Swindon Borough Council

 **Works Contract**

**Invitation to Tender for:**

**Lydiard Park Museum Heating Solution**

**Reference Number:**

**CCP00080**

**www.swindon.gov.uk**



 Contents

**Section 1 General Information**

**Section 2 Conditions of Contract**

 2.1 Contract Type: JCT Minor Works Building Contract with contractor’s design 2016

 2.2 Contract Structure: Contract Data provided by the Employer

 2.3 Additional Conditions of the Contract

**Section 3 Background Information**

**Section 4 Supplier Selection Questionnaire**

**Section 5 Specification**

**Section 6 Tender Award Questions**

**Section 7 Pricing and Payment Schedule**

**Appendices**

Appendix A Certificate of Bona Fide Tender

Appendix B Freedom of Information Act 2000 (FOI) Exemption Form

Appendix C Form of Tender

Appendix D Form of Parent Company Guarantee

Appendix E Not used

Appendix F SBC Health & Safety Policy HSP 020 Control of Contractors

Appendix G SBC Health & safety HSG020 Control of Contractors Procedures

Appendix H Pricing Schedule

Section 1 - General Information

##  Instructions to Tenderers

## 1 Statement of Purpose

1.1 Swindon Borough Council (the *Employer and Contracting Authority*), wishes to submit to tender the requirements for the provision of the Mechanical and Electrical works associated with the installation of a new Heating solution for the Museum at Lydiard Park.

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

1.3 All companies receiving this Invitation to Tender (“ITT”) are herein referred to as “Tenderer”.

## 2 Procurement Policy

2.1 It is the *Employer’s* policy to reduce current and future business costs wherever possible. The benefits of any project must be economically justifiable after the objectives for providing the *works* have been met. Individual Tenderers’ overall operations will be considered in determining which response is the most appropriate for the *Employer’s* needs. Tenderers are reminded to ensure they provide full details of their proposed offering.

## 3 Liability

3.1 The *Employer* shall incur no obligation or liability whatsoever to anyone by issuing the ITT or action by any party relative hereto.

## 4 Clause not used

## 5 Terms of Validity

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

## 6 Questions/Clarification

6.1 Tenderers proposing to submit a tender are advised first to read the documentation carefully to ensure that they are fully familiar with the nature and extent of the obligations to be accepted by them if their tender is accepted.

6.2 The Tenderer should seek to clarify any points of doubt or difficulty before submitting a tender. For this purpose contact can be made, in writing (email will be acceptable), to the named authorised officer only as detailed in 7 below. Clarification should be sought in accordance with the timescales detailed in 12.1. If it is decided to amend the Tender Documents, then all Tenderers will be notified accordingly.

6.3 The *Employer* will answer all questions from Tenderers and to ensure a consistent interpretation of the Request, all clarification statements will be made available in writing to all Tenderers. The *Employer* will respond to any outstanding clarifications no more than two days after the tender clarification deadline.

6.4 The *Employer* shall not conduct face to face meetings with responding Tenderers at any time during the period between issuing this ITT and receiving the tenders except when any site visits and supplier forums are arranged during this period.

## 7 The *Employer’s* Contact Details

7.1 Any questions, clarifications or other communication concerning this tender document must be emailed as per the instructions set out in the tender advertisement or where this is not been provided to

Email: TenderingHousingProperty@swindon.gov.uk

## 8 Clause not used

## 9 Tendering Procedure

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

9.2 Many of the tender questions require you to give a detailed response as indicated, clearly stating all of the relevant information you wish to be considered as part of the evaluation process and where applicable, you must provide all appropriate supporting documentation.

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

9.4 A Tenderer who submits a qualified tender shall be requested to withdraw the qualification without amendment to the tender sum. The Council reserves the right, to reject a tender where the qualification means that the tender is no longer capable of acceptance or where the qualification is disadvantageous to the Council or if it is considered that such qualification affords the Tenderer an unfair advantage over other Tenderers.

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

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

9.7 The *Employer’s* logo, trademarks and other identifying marks are proprietary and may not be incorporated in the Tenderers response without the *Employer’s* written permission.

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

9.10 The higher the value and complexity of the procurement, the higher the level of verification is likely to be required. Supporting documents referenced in the Supplier Selection Questionnaire will only need to be provided if the *Contractor* becomes the Preferred Bidder (for example certificates, statements with this questionnaire).You may also be asked to clarify your answers or provide more details about certain issues.

**10 Code of Conduct**

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

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

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

## 11 Collusive Tendering

11.1 Any Tenderer who: -

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

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

## 12 Receipt of Tender and Timescales

12.1 Tender responses must be submitted in the original format and as attachment(s) (note, Appendices A – C require a signed PDF copy to be included) and returned by email to TenderingHousingProperty@swindon.gov.uk. The project reference and title must be clearly marked in the Subject title and shall be received no later than **14:00:00hrs UK Local time on 02/08/2019**. Documentation not returned by the due date and time will be excluded from evaluation.

Significant dates within the tender period are identified in the table below.

|  |  |
| --- | --- |
| Closing Date for Tender Clarifications | 26/07/2019 at 14:00:00 |
| Tender return by | 02/08/2019 at 14:00:00 |
| Evaluate written Tender | 05/08/2019 |
| Preferred Bidder Status Evaluation | 09/08/2019 |
| Issue reject/accept letters | 16/08/2019 |
| Award and sign contract  | 19/08/2019 |
| Implement Contract by (*starting date*) | 02/09/2019 |
| Contract *Completion Date* | 23/09/2019 |

12.2 No tender shall be considered if it reaches the *Employer*, as detailed in 12.1, after the time specified, unless the closing date has formally been extended in writing.

12.3 Response openings will be conducted privately. All materials submitted in response to this ITT will become the *Employer’s* property and may be retained by the *Employer*.

12.4 Works Information, Site Information, data, documentation or other technical or business information (“Information”) furnished or disclosed to the Tenderer hereunder shall be deemed the *Employer’s* property.

## 13 Scope of Evaluation

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

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

**Stage 1** – **Supplier Selection Criteria**

This stage concerns the evaluation of the information provided by Tenderers in response to the Supplier Selection Questionnaire. This evaluation concentrates on economic and financial standing and technical and professional ability and will be evaluated as follows:-

