

CONDITIONS OF TENDER

1. TERMS AND CONDITIONS

The responses shall each be deemed subject to these terms and conditions, unless the Council has previously expressly agreed in writing to the contrary. No alternative terms or conditions offered by or on behalf of a Bidder (whether as part of its submission or otherwise) shall be acceptable or deemed accepted by the Council unless expressly accepted by the Council in writing.

2. CONFIDENTIALITY

Subject to the exceptions referred to below, information provide as part of this application pack ("Information") is made available to Bidders on condition that:

- a) Bidders shall at all times treat the Information as confidential;
- b) Bidders shall not disclose, copy, reproduce, distribute or pass the Information to any other person at any time or allow any of these things to happen;
- c) Bidders shall not use the Information for any purpose other than for the purposes of preparing for, and engaging in the procurement process and making (or deciding whether to make) a response during it;
- d) Bidders shall comply with the provisions of Paragraph 10 (Publicity); and
- e) Each Bidder shall ensure that each member of the Bidder's Team who receives any of the Information is made aware of, and complies with the provisions of, this paragraph as if it were a Bidder.

Any Bidder who, in the Council's opinion, breaches any of the requirements above may at the Council's sole discretion be disqualified (without prejudice to any other civil remedies available and without prejudice to any criminal liability which such conduct by a Bidder may attract).

Bidders may disclose, distribute or pass the Information to another person (including but not limited to, for example, employees, consultants, sub-contractors or advisers to the Bidder, the Bidder's insurers or the Bidder's funders) if either:

- a) This is done for the sole purpose of enabling a response to be submitted and the person receiving the Information undertakes in writing to keep the Information confidential on the same terms as set out in these terms and conditions; or

- b) The Bidder obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of Information.

By participating in this procurement process, Bidders understand and agree (and shall procure that all others whose information is supplied to support their response agree) that the Council is permitted to disclose all information submitted to it to its elected members as well as the United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in the United Kingdom and their Ministers, servants, agents and advisers.

3. DISSEMINATION OF INFORMATION TO OTHER BIDDERS

The Council also reserves the right to disseminate information that is materially relevant to all Bidders, even if the information has only been requested by one Bidder, subject to the duty to protect any Bidder's commercial confidence in its response.

Should Bidders wish to avoid such disclosure (for example on the basis that their request contains, or the likely response will contain, commercially confidential information or may give another Bidder a commercial advantage) the request for information to the Council must be clearly marked "in confidence – not to be circulated to other Bidders" and each relevant page of the document should be marked "commercially confidential". The Bidder must set out the reason or reasons for their request for non-disclosure to the other Bidders of its request and/or of the Council's response.

The Council will act reasonably as regards the protection of commercially sensitive information relating to the Bidder, subject to the Council's duties under the Freedom of Information Act 2000 and Environmental Information Regulations 2004 ("the Information Laws") and in the light of the latest published guidance in this area.

If a Bidder's request for information is marked as confidential in accordance with this paragraph, and the Bidder indicates that the Council's response should also be confidential, the Council shall notify the Bidder whether it agrees that the request and/or the response is commercially sensitive. The Bidder must confirm whether or not it accepts the Council's decision. If a Bidder is not able to accept the Council's decision then the Bidder may withdraw its request for information. If the Bidder does not withdraw its request, the final decision as to whether the request and response shall be confidential will be made by the Council.

4. ACCURACY OF INFORMATION AND LIABILITY OF THE COUNCIL, AND ITS ADVISERS

The Information in this Tender Pack and/or any other documents or information to which it refers have been prepared by the Council in good faith. However, it does not purport to be comprehensive or to have been independently verified. The Council does not accept any responsibility for the accuracy or completeness of the Information. It shall not be liable for any loss or damage arising as a result of the use of such Information or any subsequent communication. Bidders are expected to carry out their own due diligence checks for verification purposes. Bidders should treat the Information as background data, and not as contractual documentation.

Bidders are expected to have carried out their own due diligence exercise in order to assess the extent of all risks relating to the services/contract/framework and to have carried out all investigations, inspections, research and have made all necessary enquiries in order to carry out this due diligence exercise.

