate co-operation between all the parties concerned (including Sub-Contractors) and adequate co-ordination of all activities directly or indirectly under his control.
- 5.7 Work must not commence and possession of the site will not be given until such time that the Contractor has submitted a sufficiently developed Construction Phase Plan as required by the Construction, Design and Management Regulations 2015 to the Client/Contract Administrator and Client's H&S Advisor. Work will only commence on site once the Client's H&S Advisor has approved this document.
- 5.8 The Contractor shall carry out suitable and sufficient risk assessments for all materials he intends to use and ensure there are suitable and adequate control measures in place for a system of work that is safe and not prejudicial to health (in accordance with the Control of Substances Hazardous to Health Regulations 2002). The Contractor shall submit these risk assessments if requested by the Contract Administrator for evaluation.
- 5.9 The Contract Administrator shall be empowered to suspend the provision of the "works" or part thereof in the event of non-compliance by the Contractor with this clause or with their legal duties in Health and Safety matters. The Contractor shall not resume provision of the "works" or such part until the Contract Administrator is satisfied that the non-compliance has been rectified. Payments made under the terms of this Contract shall be subject to adjustments if the "works" are suspended in accordance with this clause.
- 5.10 On receiving the Council's instructions to carry out the Contract works, the Contractor shall establish contact with the Contract Administrator with the object of:
- a) Advising him how full compliance with safety requirements specified or referred to in the Contract will be achieved.
  - b) Advising the method of meeting any additional requirements the Contract Administrator may specify.
  - c) Taking full account of the safety of the general public, Council staff and others on site.
- 5.11 Throughout the duration of the contract including the maintenance/defects liability period, whenever any Contractor's staff are on site the Contractor shall take the following particular steps with the object of establishing high standards of safety:-
- a) Appoint supervisors located on site with suitable qualifications and experience, who must be familiar with all relevant statutory regulations, with the requirements of the contract and with these notes.
  - b) Appoint suitably qualified assistant supervisors as necessary to cover work locations and times not covered by the nominated supervisors. Ensure that an

appropriate level of safety supervision continues in operation at all times notwithstanding holidays, sickness, terminations, etc.

- c) Advise the 'Contract Administrator' of the site supervisors appointed initially; keep him/her posted with changes in supervision as they occur and keep him/her informed of arrangements for assistants.
- d) Empower such supervisor to take immediate action on any matters of safety.
- e) Carry out appropriate and regular inspections and check to ensure site supervisors are in fact carrying out their full responsibilities.
- f) Keep in touch with new regulations and ensure that these are advised to the site supervisors for implementation.
- g) Ensure that all appropriate and relevant information on health and safety aspects is effectively communicated in both directions between:

The Contractor's Management  
The Contractor's Supervisors  
The Contractor's Labour Force  
The Contractor's Sub-contractors  
The Contract Administrator  
The Designer (where applicable)

- h) Ensure that their supervisors and work people and those of any sub-contractors required to enter or work on the site are adequately trained and instructed to meet the required standards and to ensure their own safety and that of others who may be affected by their activities.
- j) Discuss with or advise the Contract Administrator, of potentially hazardous substances prior to introducing them to site and must give particular attention to labelling, protection, storage and use of these materials.

The Contractor shall make adequate arrangements to ensure the safe use, handling, transport, storage and disposal of all articles and substances at work. This will include the prevention or at least the adequate control of exposure to any hazardous substance by any person in compliance with the COSHH Regulations 2002.

- k) Provide suitable tools and equipment necessary for the works and arrange for their security when not in use and for their regular inspection and maintenance, ensuring particularly that all relevant regulations are complied with. Comply with the Council's requirements for portable apparatus.
- l) Provide, guards, barriers, warning notices, height gauges, warning lights, etc., as appropriate.
- m) Ensure personnel are equipped with and trained in the use of such protective clothing and equipment as is necessary for their health and safety.
- n) Advise the Contract Administrator of proposals for scaffolding and ensure that proposals for scaffolding comply with Construction Design and Management Regulations 2015 and the Working at Height Regulations 2005, and ensure that

any necessary statutory inspections are carried out.

Where a contract requires work to be carried out on a periodic basis (such as periodic maintenance contract), permission to commence work on each occasion shall be obtained in accordance with a procedure to be agreed with the Contract Administrator at the inception of the contract.