|  |
| --- |
| **13.3.1 STAGE 1 – SUPPLIER SELECTION QUESTIONNAIRE**  **EVALUATION MODEL** |
| a) Selection Questionnaire Mandatory ‘pass/fail’ sections - A Tenderer must achieve a pass for **all** of the parts set out in 13.3.2 b) Selection Questionnaire Scoring Criteria – For Tenderers who achieve in ‘pass’ as set out above will have their responses to technical & professional ability assessed against the weighted criteria set out in 13.3.3.Only Tenderers who achieve the minimum score of 3 for each scored questions, and pass all of the pass/fail sections will be eligible to have their bids assessed against the **Stage 2** - **Award Criteria**.  |
| **13.3.2 Mandatory Pass/Fail Selection Criteria** |
| **Questionnaire Section 4 Reference** | **Mandatory Requirements to pass**  |
| General  | Tender response in the correct format |
| General  | Tender response received on time |
| General  | All Sections fully completed  |
| Section 3 - 3.4 – Terms & Conditions | Tenderer accepts the Terms & Conditions |
| Section 42 - Grounds for Mandatory Exclusion | All responses to part 2 (Grounds for mandatory exclusion) answered ‘No’ subject to any self-cleaning provisions set out in this document |
| Section 43 – Grounds for discretionary exclusion – Part 1 | All Section 3 answered No’ subject to any self-cleaning provisions set out in this document |
| Section 4 4 – Grounds for discretionary exclusion – Part 2 | All Section 4 answered No’ subject to any self-cleaning provisions set out in this document |
| Section 45.1 - Economic and Financial Standing | Select one option that you can provide to demonstrate your economic and financial standing |
| Section 45.2 - Economic and Financial Standing | Self-certifying ‘Yes’ you meet the minimum level of economic and financial standing and/or a minimum financial threshold as set out below:Turnover £90,000 and Net Worth of a positive value**OR**Parent Company Turnover £90,000 and Net Worth of a positive value, plus commitment to provide to the authority (if successful)A parent company guarantee / Bank guarantee or alternative guarantee at the cost of the bidder |
| Section 45.3 - Economic and Financial Standing | If a subsidiary of a Parent/Holding Company, answer ‘Yes’ to providing Parent/Holding Company Accounts and ‘Yes’ to providing a guarantee |
| Section 46 – Technical and Professional Ability | Must provide details of two (2) relevant contracts |
| Section 47 – B - 1 - Insurance | Self-certifying ‘Yes’ commitment to meet the minimum Insurance requirements  |
| Section 47-C-1 &2 - Equality Legislation | Self-certifying ‘No’ Automatic PassIf answering ‘Yes’ you may be excluded if you are unable to demonstrate to the *Employer*’s satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring.  |
| Section 47-D-1 Environmental Management  | Self-certifying ‘No’ Automatic PassIf answering ‘Yes’ please note the *Employer* will not select bidder(s) that have been prosecuted or served notice under environmental legislation in the last 3 years, unless the *Employer* is satisfied that appropriate remedial action has been taken to prevent future occurrences/breaches |
| Section 47-D–2 Environmental Management  | Self-certifying ‘Yes’ Automatic PassIf answering ‘No’ then please confirm that relevant procedures will be in place to perform this contract should you be successful. |
| Section 47-E-1.1 Health and Safety | Self-certifying ‘Yes’ is SSIP accredited. If self- certifying “No” you will have to provide evidence for questions 7-E-2 to 7-E-24 if you become the preferred bidder. |
| Section 47-E-1.2 | This project requires the main contractor to be the Principal Designer. This must not be novated to a third party.Self-certifying that you will be the Principal Designer for this project. |
| Section 47-E-2 Health and Safety | **If not SSIP Accredited** self-certifying ‘Yes’ your organisation has a Health and Safety Policy that complies with current legislative requirements  |
| Section 47-E-3 Health and Safety | **If not SSIP Accredited** self-certifying ‘No’ your organisation or any of its Directors or Executive Officer’s been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years.If answering ‘Yes’ the *Employer* will exclude bidder(s) that have been in receipt of enforcement/remedial action orders unless the bidder(s) can demonstrate to the authority’s satisfaction that appropriate remedial action has been taken to prevent future occurrences or breaches.  |
| Section 47-E-4 to 24 (inclusive) Health and Safety | **If not SSIP Accredited** self-certifying ‘Yes’ to all of these questions |
| Section 47-F-1 & 2 Modern Slavery | Self-certifying N/A to 7-F-1Or Self-certifying ‘Yes’ to 7-F-1 and also self‑certifying ‘Yes’ to 7.2 or providing an explanation to the satisfaction of the contracting authority |
| Section 7 – 7.1 Pricing | The Tenderer confirms that the pricing is inclusive of all costs |
| Section 7 – 7.2 Best Value | The Tenderer confirms they will assist the Authority with complying with the Local Government Act 1999 in regards to Best Value |
| Section 7 – 7.3 Open Book Policy | The Tenderer confirms that they will comply with an Open Book Policy |

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| **13.3.3 Scoring Selection Criteria – Technical & Professional Ability**  |
| **Questionnaire Section 4 Reference No.**  | **Scoring Selection Criteria (Out of 5)** |
| Section 46.1 to 6.5 - Technical & Professional AbilityThis part will be scored as a whole | The Tenderer must obtain a minimum score of 3 for this section to move to the Award Criteria Stage  |
| Section 47-A-1 Additional Technical and Professional Ability questions | The Tenderer must obtain a minimum score of 3 for each question to move to the Award Criteria Stage  |
| Section 47-A-2 Additional Technical and Professional Ability questions | The Tenderer must obtain a minimum score of 3 for each question to move to the Award Criteria Stage  |
| Section 47-A-3 Additional Technical and Professional Ability questions | The Tenderer must obtain a minimum score of 3 for each question to move to the Award Criteria Stage  |

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

**13.4 Stage 2 – Award Criteria**

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

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| **13.4.1 STAGE 2 - AWARD CRITERIA**  **EVALUATION MODEL** |
| The breakdown of questions and associated weightings from the Pricing Schedule and Tender Questionnaire are identified below. |
| **Item** | **No.** | **Pricing Schedule** | **Weighting (out of 100%)** |
| ***Price******Tender Award Questions*** | *n/a* | **Submitted Price (pricing schedule as shown in Appendix H)**  | 70% |
| **Sub-total** | **70%** |
| **Section 6** |
| ***Project Delivery*** |
| 6.1.1 | Programme | 10% |
| 6.1.2 | Method Statements | 10% |
| 6.1.3 | Project specific Quality questions | 10% |
|
| **Sub-total** | **30%** |
| **Total** | **100%** |

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| **Evaluation Criteria – Price elements**  |
| **Price elements** will be judged using the following methodology:The lowest price for a response which meets the pass criteria shall score 10. All other bids shall be scored on a pro rata basis in relation to the lowest price.For example - Bid 1 £100,000 scores 10, Bid 2 £120,000 differential £20,000 or 20% remove 20% from price scores 8, Bid 3 £150,000 differential £50,000 remove 50% from price scores 5, Bid 4 £175,000 differential £75,000 remove 75% from price scores 2.5. The lowest score possible is 0. All scores are then subjected to a multiplier e.g. if price has a scoring criteria of 70%, the multiplier will be 7. |

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| **Award Evaluation Criteria – Non-price elements** |
| **Non-Price elements** 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: |
| 0 | The Question is not answered or the response is completely unacceptable. i.e. does not meet the minimum requirement or it has completely missed the point of the question. |
| 1 | Very poor response and not acceptable – fails to meet the minimum requirement/standard, requires major revision to make it acceptable. Only partially answers the requirement, with major deficiencies and little relevant detail proposed. |
| 2  | Poor response only partially satisfying requirement/standard, with deficiencies apparent. Some useful evidence provided but response falls well short of minimum requirements.  |
| 3  | Response is acceptable and meets minimum requirement but remains basic and could have been expanded upon. Response is sufficient but does not inspire. Good probability of success, weaknesses can be readily corrected. |
| 4  | Response meets our expected requirement/standard and exceeds minimum expectations, including a level of detail, which adds value to the bid. No significant weaknesses noted. |
| 5 | Excellent response. Comprehensive and useful. No weaknesses noted. The response includes a full description of techniques and measurements to be employed. |

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

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

13.7 After the initial tender evaluation the Tenderer with the Most Economically Advantageous Bid will become the Preferred Bidder and will be required to provide valid, complete documentation to support its bid as outlined in Section 4 Supplier Selection Questionnaire. To support the Preferred Bidder status and finalise the evaluation process the Tenderer will be given five (5) days to submit the information to validate its bid. Any delays in submitting this documentation will delay the contract award process and the issue of the contract award letter.

13.8 The *Employer* has the right to withdraw preferred bidder status and move to the second place provider should the documentation not be submitted by the deadline or does not support statements made in the preferred bidder’s tender.

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

13.10 Failure to comply with the *Employer*’s requirements for these mandatory sections **will** result in disqualification from the tender evaluation process.

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

## 14 Clause not used

## 15 Acceptance of Tender

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

## 16 Post Tender Clarification

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

## 17 Tender Compliance

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

Section 2 - Conditions of Contract

 **Contents**

2.1 Form of Contract:

JCT Minor Works Building Contract with contractor’s design 2016

2.2 Contract structure:

Contract Data provided by the Employer

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| --- |
| **2.1 JCT Minor Works Building Contract with contractor’s design 2016** |
| Note to Tenderers. Details of T&Cs will be inserted by SBC Legal as part of the sealing of the contract. Copies of the JCT terms and conditions can be obtained from Sweet & Maxwell |
| 2.2 Contract Data |
| Note to tenderers.3.2.1 Schedule of Clauses to the Conditions of ContractAllow for the obligations, liabilities and services described therein against the headings set out below:* Intentions of the Parties
* Carrying out the Works
* Control of the Works
* Payment
* Injury, Damage and Insurance
* Termination
* Settlement of Disputes
* Schedules

**3.2.2 “The Works” Recitals 1 and 2***The Employer*, Swindon Borough Council, wishes the following Works to be carried out:Mechanical/Electrical Works associated with the installation of a new Heating solution for the Museum at Lydiard Park.The Works shall include the design, coordination, purchase, fabricate, delivery to site, install, test, commission and set to work the Mechanical services installation.**3.2.3 Documents Recital 3** The contract documents and specification to be read in conjunction with the instructions and notes to tenderers.*The Employer* has supplied the Contractor with the following documentation:* Certificate of Bona Fide Tender
* Freedom of Information Act 2000 (FOI) Exemption Form
* Form of Tender
* Form of Parent Company Guarantee
* Form of Performance Bond
* SBC Health & Safety Policy HSP 020 Control of Contractors
* SBC Health & safety HSG020 Control of Contractors Procedures
* Pricing Schedule

