

INVITATION TO TENDER

1 Instructions to Tenderers

1.1 Delivery and Submission of Tender:

- a) The complete INVITATION TO TENDER document must be returned in its present format and order. It is absolutely essential that all elements of the INVITATION TO TENDER which require completion are included in the tender submission, fully and properly completed in black ink or typing in English.
- b) All documents requiring signature must be signed by directors or other managers authorised for that purpose
- c) Submissions should be sent by registered post, recorded delivery or data post or delivered by hand, parcelled and sealed, have the enclosed pre-addressed label affixed and be delivered to:

(Linda Banfield, Senior Officer Licensing, Town Hall, St Marys, Isles of Scilly, TR21 0LW)

Note: The Council reserves the right to make changes, whatsoever, to any section of this Invitation to Tender at any time prior to the return date and such changes will be notified to all tenderers in writing.

- d) The package must not bear any name or mark indicating the name of the tenderer.
- e) It is the responsibility of the tenderer to ensure that any courier delivering a tender submission is instructed that no identifying name or mark of the tenderer must appear on the package or be disclosed to any staff or Member or the Council.
- f) Tenders must be returned no later than **12 noon on Friday 31st January 2020**
- g) Tenders shall not be sent nor will be accepted by fax or e-mail, any tender submission received after this time and date, or at a different address, will not be considered. The Council will not consider requests for any extension of the closing date and time specified above.
- h) No alterations to any tender submission will be allowed after its receipt by the Council other than any errors found by the Council (clarified with the relevant tenderer and confirmed in writing) or changes necessitated by agreed modifications (not the correction of omissions) to the method of working.

1.2 General Tender Requirements

- a) The proposal document submitted in response to this tender should include all the information which the tenderer considers necessary for an accurate and equitable evaluation of their proposal. The document should be self-

contained, following the structure and guidelines outlined in the invitation to Tender. The attention of the tenderer is specifically drawn to the following:-

- Reference should not be made to any previous information supplied.
- Tenderers are asked to provide all the information required, and must clearly and explicitly address each requirement, in the same order as the technical specification.
- Technical and sales literature may be incorporated, but only as an appendix to the proposal.

Tenders which are not submitted in the required format will not be considered.

No alteration shall be made to tender documents except where expressly allowed.

The Council expects to decide award of contract within 2 weeks of the closing date for submission of tenders.

Tenderers must obtain for themselves all information necessary for the preparation of their tender and satisfy themselves that the quality and standards specified by themselves or the Council are appropriate. Information supplied to tenderers by the Council's staff or contained in the Council's publications is supplied only for general guidance in the preparation of the tender. Tenderers must satisfy themselves as to the accuracy of any such information and no responsibility is accepted by the Council for any loss or damage of whatever kind and howsoever caused arising from the use by tenderers of such information.

Acceptance of the tender by the Council shall be in writing and communicated to the tenderer. Upon such acceptance, the Contract shall thereby be constituted and become binding on both parties. Tenderers must not assume the contract until they have received written notification that they have been awarded the contract and are required to commence.

1.3 Format of Tenders

To facilitate rapid and equitable evaluation of their tenders, tenderers are asked to present the information requested following the structure and sequence set out below, unless otherwise requested in the specification:

- **Management Summary:**
To summarise the proposal, highlighting the most important features; describing the approach and plans for satisfying the requirements of the Tender, and summarising the rental offered for the site(s) as specified.
- **Statement on Requirements:**
Listing, by reference to each section number in this Tender document, whether and how each of the requirements will be met.
- **The Organisation:**
A brief summary should be provided of the Company, (including details of parent or subsidiary companies) and details of reference sites, including contact names and addresses.
- **Statement of Facilities Offered But Not Requested:**

Tenderers are free to provide additional information and costs, relating to other associated services, facilities and features offered which are of relevance but not specified within the Invitation to Tender as they see fit, but it should be included as a separate section to that specifically requested.

1.4 Compliance with Requirements

Any recommendations, reservations, or other comments relating to the specification and functionality of the proposed contract should be clearly stated.

The terms of this Invitation to Tender are not intended to be restrictive. Although it is desirable that tenderers respond to the stated requirements, in all cases alternatives will be considered on their merits.

Tender submissions may include separate pricing for optional facilities which the tenderer judges to be of use in the context of the system requirement.

1.5 Tendering Costs

All costs associated with the preparation of the responses to this Invitation to Tender, shall be borne in full by the tenderers. The Council will not be liable, under any circumstance, for any costs or charges incurred by tenderers arising from any aspect of the tendering process, nor, for any costs or charges incurred by the successful tenderer relating to the preparation and completion of any formal contract documentation.