Subject always to the requirements of paragraph 2 above, Bidders considering entering a contractual relationship with the Council should make their own investigations and enquiries as to the Council's requirements beforehand. The subject matter of this Tender Pack shall only have any contractual effect when it is incorporated into the expressed terms of an executed contract.

The issue of this Tender Pack is not to be construed as a promise or representation or commitment by the Council to enter into a contract as a result of this procurement process. Any expenditure, work or effort undertaken prior to the execution of any contract is accordingly a matter solely for the commercial judgment of the Bidder. The Council reserves the right to withdraw from this procurement process at any time or to re-invite tenders on the same or any alternative basis.

This Tender Pack document should not be considered as an investment recommendation made by the Council to any party seeking to tender and/or negotiate with the Council and/or each Bidder must make its own independent assessment after making such investigation and taking such professional advice as is deemed necessary.

Neither the Council nor its elected members officers or advisers make any representation or warranties (express or implied) or accept any liability or responsibility (other than in respect of fraudulent misrepresentation) in relation to the adequacy, accuracy, reasonableness or completeness of the Information or any part of it (including but not limited to, any loss or

damage arising as a result of reliance by the Bidder or any Consortium Party on the Information or any part of it).

The Council makes no representations or warranties regarding the Bidder's financial status or stability, technical competence or ability in any way to carry out the services.

No dialogue or communication with the Council, whether prior to, during or subsequent to the procurement process (including any notification of preferred Bidder status) will imply acceptance of any offer or constitute an indication that the Bidder will be awarded the contracts. Only the express terms of the contract(s) as set out in this ITT, and which shall incorporate the Bidders response to the ITT and these clarifications, shall have any contractual effect.

5. PROVISION OF FURTHER INFORMATION BY BIDDERS

The Council is relying on the information provided by Bidders (including but not limited to information concerning the members and structure of the Bidder's consortium where applicable). If at any time during the procurement process there are any material changes to such information, the Bidder must advise the Council as soon as it becomes aware of the change (even if this is after the submission of a response).

The Council reserves the right at its sole discretion to disqualify any Bidder whose circumstances change and if:

- a) it fails to notify the Council of such change in accordance with this Tender Pack; or
- b) having notified the Council of such change, the Council considers that the effect of the change is such that, on the basis of the evaluation undertaken by the Council for the purpose of selecting potential providers, the Bidder would not pre-qualify; or
- c) the change would in the opinion of the Council lead to a breach of its obligation to conduct a fair and lawful procurement process.

6. MISREPRESENTATION

Any misrepresentation or fraudulent statement by the Bidder shall permit the Council immediately to exclude the Bidder.

7. CANVASSING AND ANTI-BRIBERY

The Council reserves the right to disqualify (without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by a

Bidder or member of a Bidder Team may attract) any Bidder or Consortium Party who, in connection with the services/contract/framework:

- a) offers any inducement, fee or reward to any elected member or officer of the Council or any person acting as an adviser to the Council in connection with this procurement process or does anything which would constitute a breach of the Bribery Act 2010 (or any replacement law) or Section 117 of the Local Government Act 1972 (as amended);
or
- b) contacts any member or officer of the Council or any person acting as an adviser to the Council prior to a contract being entered into about any aspect of the procurement process in a manner not permitted by this Tender Pack,

Such disqualification may be made at the Council's absolute discretion (in either case without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by a Bidder or Consortium Party may attract).

8. NON-COLLUSION

Any Bidder or Consortium Party who, in connection with this procurement process and without obtaining the prior written content of the Council:

- a) fixes or adjusts the amount of its response by or in accordance with any agreement or arrangement with any other Bidder or Consortium Party (other than a member of its own consortium);
- b) enters into any agreement or arrangement with any other Bidder or Consortium Party (other than a member of its own consortium) that it shall refrain from making a response or as to the amount of any response to be submitted;
- c) causes or induces any person to enter such agreement as mentioned in paragraphs a) or b) above or to inform the Bidder or a Consortium Party of the approximate amount of a rival response;
- d) offers or agrees to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other response or proposed response any act or omission;
or
- e) communicates to any person other than the Council the amount or approximate amount of its response (except where such disclosures are made in confidence to obtain quotations necessary for the preparing of the response), will be disqualified (without

prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability that such conduct by a Bidder may attract).