(The appendices are more particularly itemised on page 2 of this ITT)3.2.4 ARTICLES3.2.4.1 Article Three: Architect/Contract AdministratorFor the purposes of this contract the Contract Administrator is Ian Taylor Mechanical/Electrical Project Manager Swindon Borough Council 3.2.4.2 Article Four: Principal Designer The Principal Designer for the purposes of the CDM Regulations is the Contract Administrator 3.2.4.3 Article Five: Principal Contractor The Principal Contractor for the purposes of the CDM Regulations is the Contractor 3.2.5 Contract Particulars

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| --- |
| JCT Contract Particulars  |
| Clause (s)  | Subject  |  |
| Fifth Recital and Schedule 2  | Base Date | 2nd July 2019 |
| Fifth Recital and Clause 4.2 | Construction Industry Scheme (CIS) | Is a contractor |
| Sixth Recital  | CDM Regulations  | Is not notifiable  |
| Seventh Recital  | Framework Agreement  | Not applicable  |
| Eighth Recital and Schedule 3  | Supplemental Provisions  | All Apply Employer’s Nominee Ian Taylor  |
| Article 7  | Arbitration  | Applies  |
| 2.3  | Works Commencement Date  | 02/09/2019 |
| 2.3 | Date for Completion  | 23/09/2019 |
| 2.9  | Liquidated Damages  | £1000 per week |
| 2.11 | Rectification Period  | 3 months  |
| 4.3  | Interim Payments  | Not applicable |
| 4.3  | Payments due prior to practical completion – percentage of total value of the work  | 95% |
| 4.3  | Payments becoming due on or after practical completion – percentage of the total amount to be paid to the contractor  | 97.5% |
| 4.3 and 4.8 | Fluctuations provision  | No fluctuations provision applies  |
| 4.3 and 4.8 | Percentage addition for Schedule 2  | Not applicable  |
| 4.8.1 | Supply of documentation for computation of amount to be finally certified | 3 months |
| 5.3 | Contractors Public Liability Insurance  | £5,000,000 |
| 5.4A 5.4B 5.4C  | Insurance of the Work  | Clause 5.4A applies |
| 5.4A and 5.4B  | Percentage to cover professional fees | 15% |
| 7.2 | Adjudication | The Royal Institution of Chartered Surveyors / Chartered Institute of Arbitrators |
| Schedule 1 | Arbitration | The Royal Institution of Chartered Surveyors / Chartered Institute of Arbitrators |

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| **2.3 Additional Conditions of the Contract** |
| Additional Clauses  |
| The *conditions of contract* are as stated within the Contract Data, with the following *additional conditions* Z1 to Z20 inclusive. |

