

3. TENDER NOTICES

3.1 Sufficiency of Information

- 3.1.1 The Tenderer shall ensure that it is familiar with the content, extent and nature of its obligations as set out in the Tender Documents and shall in any event be deemed to have done so before submitting its Tender.
- 3.1.2 The Council relies on the responses from the Tenderer in order to evaluate their Tender. Consequently, Tenderers are solely responsible for providing the information they consider necessary in order that effective and fair evaluation can take place. Failure to supply adequate and accurate information as part of the Tender process before the tender submission deadline, is entirely the responsibility of the Tenderer.
- 3.1.3 The Tenderer will be deemed for all purposes connected with this procurement exercise to have carried out all research, investigations and enquiries which can reasonably be carried out and to have satisfied themselves as to the nature, extent, volume and character of the work and the extent of the labour and other materials and resources which may be required and any other matter which may affect its Tender.

3.2 Costs and Expenses

- 3.2.1 All costs, expenses and liabilities incurred by the Tenderer, sub-contractors or advisors in connection with preparation and submission of this tender will be borne by the Tenderer.
- 3.2.2 The Tenderer shall have no claim whatsoever against the Council in respect of such costs and in particular (but without limitation) the Council shall not make any payments to the successful Tenderer(s) or any other Tenderer save as expressly provided for in the Contract and (save to the extent set out in the Tender Documents) no compensation or remuneration shall otherwise be payable by the Council to the successful Tenderer(s) in respect of the Services by reason of the scope of the Services being different from that envisaged by the successful Tenderer(s) or otherwise. In addition; and without limitation, no compensation or remuneration shall be payable by the Council to any Tenderer or shall be payable to any Tenderer in the event that this tendering process shall be aborted.

Rejection of Tenders

3.3.1 Any tender submitted, in respect of which the Tenderer carries out or proposes to carry out any of the following, will be rejected:

- If it discloses to any third-party the prices shown in its Tender except where such disclosure is made in confidence in order to obtain quotations necessary for the purposes of financing or insurance; and/or
- Enters into any agreement with any other person that such other person shall refrain from submitting a Tender or shall limit or restrict the prices to be shown by any other Tenderer in its Tender; and/or
- Fixes prices in its Tender in accordance with any arrangement with any person or by reference to any other Tender; and/or
- Has committed an offence under section 188 of the Enterprise Act 2002; and/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 Tenderer or any other person's Tender any act or omission; and/or
- In connection with the award of the Contract commits an offence under the Bribery Act 2010 or gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972; and/or
- Has directly or indirectly canvassed any Member or official of the Council concerning award of the Contract or who has directly or indirectly obtained or attempted to obtain information from any such Member or official concerning any other Tenderer or Tender submitted by any other Tenderer; and/or
- Has done anything improper to influence the Council during the procurement period; and/or
- Has unreasonably qualified its Tender and or made any unauthorised amendments to the Tender Documents.
- Has failed to return the Tender fully completed and signed or any of the accompanying documents by the stated return date.

3.2.3 For the avoidance of doubt any rejection of a Tender pursuant to this paragraph shall be without prejudice to any other civil remedies available to the Council or any criminal liability which such conduct by a Tenderer may attract.

3.4 Confidentiality and Ownership of Documents

3.4.1 The Tender documents and all other documentation issued by the Council relating to the contract shall be treated by the Tenderer as confidential for use only in connection with the procurement process and any resulting contract. The said documentation shall not be disclosed in whole or in part to any third party without the prior written consent of the Council save where such information has been disclosed for the purposes of obtaining quotations from proposed insurers and/or sub-contractors and other information required to be submitted with the Final Tender.

3.4.2 The copyright in all the documents shall vest in the Council and all such documents and all copies thereof are and shall remain the property of the Council and must be returned to the Council upon demand.