9. INTELLECTUAL PROPERTY

The copyright in this Tender Pack document is vested in the Council and it may not be reproduced, copied or stored in any medium without the prior written consent of the Council except in relation to the preparation of a response. This Tender Pack, and any document issued as a supplement to it, are and shall remain the property of the Council and must be returned upon demand, without any copies being retained.

The Council reserves the right, depending upon the nature of the response proposed, to require the assignment or grant of a royalty free non-exclusive licence to it of all intellectual property relating to or in connection with any response that is developed into a contract awarded by the Council.

10. PUBLICITY

Bidders and Consortium Parties shall not undertake (or permit to be undertaken) at any time any publicity or activity with any section of the media in relation to this procurement process or the supply of the products and/or services specified other than with the prior written consent of the Council. In this paragraph the word "media" includes radio, television, newspapers, trade and specialist press, the internet and email accessible by the public at large and the representatives of such media.

11. RIGHT TO REJECT BIDDERS

The issue of this Tender Pack does not commit the Council to enter into any contract pursuant to this procurement process. The Council is not bound to accept the lowest priced of any responses, and it reserves the right to accept any response that it feels is the most economically advantageous. Nothing in this Tender Pack shall oblige the Council to enter into a contract.

The Council may in its sole discretion to alter or terminate this procurement process at any stage. The Council reserves the right, at its absolute discretion, to disqualify any Bidder or Bidder Team member that does not, in the Council's opinion, comply with the requirements of this Tender Pack or any other requirement of the Council in connection with this procurement process that may from time to time be notified to the Bidder.

The Council reserves the right, subject to relevant legislation, at any time to reject a response.

The Council reserves the right, subject to relevant legislation, at any time to reject or disqualify a Bidder and/or Bidder Team members where:

- a) a response is submitted late, is completed incorrectly, is materially incomplete, is submitted in any other format other than via the Portal or fails to meet the submission requirements of the Council which have been notified to Bidders;
- b) the Bidder and/or the member of the Bidder Team is unable to satisfy the terms of Article 57 of Directive 2014/24/EU and/or Regulation 57 of the Public Contracts Regulations 2015 (or any replacement law) at any stage during the procurement process;
- c) the Bidder and/or the members of the Bidder Team are guilty of material misrepresentation or false statement in relation to their submission and/or the procurement process;
- d) the Bidder and/or the members of the Bidder Team contravene any of the terms and conditions of this Tender Pack;
- e) there is a change in identity, control, financial standing, structure or other factor impacting on the selection and/or evaluation process affecting the Bidder and/or the members of the Bidder Team; or
- f) the Bidder introduces a material change in any commitment or statement contained in any previous submission at any previous stage in the procurement process.

The disqualification of a Bidder will not prejudice any other civil remedy available to the Council and will not prejudice any criminal liability that such conduct by a Bidder may attract.

12. VALIDITY OF TENDERS

Tenders must remain valid for at least 180 days following submission.

13. FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004

All information relating to any Bidder for short listing or any response made to the Council or any contract to which the Council is party, including information arising under a contract or about its performance, may be disclosable under the Information Laws. The Council is under a legal obligation to disclose such information if requested, unless an exemption applies. The Council may also be required to disclose requirements under other legislation or applicable codes of practice or otherwise as required by law, including by order of a court of competent jurisdiction.

Each Bidder must, as part of this procurement process, identify to the Council information which it submits, whether on its own behalf or, in the case of Consortium Parties, on behalf of others, which it regards as being potentially exempt from disclosure by the Council under the Information Laws. Such identification may be either specific or by class. The Bidder must state the grounds that it believes exist for potentially exempting the information from disclosure, together with detailed reasoning for this. The Bidder should also indicate whether it considers that the potential exemption from disclosure applies only for the period of the procurement or whether the potential exemption would continue after the conclusion of the procurement.

Please note that, consistent with the spirit of its obligations under the Information Laws, as a general principle the Council will seek to prevent, or restrict the scope of confidentiality obligations sought to be imposed upon it other than in accordance with the Information Laws. As such the Council reserves the right not to accept, in whole or in part, receipt of any information marked as confidential or sensitive or to require further explanation of the reasons why the Bidder considers confidentiality obligations to be appropriate in a particular case.