#### ACTION TO BE TAKEN BY CONTRACTOR'S SITE SUPERVISOR

- 5.12 On receiving The Client's instructions to carry out the contract works, establish contact with the 'Contract Administrator' for the purpose of a preliminary site meeting.
- 5.13 The Contract Administrator reserves the right to inform the Health and Safety Executive if the Contractor continues to fail to comply with the requirements of the relevant statutory provisions.
- 5.14 Keep the Contract Administrator informed of all changes in site or working conditions which may affect the safety on site and which may arise as a result of the contract work or activities. Also keep the 'Contract Administrator' informed of any changes in circumstances, which might create a significant risk to any person, due to the activities of other persons in the vicinity of the contract works.
- 5.15 Control operations so that all appropriate safeguards are provided and ensure that all relevant information and instructions are received by all persons lawfully present on the site.
- 5.16 Maintain a daily roll of personnel engaged on the contract either on behalf of the Contractor or any Sub-Contractor on the site for security and emergency use.

#### POTENTIAL HAZARDS

- 5.17 In discharging its duties under Health and Safety legislation the Employer hereby brings to the attention of the Contractor, significant potential hazards of which it is aware, which may be encountered whilst carrying out "The Works" and which Contractors may not otherwise be readily aware of:-
  - (i) Much of the work will be carried out in areas where the presence of the following could especially give rise to hazards:-
    - (a) children - are not always aware of the potential dangers their actions may cause to themselves or to others and this should be considered when carrying out the contract works.
    - (b) disabled people
    - (c) elderly people
    - (d) pets.
  - (ii) Presence of Underground and Above Ground Services.
    - (a) Contractors cannot rely on services being in the positions indicated on any drawings which may be issued to them.



- (b) all services are invariably underground (this includes electricity cables, lighting cable T.V. cables from communal aerials and telephone lines).
- (c) above ground T.V. cables which may be high voltage.

NOTE: Any work which may involve or affect any electrical system including the installation of new lighting columns should be carried out in compliance with the Electricity at Work Regulations 1989.

- (iii) The Contractor shall ensure the provision and maintenance of a safe means of access to and egress from the premises by any person at all times. This will include the provision of alternative arrangements or measures to inform any person who may be affected in situations where a particular access or egress route cannot be used for the purpose intended. This is particularly relevant for fire escape routes.
- (iv) The Contractor shall alert the Contract Administrator immediately if any asbestos is found, and await further instructions.
- (vii) Dog faeces may be encountered within the contract area.
- (viii) Other material left by the public may be present on site which may present a potential danger, examples may include needles, glass metal etc.
- (viii) During the contract period other Contractors may be engaged by the Employer to carry out work in and around the areas where the Contractor is carrying out the Works.
- (ix) In carrying out the Works the Contractor's employees will often come into contact with members of the public, a limited number of whom can be violent under certain circumstances, especially when under the influence of alcohol or drugs and/or when receiving information which they do not consider favourable to their interests.
- (x) the Contractor shall, whilst carrying out the contract works, give full regard to the above list of hazards and employ proper safe working practices to achieve a safe system of work and comply with the revelation legislation.

#### SAFETY, HEALTH AND WELFARE OF WORK PEOPLE

- 5.18 The Contractor must provide all safety, health and welfare facilities for his work people required under or by virtue of the provision of any enactment or regulations together with any amendments thereto and the working rules of any industry.
- 5.19 The Contractor shall, at his own expense, comply in all aspects with the requirements of:-
  - (a) The Health and Safety at Work etc., Act 1974 and all existing enactments which are "Relevant Statutory Provisions" under the Act and as outlined in the Introduction Section of these notes (which includes the Construction Design and Management Regulations 1994) together with regulations made there under and any other regulations from time to time amending or replacing same.

- (b) The Construction Design and Management Regulations 2015 and the Workplace (Health, Safety and Welfare) Regulations 1992
- (c) The Code of Welfare Conditions for the Building Industry approved by the National Joint Council for Building Industry of any Regional Joint Committee thereof and for the time being in operation.
- (d) Any enactment or anything done there under binding upon the Contractor or any agreements to which his is a party or by which he is otherwise bound.
- (e) Health and Safety Executive Guidance Note CS6 - Storage and use of Liquefied Petroleum Gas (LPG) on construction sites.

#### “DUTY OF CARE” - TRANSPORTATION AND TIPPING

- 5.20 Contractors are reminded of their obligations under “the Duty of Care” requirements of the Environmental Protection Act 1990.
- 5.21 Particular attention should be paid to The Control of Pollution (Amendment) Act 1989 under which “Controlled Waste” (Whose definition is so broad as to embrace almost anything removed from any location where these contract works are to be executed) is to be transported only by those who are properly registered under that Act to carry such waste.
- 5.22 Prior to the commencement of the Contract the Contractor must provide to the Contract Administrator the names of all those who the Contractor intends to use to transport “Controlled Waste” together with documented proof that such persons are properly registered to transport such waste. Furthermore the Contract Administrator will require a copy of all ‘Controlled Waste Transfer Notes’ both received and issued by the Contractor in connection with this Contract.
- 5.23 The Contractor shall also comply with any requirement of the Contract Administrator to provide details of the final disposal of any “Controlled Waste” which has in any way been connected with this Contract.