|  |  |  |  |
| --- | --- | --- | --- |
| Definition of Additional Clause | Z No. | No. | Clause |
| [Identified and Defined Terms for Additional Clauses](#IdentifiedandDefinedTermsforAdditio) | **Z1** |  | In these additional conditions of contract, the following terms are defined terms and shall have the meanings ascribed hereto: |
|  |  | (1) | “Code” shall mean the Code of Practice for Employment published by the Equality and Human Rights Commission (as published from time to time) or any code that may replace it |
|  |  | (2) | “Confidential Information” shall mean any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, works, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the DPA |
|  |  | (3) | “Contracting Authority” shall mean any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than SBC |
|  |  | (4) | “Controller, Processor, Data Subject, Personal Data, Personal Data Breach Data Protection Officer” shall take the meaning given in the GDPR. |
|  |  | (5) | “Data Loss Event” shall mean any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach. |
|  |  | (6) | “Data Protection Legislation” shall mean: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy. |
|  |  | (7) | “Data Processing Schedule” shall mean that document, scheduled to this Agreement, that sets out (among other things) the types of processing to be carried out by the Contractor.  |
|  |  | (8) | “Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. |
|  |  | (9) | “Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. |
|  |  | (10) | “DPA2018” shall mean the Data Protection Act 2018 |
|  |  | (11) | “EIR” shall mean the Environmental Information Regulations 2004 |
|  |  | (12) | “FOIA” shall mean the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation. |
|  |  | (14) | “GDPR” shall mean the General Data Protection Regulation (*Regulation (EU) 2016/679*). |
|  |  | (15) | “Information” shall have the meaning given under section 84 of the FOIA |
|  |  | (16) | “LED” shall mean Law Enforcement Directive (*Directive (EU) 2016/680*) |
|  |  | (17) | “Local Commissioner” shall mean the Local Commissioner as appointed by the Commissioner for Local Administration in England or any successor body |
|  |  | (18) | “Protective Measures” shall mean appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it. |
|  |  | (19) | “Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the EIR |
|  |  | (20) | “Subject Access Request” shall mean a request made under section 7 DPA |
|  |  | (21) | “Staff” shall mean all persons employed by the *Contractor* to perform the Contract together with the Contractor*’s* servants, agents and subcontractors used in the performance of the Contract |
|  |  | (22) | “Works” shall mean the *works* |
|  |  | (23) | “Working Day” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London |
| Prevention of Corruption | **Z2** |  | The *Employer* 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 respect of this or any other *Employer* 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 *Employer* contract whether alone or in conjunction with Members of the *Employer*, Contractors or employees. |
|  |  |  | Any clause limiting the *Contractor’s* liability shall not apply to this clause. |
| Local Commissioner | **Z3** | Z3.1 | Where the Local Commissioner conducts an investigation into a complaint out of or in connection with Providing the Works or any part of them, the Contractor shall:(a) provide any information requested by the Local Commissioner or by the *Employer* within the timescale allotted;(b) attend any meetings with the Local Commissioner and/or the *Employer* as required for the purposes of the investigation;(c) promptly allow access to and investigation of any relevant documents and data and if requested provide copies;(d) permit the Local Commissioner and/or the *Employer* to interview any members of its Staff in connection with the investigation;(e) permit the Local Commissioner and/or the *Employer* to interview any members of its Staff in connection with the investigation;(f) co-operate fully and promptly in every way required by the Local Commissioner during the course of the investigation; and(g) at the request of the *Employer*, issue a suitable apology to the complainant. |
|  |  | Z3.2 | The *Employer* and the Contractor agree that the *Employer* shall take action in response:(a) to reports of the Local Commissioner in respect of the works which conclude that injustice has been caused to a person aggrieved in consequence of maladministration, such action to be commensurate with the findings of such reports; or(b) if, following a report referred to in Clause Z3.2(a), recommendations are made by the Local Commissioner, to comply with such recommendations. |
|  |  | Z3.3 | The Contractor shall be liable for and shall fully and promptly indemnify the *Employer* against all costs, expenses and losses properly incurred or suffered arising, be it directly or indirectly, out of or in connection with the compliance with, or the implementation of any actions in response to, a report of, or recommendations by, the Local Commissioner pursuant to Clause Z3.2 to the extent that the said costs, expenses and losses are due to the Contractor’s failure (through act or omission) to exercise the level of skill, care and diligence which would be reasonably expected from an efficient and effective contractor of the works. |
| Data Protection | **Z4** | Z4.1 | The parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Data Processing Schedule by the Employer and may not be determined by the Contractor. |
|  |  | Z4.2 | The Contractor shall notify the Employer immediately if it considers that any of the Employer's instructions infringe the Data Protection Legislation. |
|  |  | Z4.3 | The Contractor shall provide all reasonable assistance to the Employer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Employer, include:(a) a systematic description of the envisaged processing operations and the purpose of the processing;(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;(c) an assessment of the risks to the rights and freedoms of Data Subjects; and(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data. |
|  |  | Z4.4 | The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:(a) process that Personal Data only in accordance with the Data Processing Schedule, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Employer before processing the Personal Data unless prohibited by Law;(b) ensure that it has in place Protective Measures, 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; andiv. cost of implementing any measures;(c) ensure that :i. the Contractor Staff do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule);ii. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Staff 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 Employer or as otherwise permitted by this Agreement; andd. have undergone adequate training in the use, care, protection and handling of Personal Data; and(d) not transfer Personal Data outside of the EU unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:i. the Employer 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 Employer;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 Employer in meeting its obligations); andiv. the Contractor complies with any reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;(e) at the written direction of the Employer, delete or return Personal Data (and any copies of it) to the Employer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data. |
|  |  | Z4.5 | Subject to clause Z4.6, the Contractor shall notify the Employer immediately if it:(a) receives a Data Subject Access Request (or purported Data Subject Access Request);(b) receives a request to rectify, block or erase any Personal Data;(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;(d) receives any communication from the Information Commissioner or any other regulatory Employer in connection with Personal Data processed under this Agreement;(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or(f) becomes aware of a Data Loss Event. |
|  |  | Z4.6 | The Contractor’s obligation to notify under clause Z4.5 shall include the provision of further information to the Employer in phases, as details become available. |
|  |  | Z4.7 | Taking into account the nature of the processing, the Contractor shall provide the Employer with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause Z4.5 (and insofar as possible within the timescales reasonably required by the Employer) including by promptly providing:(a) the Employer with full details and copies of the complaint, communication or request;(b) such assistance as is reasonably requested by the Employer to enable the Employer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;(c) the Employer, at its request, with any Personal Data it holds in relation to a Data Subject;(d) assistance as requested by the Employer following any Data Loss Event;(e) assistance as requested by the Employer with respect to any request from the Information Commissioner’s Office, or any consultation by the Employer with the Information Commissioner's Office. |
|  |  | Z4.8 | The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:(a) the Employer determines that the processing is not occasional;(b) the Employer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and(c) the Employer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects. |
|  |  | Z4.9 | The Contractor shall allow for audits of its Data Processing activity by the Employer or the Employer’s designated auditor. The Employer is entitled, on giving at least three days' notice to the Contractor, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data under this Agreement by the Contractor. The requirement to give notification in advance will not apply if the Employer believes that the Contractor is in breach of any of its obligations under this Agreement. The Contractor shall designate a data protection officer if required by the Data Protection Legislation. |
|  |  | Z4.10 | Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:(a) notify the Employer in writing of the intended Sub-processor and processing;(b) obtain the written consent of the Employer;(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause Z4 such that they apply to the Sub-processor; and(d) provide the Employer with such information regarding the Sub-processor as the Employer may reasonably require. |
|  |  | Z4.11 | The Contractor shall remain fully liable for all acts or omissions of any Sub-processor. |
|  |  | Z4.12 | The Contractor 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). |
|  |  | Z4.13 | The parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Employer 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 Officer. |
|  |  | Z4.14 | The Contractor shall undertake all of the above processing activities at its own expense and at no extra cost to the Employer. |
|  |  | Z4.15 | The Employer retention and disposal schedule as provided will be followed by the Contractor where appropriate and relevant; no decisions on retention or disposal are to be made by the Contractor unless it is part of detailed Processing under this Agreement. |
|  |  | Z4.16 | The Contractor shall without undue delay inform the Employer if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Contractor will make regular backups of the Personal Data and will restore such Personal Data at its own expense. The *Contractor* shall (and shall procure that any of its Staff involved in Providing the Works) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract. |
| Confidentiality | **Z5** | Z5.1 | Each Party: |
|  |  |  | (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and |
|  |  |  | (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract. |
|  |  | Z5.2 | The *Contractor* shall take all necessary precautions to ensure that all Confidential Information obtained from the *Employer* under or in connection with the Contract: |
|  |  |  | (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract; |
|  |  |  | (b) is treated as confidential and not disclosed (without prior written approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract. |
|  |  | Z5.3 | The *Contractor* shall not use any Confidential Information it receives from the *Employer* otherwise than for the purposes of the Contract. |
|  |  | Z5.4 | The provisions of clauses Z5.1 to Z5.3 shall not apply to any Confidential Information received by one Party from the other: |
|  |  |  | (a) which is or becomes public knowledge (otherwise than by breach of this clause); |
|  |  |  | (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; |
|  |  |  | (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; |
|  |  |  | (d) is independently developed without access to the Confidential Information; or |
|  |  |  | (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to clause Z6. |
|  |  | Z5.5 | Nothing in this clause shall prevent the *Employer*: |
|  |  |  | (a) disclosing any Confidential Information for the purpose of: |
|  |  |  | (i) the examination and certification of the *Employer’s* accounts; or |
|  |  |  | (ii) any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the *Employer* has used its resources; or |
|  |  |  | (b) disclosing any Confidential Information obtained from the *Contractor*: |
|  |  |  | (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or |
|  |  |  | (ii) to any person engaged in providing any works or services to the *Employer* for any purpose relating to or ancillary to the Contract; |
|  |  |  |  provided that in disclosing information under sub-paragraph (b) the *Employer* discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.  |