It should be remembered that even where a Bidder has indicated that information should be exempted, the Council may disclose this information following its own consideration of the request for disclosure. The Council may, in its absolute discretion, consult with the Bidder before making a decision on a request for disclosure. The decision of the Council in relation to the application of an exemption and disclosure shall be final.

14. JURISDICTION

The negotiations and all subsequent contract negotiation with the Council and any non-contractual obligations arising out of or in connection with such contracts will be subject to the laws of England and the exclusive jurisdiction of the English courts.

15. CONFLICTS OF INTEREST

Bidders are responsible for ensuring that there are no conflicts of interest either between their own advisers and those of the Council and its advisers, or between the members of their consortium and their sub-contractors. A Bidder must notify the Council of any conflict of interest as soon as reasonably practicable after it becomes aware of such a conflict.

The Council requires all actual or potential conflicts of interest to be resolved to the Council's satisfaction prior to the submission of a tender. Failure to declare such conflicts and / or failure

to address such conflicts to the reasonable satisfaction of the Council may result in the Bidder being disqualified.

16. BIDDING COSTS

The Council will not make any payments to any Bidder in respect of the Bidder's expenses incurred in participating in this procurement procedure. Accordingly, the Council and each Bidder will bear their own costs arising out of or in connection with the entirety of this procurement process.

The Council reserves its position as to whether or not it will enter any contractual arrangements as a result of this procurement process and the Bidders' participation in the procurement process will be entirely at their own risk.

The Council shall bear no liability whatsoever for the outcome of this procurement procedure, whether withdrawn or altered or recommenced, including any loss of bidding costs, profit or economic loss incurred by Bidders or any other person arising out of or in connection with this procurement procedure.

17. TENDER PROCESS AND TENDER COSTS

The Council reserves the right at any time:

- a) not to consider responses other than those submitted in accordance with the terms of this Tender Pack and to disqualify any Bidder that does not submit a compliant response;
- b) to enter dialogue (in the case of a competitive dialogue) with one or more of the Bidders during the procurement process to obtain arrangements which best meet its requirements to the extent permitted pursuant to the procurement regulations;
- c) to issue amendments or modifications to this Tender Pack during the procurement process;
- d) to require a Bidder and/or the members of a Bidder Team to clarify their submission in writing and/or to provide additional information. Failure to respond adequately may result in a Bidder being rejected;
- e) to alter the timescale of any aspect of the procurement including (but not limited to) the anticipated date of contract award;
- f) not to award a contract or appoint to a framework as a result of the procurement; and /or

- g) to cancel or withdraw from the procurement process at any time or to re-invite applications on the same or any alternative basis.

18. BIDDER WARRANTIES

In submitting its responses, the Bidder warrants, represents and undertakes to the Council that:

- a) all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Bidder, its staff, agents or advisers in connection with or arising out of the Tender Pack are true, complete and accurate in all respects, both as at the date communicated and as at the date of submission of the response(s);
- b) it has made its own investigations and undertaken its own research and due diligence and has satisfied itself in respect of all matters (whether actual or contingent) relating to the Information and that it has not submitted its response(s) in reliance upon any information, representation or assumption which may have been made by or on behalf of the Council (save in respect of any information which is expressly warranted by the Council under the terms of the contract); and
- c) it has full power and authority to respond to the Tender Pack and to perform the obligations in relation to the contract and will, if requested produce evidence of such to the Council's reasonable satisfaction.

The Bidders acknowledge that the confirmation they provide in response to the questions and the requirements and associated documents, and all statements made by them within their tender, shall remain true and accurate in all material respects throughout the procurement process (save to the extent specifically highlighted by them).

Bidders must ensure that their tenders are accurate and complete. Exceptionally, where there is a change to the information provided to the Council at any time the Bidder must advise the Council as soon as practicable, even if this is after the date of submission of a response, and disclose such changes in full. Bidders should refer to paragraph 5 (Provision of Further Information by Bidders) transparency.

Bidders are to be aware that the Council may comply with the Government's transparency agenda by publishing procurement documentation and contracts on appropriate publically accessible websites. The procurement documents, the fact that the Bidder has submitted a

tender and the text of any contract awarded may therefore be published (subject to possible redactions at the Council's discretion, relating to information which is exempt from disclosure under the Information Laws).