#### ASBESTOS

- 5.24 The contractors must comply with the current Asbestos Regulations at all times. If any asbestos items are found work must stop and the matter must be brought to the attention of the Contract Administrator. Any subsequent remedial work instructed by the Contract Administrator must comply with the current Asbestos Regulations.

#### CDM REGULATIONS 2015

- 5.25 The works will be subject to the Construction Design and Management Regulations 2015 (CDM Regulations). The successful contractor will be required to undertake the duties of “Principal Contractor” in respect of these regulations.
- 5.26 The Contractor must provide to the Contract Administrator/Client H&S Advisor the following information to allow an evaluation to be made of the adequacy of

the tenderers provision for discharging his obligations under the CDM Regulations:

- i) All relevant method statements
- ii) A developed Construction Phase Plan

- 5.27 Only when the Contract Administrator and/or Client Advisor is satisfied with a tenderers approach to the CDM Regulations will that contractor's tender be considered seriously for acceptance.
- 5.28 The provision by the tenderer of the information detailed above will in no way discharge a Contractor from full compliance with the CDM Regulations during the whole of the contract period.
- 5.29 In accordance with the CDM Regulations, the Contractor will not be allowed to commence the works unless he has an appropriate Construction Phase Plan for the contract, which must then be developed as necessary until the completion of the contract.
- 5.30 In addition, the Principal Contractor may be required to provide relevant information for the Principal Designer when compiling a Health and Safety file for the works.

## **SECTION 6: INSURANCE**

### **INSURANCE COVER REQUIRED**

<b><u>TYPE OF INSURANCE COVER CONDITIONS</u></b>	<b><u>AMOUNT OF COVER</u></b>	<b><u>RELEVANT CLAUSE OF CONTRACT</u></b>
<b>“Employers Liability”</b>	<b>Not less than £10,000,000</b>	
<b>“Public Liability”</b>	<b>Not less than £5,000,000</b>	

## **SECTION 7: BILL OF QUANTITIES – PRICED SECTION**

The Pricing Schedule of Works (MS Excel format) should be downloaded from The Chest, completed, then uploaded to The Chest as part of your Tender submission.

## **SECTION 8: SPECIFICATION**

8.1 The Specification comprises a series of pdf documents forming drawings alongside the Pricing Schedule of Works which can be downloaded from The Chest. Refer to drawing register.

8.2 The works briefly involve the following:

The contractor shall construct the cycle route in accordance with plans listed above and the construction works shall be done, as far as possible, in accordance with guidance contained within:

- Sustrans Design Manual Chapter 6 - Traffic Free Routes: Detailed Design (draft) construction and ancillary details,
- Sustrans Design Manual Handbook for cycle-friendly design- April 2014
- Department for Transport Local Transport Note 1/12 Shared Use Routes for Pedestrians and Cyclists,
- Shared Use routes for pedestrians and cyclists (LTN 1/12), Department for Transport, 2012
- Volume 2 Highway Structures Design (substructures) Material section 2 special structures Design Criteria for Bridges DMRB BD/29/17
- The details and specification shown in this Works Information.
- Manual for Streets, 2019

8.3 The track is to be surfaced with Styrene Butadiene Rubber/Aggregate (SBRA) surfacing, or similar, to the Specification listed in this Works Information. If you are proposing to use an alternative surface material the proposal must be submitted in writing as a tender clarification.

8.4 For further information please additionally refer to the documents entitled Section A and Section B.

## **SECTION 9: PROPOSED TIMESCALES**

- 9.1 Please state your proposed timescales for completion of each stage of the works, and overall completion, with and without the optional additional works. You should assume the contract will be awarded on 23<sup>rd</sup> October 2019.
- 9.2 The Employer anticipates a 3 week lead in, up to 8 no. weeks on site, a completion by 24<sup>th</sup> December 2019.
- 9.3 Submission of a programme may be requested.

## **SECTION 10: FORM OF TENDER**

The form of tender should be downloaded from the Chest, completed, and then uploaded as part of your Tender submission.



## **SECTION 11: QUESTION BANK**

The question bank should be downloaded from the Chest, completed, and then uploaded as part of your Tender submission.

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