|  |  | Z5.6 | Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of intellectual property rights. |
|  |  | Z5.7 | The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the text of this Contract is not confidential information. The *Employer* shall be responsible for determining in its absolute discretion whether any part of the Contract is exempt from disclosure in accordance with the provisions of the Act. |
|  |  | Z5.8 | Notwithstanding any other term of this Contract the *Contractor* hereby gives its consent for the *Employer* to publish this Contract in its entirety, including from time to time agreed changes to the Contract, to the general public in whatever form the *Employer*  decides. |
| Publicity |  | Z5.9 | The *Contractor* treats the contract and everything in it as confidential and does not give any information regarding the contract to any member of the Press or general public. |
|  |  | Z5.10 | The *Contractor* may publicise the *works* only with the *Employer’s* written agreement. |
| Freedom of Information | **Z6** | Z6.1 | The *Contractor* acknowledges that the *Employer* is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the *Employer* (at the *Contractor’s* expense) to enable the *Employer* to comply with these Information disclosure requirements. |
|  |  | Z6.2 | The *Contractor* shall and shall procure that its subcontractors shall: |
|  |  |  | (a) transfer the Request for Information to the *Employer* as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information; |
|  |  |  | (b) provide the *Employer*  with a copy of all Information in its possession or power in the form that the *Employer* requires within five Working Days (or such other period as the *Employer* may specify) of the *Employer* requesting that Information; and |
|  |  |  | (c) provide all necessary assistance as reasonably requested by the *Employer* to enable SBC to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR. |
|  |  | Z6.3 | The *Employer* shall be responsible for determining at its absolute discretion whether any Information: |
|  |  |  | (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; |
|  |  |  | (b) is to be disclosed in response to a Request for Information, and in no event shall the *Contractor* respond directly to a Request for Information unless expressly authorised to do so by the *Employer*. |
|  |  | Z6.4 | The *Contractor* acknowledges that the *Employer* may, acting in accordance with the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA or the EIR to disclose Information: |
|  |  |  | (a) without consulting with the *Contractor*, or |
|  |  |  | (b) following consultation with the *Contractor* and having taken its views into account. |
|  |  | Z6.5 | The *Contractor* shall ensure that all Information produced in the course of the contract or relating to the Contract is retained for disclosure and shall permit the *Employer* to inspect such records as requested from time to time. |
|  |  | Z6.6 | The *Contractor* acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the *Employer* may nevertheless be obliged to disclose Confidential Information in accordance with clause Z6.4. |
| Equal Opportunities | **Z7** | Z7.1 | The *Contractor* must: |
|  |  |  | (a) operate an equal opportunities policy for as long as this Contract is in force; and |
|  |  |  | (b) provide the *Employer* with a copy of any such policy at the *Employer’s* request |
|  |  | Z7.2 | The *Contractor* must use all reasonable endeavours to make sure that its equal opportunities policy complies with all statutory obligations as regards discrimination on the grounds of colour, race, nationality, cultural or ethnic origin, marital status, gender, age, disability, religion or sexual orientation in relation to: |
|  |  |  | (a) decisions made by it in the recruitment, training or promotion of staff employed or to be employed in Providing the Works; |
|  |  |  | (b) Providing the Works; and |
|  |  |  | (c) the carrying out of its obligations under this Contract. |
|  |  | Z7.3 | In Providing the Works, the *Contractor* must observe as far as possible the Code and the Human Rights Act 1998 |
|  |  | Z7.4 | The *Contractor* must provide the *Employer* with such information as it may reasonably require in order for the *Employer* to assess the *Contractor*’s compliance with the Code. |
|  |  | Z7.5 | If any Court or Tribunal, or the Equality and Human Rights Commission (or any body which may replace the Commission) makes a finding that the *Contractor* has unlawfully discriminated against any person in Providing the Works then the *Contractor* must: |
|  |  |  | (a) take all necessary steps to make sure that the unlawful discrimination does not happen again; and |
|  |  |  | (b) notify the *Employer* in writing of the finding and the steps taken to prevent its re-occurrence. |
| Right of Access and Audit | **Z8** | Z8.1 | The *Contractor* shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the *works* provided under it, all expenditure reimbursed by the *Employer*, and all payments made by the *Employer*. The *Contractor* shall on request afford the *Employer* or the *Employer’s* representatives such access to those records as may be required by the *Employer* in connection with the Contract. |
| *Employer* Policies | **Z9** | Z9.1 | The *Employer* has a whistle blowing policy to encourage its employees and the public to bring into the open issues concerning dishonesty involving the *Employer*. The *Contractor* shall ensure that its Staff are made aware of this policy which is available on the *Employer’s* website. |
|  |  | Z9.2 | Where the *Employer’s* “Customer Services Charter” is applicable to the *works*, the *Contractor* shall use its best endeavours to ensure that the standards set out in the Charter are met. |
|  |  | Z9.3 | Where the *Contractor*  has been appointed as agent for the *Employer* and under this Contract is required to let contracts, the *Contractor* shall comply with the *Employer’s* Standing Orders relating to Contracts (contained in Part 4 of the *Employer’s* Constitution available on the *Employer’s* website). |
| Assignment and Sub-Contracting | **Z10** | Z10.1 | The *Contractor* shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without the prior written approval of the *Employer*.  |
|  |  | Z10.2 | The *Contractor* submits the names of each proposed subcontractor to the *Employer* for acceptance. A reason for not accepting the subcontractor is that his appointment will not allow the *Contractor* to Provide the Works. The *Contractor* does not appoint a proposed subcontractor until the *Employer* has accepted him. |
| Health and Safety | **Z11** | Z11.1 | The *Contractor* shall promptly notify the *Employer* of any health and safety hazards, which may arise in connection with the performance of the Contract. The *Employer* shall promptly notify the *Contractor* of any health and safety hazards which may exist or arise at the premises of the *Employer* and which may affect the *Contractor* in the performance of the Contract. |
|  |  | Z11.2 | While on premises of the *Employer*, the *Contractor* shall comply with any health and safety measures implemented by the *Employer* in respect of Staff and other persons working on those premises. |
|  |  | Z11.3 | The *Contractor* shall notify the *Employer* immediately in the event of any incident occurring in the performance of the Contract on the premises of the *Employer* where that incident causes any personal injury, damage to property which could give rise to personal injury or any incident falling into scope of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013. |
|  |  | Z11.4 | The *Contractor* shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on premises in the performance of the Contract. |
|  |  | Z11.5 | The *Contractor* shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the *Employer* on request. |
|  |  | Z11.6 | The *Contractor* shall at all times during the term of the Contract, provide and maintain all such vehicles, plant, machinery and equipment as are necessary for the proper performance of this Contract. Vehicles used on this Contract shall comply with the Supply of Machinery Regulations 1992 and be of a design, which is entirely suitable for the performance of this Contract. |
| Disclosure and Barring Service  | **Z12** |  | **Applicable where the *works* are being carried out which could affect persons as set out in Z12.1 (b) (i) or (ii) below.** |
|  |  | Z12.1 | The *Contractor* shall procure that in respect of all potential Staff before a member of Staff begins to attend the premises of the *Employer* to perform any of the *works*: |
|  |  |  | (a) each member of Staff is questioned as to whether he or she has any convictions; and |
|  |  |  | (b) where requested to do so by the *Employer*, the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in accordance with Part V of the Police Act 1997 in respect of each member of Staff. The check for each member of Staff shall include: |
|  |  |  | (i) arch of the list held pursuant to the Protection of Children Act 1999 where the performance of the Services may involve contact with children; and/or |
|  |  |  | (ii) a search of the list held pursuant to Part VII of the Care Standards Act 2000 where the performance of the Services may involve contact with vulnerable adults (as defined in the Care Standards Act). |
|  |  |  | (c) the results of such checks are notified to the *Employer*. |
|  |  |  | The *Contractor* shall procure that no person who discloses any convictions, or who is found to have any convictions following the results of a Disclosure and Barring Service check, is employed or engaged by the *Contractor* or on the *Contractor’s* behalf without approval where that conviction is incompatible with the type of work being undertaken by the member of Staff in Providing the Works. |
|  |  |  | The *Contractor* shall procure that the *Employer* is kept advised at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the *Contractor*. |
| Security | **Z13** |  | Site admittance |
|  |  | Z13.1 | The *Contractor* submits to the *Employer* details of people who are to be employed by him and his subcontractors in connection with the *works*. The details include a list of names and addresses, the capacities in which they are employed, and other information required by the *Employer*. |
|  |  | Z13.2 | The *Employer* may instruct the *Contractor* to take measures to prevent unauthorised persons being admitted on to the *site*. The instruction is a compensation event if the measures are additional to those required by the Works Information. |
|  |  |  | Passes  |
|  |  | Z13.3 | Employees of the *Contractor* and his subcontractors are to carry an *Employer’s* pass whilst they are on the parts of the *site* stated in the Contract Data. |
|  |  | Z13.4 | The *Contractor* submits to the *Employer* for acceptance a list of the names of the people for whom passes are required. The *Employer* issues the passes to the *Contractor*. Each pass is returned to the *Employer* when the employee no longer requires access to that part of the *site* or after the *Employer* has given notice that the employee is not to be admitted to the *site*. |
|  |  |  | Photographs  |
|  |  | Z13.5 | The *Contractor* does not take photographs of the *site* or the *works* or any part of them unless he has obtained the agreement of the *Employer*. |
|  |  | Z13.6 | The *Contractor* takes the measures needed to prevent his and his subcontractors’ people taking, publishing or otherwise circulating such photographs. |
| Parent Company Guarantee | **Z14** | Z14.1 | It is a condition precedent to the obligation of the *Employer* to pay any sums under this contract that if the *Contractor* is a subsidiary within the meaning of the Companies Act 2006 the *Contractor* has provided to the *Employer* a parent company guarantee in the form set out in this contract duly executed as a deed by the *Contractor’s* ultimate parent. |
| Principal Contractor | **Z15** | Z15.1 | The *Contractor* is the Principal Contractor in terms of The Construction (Design and Management) Regulations 2015. |
| The Contracts (Rights of Third Parties) Act 1999 | **Z16** | Z16.1 | For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in this contract confers or purports to confer on a third party any benefit or any right to enforce a term of this contract. |
| Termination under Public Contracts Regulations 2015 | **Z17** | Z17.1 | The *Employer* shall be entitled by notice having immediate effect if any of the following grounds apply:-(a) Where the Agreement has been subject to a substantial modification that constitutes a new contract award(b) Where it is discovered after contract award that the Contractor should have been excluded on mandatory exclusion grounds (c) Where the Court of Justice of the European Union has declared a serious infringement by the *Employer* meaning that the Agreement should not have been awarded by the *Employer* to the Contractor |
| Environmental, Social and Labour Requirements | **Z18** | Z18.1 | In performance of their obligations under the Agreement the Contractor shall comply with applicable obligations in the field of environmental, social and labour law, collective agreements and the international environmental social and labour law provisions listed in Annex X of the Public Contracts Directive |
| Sub Contractor Payments | **Z19** | Z19.1 | The Contractor shall pay all the invoices of its sub-contractors within 30 days of receipt and shall ensure that the same timescale for payment is passed down its supply chain |