3.5 Freedom of Information Act

- 3.5.1 The Council is a “public authority” for the purposes of the Freedom of Information Act 2000 (“FOIA”) and the Environmental Information Regulations 2004.
- 3.5.2 Accordingly, certain elements of the information submitted to the Council by the Tenderer may need to be disclosed in response to a request made by a third party under the Act. The Council may also decide to include certain information in the publication scheme which it is required to maintain under FOIA.
- 3.5.3 If you consider that the disclosure of any of the information included in your tender would prejudice your legitimate commercial interests, or would result in the disclosure of any of your trade secrets, please identify such information in a separate schedule and explain (in broad terms together with a time period after which the information could be disclosed) what harm may result from any disclosure by us pursuant to the FOIA. Tenderers must give a clear justification in writing why they prefer any information to be withheld.
- 3.5.4 The Council will consider all parts of the tender outside of the separate schedule to be appropriate to place in the public domain at the end of the tendering procedure.
- 3.5.5 Tenderers should be aware that, even where information is included in the separate schedule, the Council may still be required to disclose it under the FOIA if the application of the statutory tests following receipt of a request for information under the FOIA requires this, or if there is a successful appeal to the Information Commissioner.
- 3.5.6 The Council recognises legitimate commercial concerns of suppliers and when it considers it reasonably practicable to do so within the statutory timetable, will try to consult with the relevant Tenderer before disclosing information in the separate schedule pursuant to the FOIA. Nonetheless the final decision will rest with the Council.
- 3.5.7 Tenderers should also note that the receipt by the Council of any material marked ‘confidential’ or equivalent wording shall not be taken to mean that the Council accept any duty of confidence by virtue of marking.
- 3.5.8 If a request is received, the Council may also be required to disclose details of unsuccessful Tenders.

3.6 Tenderer’s Warranties

- 3.6.1 In submitting any Tender, the Tenderer warrants, represents and undertakes to the Council that:
- It has in all respects complied with these instructions.
 - All information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Tenderer or its staff in connection with or arising out of the Tender are true, complete and accurate in all respects.
 - It has carried out its own investigations and research, has satisfied itself in respect of all matters relating to the Tender documents and that it has not submitted the Tender and has not entered into the contract in reliance upon any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council.

- It has full power and authority to enter into the contract and carry out the Services and will if requested produce evidence of such to the Council.
- It is of sound financial standing and the Tenderer and its directors, officers and employees are not aware of any circumstances (other than such circumstances that may be disclosed in the audited accounts or other financial statements of the Tenderer) submitted to the Council which may adversely affect such financial standing in the future.
- It has, and has made arrangements to ensure that it will continue to have, sufficient working capital, skilled staff, equipment, machinery, premises and other resources available to carry out the Services in accordance with the Contract and for the Contract Period.

3.7 Contract Conditions

- 3.7.1 The successful tenderer shall be required to enter into a form of contract with the Council embodying all the conditions and terms contained in this Invitation to Tender, the tenderer's submission on the response document and any other relevant correspondence, together with other ancillary terms and conditions reasonably required by the Council and/or successful tenderer including provisions relating to the standard of performance and default.

3.8 Equal Opportunities and Diversity

- 3.8.1 As a public authority, the Council is legally obliged to promote equality of opportunity and eliminate unlawful discrimination, as set out in the Equality Act 2010, Equality Act 2006 and Human Rights Act. As such, Tenderers will be required to comply with current and future equalities legislation.

3.9 Business Continuity

- 3.9.1 Tenderers must have appropriate business continuity plans for maintaining supply of the full range of services required under the contract in the event of computer failure, loss of use of your premises or other emergency.
- 3.9.2 Business continuity plans must be tested at least annually. The Plan and evidence of its annual testing, should be made available at the request of the Council.

3.10 Social Value

- 3.10.1 The Council has a statutory duty under the Public Services (Social Value) Act 2012 to have regard to economic and environmental well-being in connection with public services contracts and for connected purposes within the communities of the Borough of Copeland.
- 3.10.2 The Council's duties under this Act when procuring services is to consider how the proposed procurement might improve the economic, social and environmental well-being of our area and how the Council might secure that improvement within the procurement process itself.
- 3.10.3 The legislation has the potential to improve the procurement process and ensure that values, beyond just financial costs, are included in the procuring decisions made by the Authority. It should enable suppliers, contractors, service providers, charities and voluntary groups to use their skills and expertise to deliver more public services.