**DATA PROCESSING SCHEDULE**

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

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the processing | **[insert]** |
| Duration of the processing | From commencement of contract to its termination. |
| Nature and purposes of the processing | **[insert]** |
| Type of Personal Data | **[insert]** |
| Categories of Data Subject | **[insert]** |
| 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 | **[insert]** |

|  |
| --- |
| **3.4 Acceptance of Terms & Conditions** |
| The Tenderer confirms acceptance of the Terms & Conditions (Pass/Fail) |  |

Section 3 – Background Information

The present heating system is oil run system being fed by a bunded oil tank located within the immediate area of the boiler, this system is in close proximity of a fresh water well.

The oil tank and boiler are showing signs if age are starting to leak Kerosene oil with the potential to enter the fresh water well.

The indoor Heat emitters are old and inefficient and require replacement to bring to current standards and ease the cost of high utility bills.

Section 4 – Supplier Selection Questionnaire

Note to Tenderers on Supplier Selection Questionnaire

**Notes for completion**

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

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

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

Please ensure that all questions are completed in full, and in the format requested. Failure to do so may result in your submission being disqualified. If the question does not apply to you, please state clearly ‘N/A’.

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

**Verification of Information Provided**

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

**Sub-contracting arrangements**

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

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

**Consortia arrangements**

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

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

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

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

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

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

**Confidentiality**

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

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

The authority confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the Public Contracts Regulations.

Section 4 - Supplier Selection Questionnaire

**1 - Supplier information**

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

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

|  |
| --- |
| **1.4 Licensing and registration (please mark ‘X’ in the relevant box)** |
| 1.4.1 | Registration with a professional bodyIf applicable, is your business registered with the appropriate trade or professional register(s) in the EU member state where it is established (as set out in Annex XI of directive 2014/24/EU) under the conditions laid down by that member state). | ▢ Yes▢ NoIf Yes, please provide the registration number in this box. |
| 1.4.2 | Is it a legal requirement in the state where you are established for you to be licensed or a member of a relevant organisation in order to provide the requirement in this procurement? | ▢ Yes▢ NoIf Yes, please provide additional details within this box of what is required and confirmation that you have complied with this. |

**2 - Grounds for mandatory exclusion**

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

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

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

## 3. Grounds for discretionary exclusion – Part 1

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

|  |  |
| --- | --- |
| **3.1 Within the past three years, please indicate if any of the following situations have applied, or currently apply, to your organisation.** | **Please indicate your answer by marking ‘X’ in the relevant box.** |
| **Yes** | **No** |
| 1. your organisation has violated applicable obligations referred to in regulation 56 (2) of the Public Contracts Regulations 2015 in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive as amended from time to time;
 |  |  |
| 1. your organisation is bankrupt or is the subject of insolvency or winding-up proceedings, where your assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;
 |  |  |
| 1. your organisation is guilty of grave professional misconduct, which renders its integrity questionable;
 |  |  |
| 1. your organisation has entered into agreements with other economic operators aimed at distorting competition;
 |  |  |
| 1. your organisation has a conflict of interest within the meaning of regulation 24 of the Public Contracts Regulations 2015 that cannot be effectively remedied by other, less intrusive, measures;
 |  |  |
| 1. the prior involvement of your organisation in the preparation of the procurement procedure has resulted in a distortion of competition, as referred to in regulation 41, that cannot be remedied by other, less intrusive, measures;
 |  |  |
| 1. your organisation has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;
 |  |  |
| 1. your organisation—

(i) has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or(ii) has withheld such information or is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015; or |  |  |
| (i) your organisation has undertaken to |  |  |
| (aa) unduly influence the decision-making process of the contracting authority, or |  |  |
| (bb) obtain confidential information that may confer upon your organisation undue advantages in the procurement procedure; or |  |  |
|  (j) your organisation has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award. |  |  |

**Conflicts of interest**

In accordance with question 3.1 (e), the authority may exclude the Supplier if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

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

**Taking Account of Bidders’ Past Performance**

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

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

**‘Self-cleaning’**

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

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

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

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

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

## 4. Grounds for discretionary exclusion – Part 2

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

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

“Occasion of Tax Non-Compliance” means:

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

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

In order that the authority can consider any factors raised by the Supplier, the following information should be provided:* A brief description of the occasion, the tax to which it applied, and the type of “non-compliance” e.g. whether HMRC or the foreign Tax Authority has challenged pursuant to the GAAR, the “Halifax” abuse principle etc.
* Where the OONC relates to a DOTAS, the number of the relevant scheme.
* The date of the original “non-compliance” and the date of any judgement against the Supplier, or date when the return was amended.
* The level of any penalty or criminal conviction applied.
 |

**5 - Economic and Financial Standing**

|  |  |
| --- | --- |
|  | **FINANCIAL INFORMATION**  |
| 5.1 | **Please provide one of the following to demonstrate your economic/financial standing;** Please indicate your answer with an ‘X’ in the relevant box. |
| 1. A copy of the audited accounts for the most recent two years
 |  |
| 1. A statement of the turnover, profit & loss account, current liabilities and assets, and cash flow for the most recent year of trading for this organisation
 |  |
| 1. A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position
 |  |
| 1. Alternative means of demonstrating financial status if any of the above are not available (e.g. Forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).
 |  |
| 5.2 | Where the authority has specified a minimum level of economic and financial standing and/or a minimum financial threshold within the evaluation criteria for this Questionnaire, please self-certify by answering ‘Yes’ or ‘No’ that you meet the requirements set out here.Minimum Turnover £90,000Net Worth of a positive value | ▢ Yes▢ No  |
| 5.3 | **(a) Are you are part of a wider group (e.g. a subsidiary of a holding/parent company)?**If yes, please provide the name below:

|  |  |
| --- | --- |
| Name of the organisation |  |
| Relationship to the Supplier completing the Questionnaire |  |

If yes, please provide Ultimate / parent company accounts if available. If yes, would the Ultimate / parent company be willing to provide a guarantee if necessary? If no, would you be able to obtain a guarantee elsewhere (e.g from a bank?) | ▢ Yes▢ No▢ Yes▢ No▢ Yes ▢ No |

**6 – Technical and Professional Ability**

|  |  |
| --- | --- |
| 6 | **Relevant experience and contract examples** |
| Please provide details of up to three contracts, in any combination from either the public or private sector, that are relevant to the authority’s requirement. Contracts for supplies or services should have been performed during the past three years. Works contracts may be from the past five years, and VCSEs may include samples of grant funded work. The named customer contact provided should be prepared to provide written evidence to the authority to confirm the accuracy of the information provided below.Consortia bids should provide relevant examples of where the consortium has delivered similar requirements; if this is not possible (e.g. the consortium is newly formed or a Special Purpose Vehicle will be created for this contract) then three separate examples should be provided between the principal member(s) of the proposed consortium or Special Purpose Vehicle (three examples are not required from each member). Where the Supplier is a Special Purpose Vehicle, or a managing agent not intending to be the main provider of the supplies or services, the information requested should be provided in respect of the principal intended provider(s) or sub-contractor(s) who will deliver the supplies and services. |
|  | Contract 1 | Contract 2 |
| 6.1 | Name of customer organisation |  |  |
| 6.2 | Point of contact in customer organisationPosition in the organisationE-mail address |  |  |
| 6.3 | Contract start dateContract completion dateEstimated Contract Value |  |  |
| 6.4 | In no more than 500 words, please provide a brief description of the contract delivered including evidence as to your technical capability in this market. |  |  |

**7. Additional Questionnaire modules**

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

**A – Project specific Technical and Professional Ability**

Further project specific questions relating to the technical and professional ability of the Supplier. Please note, the Supplier must score a minimum of three (3) for all questions in order to pass the Supplier Selection Questionnaire.

|  |  |  |
| --- | --- | --- |
| 1. | Please give two examples of work that you have undertaken in a listed building, including some of the issues you have experienced. |  |
| 2. | The contract will be working with the public in close proximity, please explain how you would control any hazards that may occur. |  |
| 3 | Please give one example of when a contract time line started to slip and how you resolved this. |  |

**B - Insurance**

|  |  |  |
| --- | --- | --- |
| 1. | Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below:*Employer*’s (Compulsory) Liability Insurance = £5,000,000.00Public Liability Insurance = £5,000,000.00Product Liability Insurance = £2,000,000.00Professional Indemnity Insurance = £5,000,000.00\* It is a legal requirement that all companies hold *Employer*’s (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders. | ▢ Yes▢ No  |

**C – Compliance with equality legislation**

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

**D - Environmental Management**

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

**E - Health and Safety**

|  |  |  |
| --- | --- | --- |
| 1. | The Tenderer confirms that has been assessed by Safety Schemes in Procurement (SSIP) and are compliant with the Principal Contractor / Designer qualification and are compliant with Regulation 8 (1)  – General duties of CDM 20151. A designer (including a principal designer) or contractor (including a principal contractor) appointed to work on a project must have the skills, knowledge and experience and, if they are an organisation, the organisational capability, necessary to fulfil the role that they are appointed to undertake, in a manner that secures the health and safety of any person affected by the project.
2. This project requires the main contractor to be the Principal Designer, please confirm that you will provide this service. (This service is not to be novated to a third party). Provision of competence and details for the arrangements to undertake the Principal Designer duty must be provided

The SSIP Table of Equivalences is available on the URL below<http://www.ssip.org.uk/docs/SuppliersGuideToSSIPRegistration.pdf>*If the Tenderer becomes the Preferred Bidder they will be required to provide their SSIP certificate.* | ▢ Yes▢ No ▢ Yes▢ No  |
| **If the Tenderer is SSIP accredited;** **If they become the Preferred Bidder they will need to provide their SSIP certificate and will not need to provide evidence for questions 2 to 24 of Section 7.****If the Tenderer is not SSIP accredited they will need to provide evidence for questions 2 to 24 of Section 7, which is based on PAS91.** |
| 2. | Please self-certify that your organisation has a Health and Safety Policy that complies with current legislative requirements. *If the Tenderer becomes the Preferred Bidder they will be required to provide the following evidence: That the organisation periodically reviews their H&S policy, endorsed by their Chief Executive. The H&S Policy should be relevant to the anticipated nature and scale of activity undertaken and set out in the responsibilities of H&S management at all level in the organisation.* | ▢ Yes▢ No  |
| 3. | Has your organisation or any of its Directors or Executive Officers been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years? *If your answer to this question was “Yes”, please provide details in a separate Appendix of any enforcement/remedial orders served and give details of any remedial action or changes to procedures you have made as a result.**The authority will exclude bidder(s) that have been in receipt of enforcement/remedial action orders unless the bidder(s) can demonstrate to the authority’s satisfaction that appropriate remedial action has been taken to prevent future occurrences or breaches.*  | ▢ Yes▢ No  |
| 4. | If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations? | ▢ Yes▢ No  |

|  |  |  |
| --- | --- | --- |
| 5. | The Tenderer confirms that if they become the Preferred Bidder they can provide evidence of arrangements for ensuring their H&S measures are effective in reducing/preventing incidents, occupational ill-health and accidents*If the Tenderer becomes the Preferred Bidder they will need to provide the following evidence; details of arrangements for H&S management that are relevant to the anticipated nature and scale of activity to be undertaken and that show clearly how these arrangements are communicated to the workforce.* | ▢ Yes▢ No  |
| 6. | The Tenderer confirms that they have access to competent H&S advice/assistance – both general and construction/sector relatedIf the Tenderer becomes the Preferred Bidder they will need to provide evidence of how their organisation obtains access to competent H&S advice. | ▢ Yes▢ No  |
| 7. | The Tenderer confirms that their organisation has a policy and process for providing their staff/workforce with training and information appropriate to the types of activity that their organisation is likely to undertake.*If the Tenderer becomes the Preferred Bidder they must provide evidence that their organisation has in place and implements, training arrangements to ensure that their staff/ workforce has sufficient skills and understanding to discharge their various duties. This should include refresher training (e.g. a CPD programme) that will keep their workforce updated on good H&S practice applicable throughout the company.* | ▢ Yes▢ No  |
| 8. | The Tenderer confirms that their staff/ workforce have H&S or other relevant qualifications and experience sufficient to implement their H&S policy to a standard appropriate to the activity that their organisation is likely to undertake.*If the Tenderer becomes the Preferred Bidder they must provide evidence on request that their staff/ workforce possesses suitable qualifications and experience for the tasks assigned to them, unless there are specific situations where they need to work under controlled and competent supervision e.g trainees.* | ▢ Yes▢ No  |
| 9. | The Tenderer confirms they check, review and where necessary improve their H&S performance*If the Tenderer becomes the Preferred Bidder they must provide evidence that their organisation has in place and implements, an on-going system for monitoring H&S procedures on an on-going basis and for periodically reviewing and updating that system as necessary.* | ▢ Yes▢ No  |
| 10. | The Tenderer confirms they have procedures in place to involve their staff/ workforce in the planning and implementation of H&S measures*If the Tenderer becomes the Preferred Bidder they must provide evidence that their organisation has in place and implements a means of consulting with their staff/ workforce on H&S matters and show how staff/ workforce comments, including complaints are taken into account.* | ▢ Yes▢ No  |
| 11. | The Tenderer confirms they routinely record and review accidents/ incidents and undertake follow-up action*If the Tenderer becomes the Preferred Bidder they must provide access to records of accident rates and frequency for all RIDDOR reportable events for at least the last three years. Demonstrating that their organisation has in place a system for reviewing significant incidents, and recording action taken as a result including action taken in response to any enforcement.* | ▢ Yes▢ No  |
| 12. | The Tenderer confirms they have arrangements for ensuring that their suppliers apply H&S measures to a standard appropriate to the activity for which they are being engaged*If the Tenderer becomes the Preferred Bidder they must provide evidence on request that their organisation has and implements, arrangements for ensuring that H&S performance throughout the whole of their organisation’s supply chain is appropriate to the work likely to be undertaken.* | ▢ Yes▢ No  |
| 13. | The Tenderer confirms they operate a process of risk assessment, capable of supporting safe methods of work and reliable project delivery where necessary*If the Tenderer becomes the Preferred Bidder they must provide evidence on request that their organisation has in place and implements procedures for carrying out relevant risk assessments and for developing and implementing safe systems of work (‘method statements’). The Tenderer should be able to provide indicative examples. The identification and control of any significant occupational health (not just safety) issues should be prominent.* | ▢ Yes▢ No  |
| 14. | The Tenderer confirms they have arrangements for co-operating and coordinating their work with others (including other suppliers, notably contractors)*If the Tenderer becomes the Preferred Bidder they must provide an explanation of how co-operation and co-ordination of the work is achieved in practice, and how other organisations are involved in drawing up method statements/safe systems of work etc. including arrangements for response to emergency situations. This should include details of how comments and input from your suppliers will be taken into account and how external comments including any complaints, will be responded to.* | ▢ Yes▢ No  |
| 15. | The Tenderer confirms they have arrangements for ensuring that on-site welfare provision meets legal requirements and the needs/expectations of their employees*If the Tenderer becomes the Preferred Bidder they must provide evidence on request about how they ensure suitable welfare facilities will be in place before starting work on site, whether provided by a site-specific arrangement or your own organisational measures.* | ▢ Yes▢ No  |
| 16. | The Tenderer confirms they ensure that they and their workforce have the appropriate capabilities to enable them to discharge their legal duties under health and safety legislation*If the Tenderer becomes the Preferred Bidder they must provide evidence of their CPD programme and / or examples of training and development plans (which may include in-house training).**Please provide evidence of how your organisation obtains H & S information, including how you maintain your technical knowledge and understanding of developments in construction. Provide commentary on how you match individual capabilities with the work undertaken* | ▢ Yes▢ No  |
| 17. | The Tenderer confirms they have and implement, arrangements for meeting the Principal Contractor duties under the Construction Design and Management Regulations 2015*If the Tenderer becomes the Preferred Bidder they must provide evidence showing how you address the following including examples for each showing how risk was reduced through design.** *ensure co-operation and co-ordination of design work within the design team and with other designers/contractors;*
* *ensure hazards are eliminated and show how remaining risks are managed, (with reference to buildability, maintainability and use);*
* *ensure that any structure that will be used as a workplace will meet relevant requirements of the Workplace (Health, Safety and Welfare) Regulations 1992;*
* *manage design changes.*
 | ▢ Yes▢ No  |
| 18. | The Tenderer confirms they check, review and where necessary improve their H & S performance*If the Tenderer becomes the Preferred Bidder they must provide evidence that their organisation has in place and implements, an ongoing system for monitoring H&S procedures and for periodically reviewing and updating that system as necessary for example through project design review (during and post-completion).* | ▢ Yes▢ No  |
| 19. | The Tenderer confirms that if they become the Preferred Bidder they can provide evidence of their field of knowledge and experience in the design and construction process.*If the Tenderer becomes the Preferred Bidder they will be required to provide the following evidence; real examples rather than generic documents, of actual attainments which should indicate their competence as in the case of:* *Professionally Qualified to Chartered level**Membership to a relevant construction institution E.g. CIAT; CIBSE; CIOB; ICE; IET; IMechE; IStructE; RIBA; RICS* | ▢ Yes▢ No  |
| 20. | The Tenderer confirms that if they become the Preferred Bidder they can provide evidence of their knowledge and experience of H&S in construction*If the Tenderer becomes the Preferred Bidder they must provide the following evidence; Examples of actual attainments which should indicate competence as in the case of validated CPD in this field, and typical additional qualifications e.g. NEBOSH Construction Certificate; Member of health and safety register administered by the ICE (Note 7); Membership of Association for Project; Safety; Membership of Institution of Construction Safety.*  |  |
| 21. | The Tenderer confirms that they review and develop their effectiveness at delivering the coordination role.*If the Tenderer becomes the Preferred Bidder they will need to provide evidence that their organisation has in place and implements, an ongoing system for monitoring performance including post project review* | ▢ Yes▢ No  |
| 22. | The Tenderer confirms that they have a documented policy and organisation for the management of construction-related environmental issues*If the Tenderer becomes the Preferred Bidder they will need to provide evidence that their organisation has an environmental policy authorised by the Chief Executive or equivalent and regularly reviewed. The policy should be relevant to the nature and scale of the activity and set out the responsibilities for environmental management throughout the organisation.* | ▢ Yes▢ No  |
| 23. | The Tenderer confirms they have the arrangements for ensuring that their quality management including the quality of the construction output and general performance, is effective in reducing/preventing incidents of sub-standard delivery*If the Tenderer becomes the Preferred Bidder they must provide evidence that their organisation keeps copies of documentation setting out quality management organisation and procedures that meet currently agreed good practice. These should include the arrangements for quality management throughout their organisation. They should set out how the company will carry out its policy, with a clear indication of how the arrangements are communicated to the workforce.* | ▢ Yes▢ No  |
| 24. | The Tenderer confirms that they have arrangements for ensuring that their suppliers apply quality management measures that are appropriate to the work for which they are being engaged*If the Tenderer becomes the Preferred Bidder they must provide evidence that your organisation has arrangements for monitoring supplier’s quality management arrangements and ensuring that quality performance appropriate for the work to be undertaken is delivered throughout the whole of your organisations supply chain.* | ▢ Yes▢ No  |

## F – Modern Slavery

**Modern Slavery Act 2015:** **Requirements under Modern Slavery Act 2015[[2]](#footnote-2)**

|  |  |  |
| --- | --- | --- |
| 1. | Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")? | ▢ Yes▢ N/A  |
| 2. | If you have answered yes to question 1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015? | ▢ YesPlease provide relevant the url …▢ No Please provide an explanation  |

**Questionnaire – Template for Appendices**

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

Section 5 – Specification

Please see attached document in the name of ‘Appendix J – Scope of Works’.

Section 6 – Tender Award Questions

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

|  |
| --- |
| **6.1 Tender Award Questions** |
| **QUALITY QUESTIONS (30% OF TOTAL MARKS)** |
| **Project Delivery**  |
| 6.1.1 | The Tenderer shall provide a preliminary resourced programme which shall show as a minimum the periods required and the sequence in which the Tenderer proposes to construct the various parts of the *works*. Your programme must include an easily understood Gant chart and should clearly show that the Tenderer understands the phasing constraints within the Works Specification.Your programme should include the following information;* each of the activities included in the *activity schedule* prepared by the Tenderer, including any Key Dates as identified in the Contract Data part one
* mobilisation
* development of the Construction (Design and Management) Regulations 2015(CDM) Construction Phase Plan (by Principal Contractor)
* acceptance of the CDM Construction Phase Plan – a minimum of 10 working days is required
* development of quality plan
* acceptance of quality plan by *Project Manager –* a minimum of 10 working days is required.

In addition to the Gant chart, all Tenderers shall submit a description of how the programme is to be delivered, including details of innovation to improve the programme, whilst complying with the constraints included in the Works Information.***(max. 500 words) – 10% Weighting*** |
| **TENDERER RESPONSE** |
|  |
| **Method Statements**  |
| 6.1.2 | The Tenderer shall provide two preliminary method statements describing, as a minimum, the Tenderer's proposed methods, including temporary works and safety provision required for the *works*. A method statement is to be provided for the following activities: * Any excavation work.
* Heating installation.

Please also provide details within the relevant method statement(s) of the welfare facilities to be put in place before people start work on the project.***(max. 500 words) – 10% Weighting*** |
| **TENDERER RESPONSE** |
|  |
| The Tenderer must submit all Method Statements in their Tender response **(PASS/FAIL)** |  |
| **Quality Assurance Proposal** |
| 6.1.3 | The Tenderer shall provide an indicative quality plan. This should include general details that will form the basis for any contract quality plan and also at least one specific quality plan for representative types of work, as a minimum. The specific quality plans shall provide details of how the Tenderer will maintain quality of workmanship.Please also provide details of how your organisation intends to co-ordinate the work on this project with other Tenderers and illustrate how co-operation with others working on this project will be achieved.This should also include details of any quality monitoring systems that will be successfully applied to this particular project (e.g. Investors in People, BS EN ISO 9000 (2000) or other equivalents). If any of these works are to be subcontracted, you must also set out the process and procedure for how this will be managed.***(max. 500 words) – 10% Weighting*** |
| **TENDERER RESPONSE** |
|  |

Section 7 - Pricing and Payment schedule

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

Appendices

Appendix A - Certificate of Bona Fide Tender

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

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

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

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

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

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

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

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

Name:

Occupation/Profession:

For and on behalf of:

Appendix B - Freedom of Information Act 2000 (FOI) Exemption Form

**GUIDANCE**

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

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

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

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

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

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

## PROCEDURE

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

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

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

CONFIDENTIAL INFORMATION:

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

COMMERCIALLY SENSITIVE INFORMATION:

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

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

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

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

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

Appendix C - Form of Tender

To: Swindon Borough Council

Law and Democratic Services

Post Room

Civic Offices

Euclid Street

Swindon SN1 2JH

**Lydiard Park Museum Heating Solution**

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

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

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

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

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

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

Dated this       day       of       20

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

Name:       in the capacity of

duly authorised to sign tenders for and on behalf of:

Witness:

Address:

Occupation/Profession

Appendix D - Form of Parent Company Guarantee

**THIS AGREEMENT** is made on

**BETWEEN (GUARANTOR)**

(Address)

(the “Guarantor”) of the one part

and the

(Address)

 (the “*Employer”*) of the other part

**WHEREAS**

1. This Agreement is supplemental to a contract dated ………. (the “Contract”)

made between

(Address) (the “*Tenderer”*)

 of the one part and the *Employer* of the other part whereby the *Tenderer* agreed and undertook to (nature of works)

for the sum of

or other such sum as may be payable under the Contract.

2. In consideration of the payment by the *Employer* to the Guarantor of £1, receipt of which is hereby acknowledged, the Guarantor has agreed to guarantee the due performance of the Contract.

**NOW THE GUARANTOR HEREBY AGREES** with SBC as follows:

1. The Guarantor shall reimburse the *Employer* in respect of any properly mitigated losses, damages, costs and expenses that may become due or payable to the *Employer* directly arising from any failure to perform, default or breach of the *Tenderer* of its obligations under the Contract.
2. The obligations guaranteed by the Guarantor and the total liability of the Guarantor under this Guarantee shall not be greater than those of the *Tenderer* under the Contract.
3. No person who is not a party to this Guarantee shall have a right to enforce any term of the Guarantee by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999.
4. The Guarantee shall come into force on the day it is dated. This Guarantee shall continue in effect until all the obligations and liabilities of the *Tenderer* under or in connection with the Contract have been performed and complied with and notwithstanding any change in the shareholding by the Guarantor in the *Tenderer* but in any event this Guarantee shall expire in full not later than the Defects Date.
5. This Guarantee shall be governed by and be construed in accordance with English law.

IN WITNESS whereof this Guarantee has been executed as a deed and delivered by the parties on the date first written above.

EXECUTED as a DEED by

Guarantor

acting by two directors, or by a

director and the company secretary

Director

Director/Company Secretary

EXECUTED as a DEED by

SWINDON BOROUGH COUNCIL

by affixing the Common Seal in the presence of:

Appendix E - **Not used**

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Appendix F - SBC Health & Safety Policy HSP 020 Control of Contractors

Please see attached document in the name of ‘Appendix F - HSP 020 Control of Contractors’.

Appendix G - SBC Health & Safety HSG 020 Control of Contractors Procedures

Please see attached document in the name of ‘Appendix G - HSG 020 Control of Contractors Procedures’.

Appendix H – Pricing Schedule

Please see section 3.0 Mechanical/Electrical Services Pricing Breakdown of the attached document in the name of ‘Appendix J – Scope of Works’.

Appendix I – Pre-Construction Information

Please see attached document in the name of ‘Appendix I – Pre-Construction Information’.

Appendix J – Scope of Works

Please see attached document in the name of ‘Appendix J – Scope of Works’.

1. See EU definition of SME: <http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/> [↑](#footnote-ref-1)
2. [Procurement Policy Note 9/16 Modern Slavery Act 2015](https://www.gov.uk/government/collections/procurement-policy-notes) [↑](#footnote-ref-2)