1.6 Confidentiality

All information supplied by the Council in connection with this Invitation to Tender shall be treated as confidential by the tenderers. However, such information may be disclosed, only as far as is necessary, for the purpose of obtaining quotations required for the preparation of the tender and for insurance purposes.

The information provided by tenderers in their submissions shall be treated as confidential by the Council, subject to the legal requirements i.e. Freedom of Information (FOI).

1.7 Review of Proposals

The criteria for selection of the successful tenderer(s) will be based upon the most economically advantageous offer having regard, to the following, unless otherwise stated in the specification (not necessarily in order of importance):

- Satisfying technical/operational requirements;
- Level of experience, insurance cover, resources and specialist managerial skills which would be assigned to any contract.
- Net overall cost;
- Scale of operation and financial stability;
- Range and quality of any additional services offered;
- Environmental Sustainability Issues.

1.8 Basis of Contract Award

The Council is not bound to accept the lowest, or indeed, any tender. Furthermore, the Council may award all or any part of the goods, work or services subject to this INVITATION TO TENDER to any one or more tenderers.

When submitting bids, tenderers shall be deemed to undertake with the Council, within two weeks from the provisional award date, to conduct and conclude any clarification of the contract negotiations with the Council relating to the terms and conditions. In the event that the successful tenderer does not comply with the undertaking, the Council reserves to itself the right to withdraw the provisional award by notice in writing and, therefore, not proceed to make the final award.

1.9 Company Profile

Tenderers should provide, in this section, relevant information about themselves that may not have been specifically requested elsewhere. This should include:

- Details of the company, including length of time established, ownership, whether part of a group, structure and history, number of staff employed, age, location and history.
- an indication of any accreditation governed by English Law and the parties shall be deemed to have submitted to the jurisdiction and procedures of the English Courts.

2. Terms and Conditions

2.1 Definitions

In these Conditions the following words will have the meanings assigned to them

- (a) "The Council" means the Council of the Isles of Scilly.
- (b) "The Contractor" means the other party to the contract.
- (c) "The Supervising Officer" shall mean the person nominated by the Council and made known to the Contractor.
- (d) "The Contract Period" shall mean the period that the contract is in existence as shown in the contract documents.
- (e) "The Contract Documents" shall mean all the documents attached to these General Conditions of Contract. Where there is a conflict between these General Conditions and the Contract Documents the Contract Documents will prevail.

2.2 Construction of Contract

Any contract resulting from this Invitation to Tender shall be governed by English Law and the parties shall be deemed to have submitted to the jurisdiction and procedures of the English Courts.

2.3 Corruption

If the Contractor or a person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) corruptly offers, gives or agrees to give, to any person, a gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the Contract, or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Council, or, if, in relation to any contract with Council, the Contractor, or any person employed by him or acting on their behalf, (whether with or without the knowledge of the Contractor) commits an offence under the Prevention of Corruption Acts 1889-1916, the Council shall be entitled to terminate the Contract, and to recover from the Contractor the amount of any loss resulting from such termination. For the avoidance of doubt, the Contractor acknowledges that the conduct referred to in this clause may occur before, on and after the date of this contract.

2.4 The Council's Responsibilities

Taking into consideration the terms listed in Clause 2.5 below:-

- a) The Council shall provide the Contractor with all information reasonably required to perform under the Contract.
- b) The Council shall permit the Contractor's staff to have access to the sites by prior agreement and at reasonable times to enable them to perform the Contract.
- c) The Council reserves the right to accompany the Contractor's staff in certain locations.

2.5 Identification and Restriction on Access

- a) The Contractor must note that all employees of the Council have the right to refuse admission to any site, building or premises to any person who is unable to establish their identity and justifiable cause for their presence.
- b) It is a Condition of Contract that, no storage is permitted on site or in any of the buildings belonging to the Council, without prior written permission from the nominated officer
- c) As defined in 2.1 Council will entertain no claims of any sort by a Contractor who, as a result of their failure to comply with this condition and with any special requirement arising there from which has been communicated to him, is not allowed to make any delivery, and under such circumstances the Council reserves the right to seek redress for their failure to effect delivery.

2.6 Assignment, Transfer, Subletting

The Contractor shall not transfer, assign or sublet the Contract or any part thereof, without the prior written consent of the Council and if such consent is given the Contractor shall remain liable for the performance of the Contract in its entirety as if such assignment or sublet had not taken place.

2.7 Price Variations

The charge quoted in the tender submission will be valid for the duration of the Contract.

2.8 Supply and Delivery

During the Contract Period, the Contractor shall use the site(s) designated in the contract only as permitted by the Council

2.9 Sale of Goods Act 1979

Nothing in the Contract Documents shall restrict the provisions of the Sale of Goods Act 1979.

2.10 Termination of Contract

Where any of the following conditions apply, the Council reserves the right to terminate the Contract by serving one month's written notice to the Contractor and shall be entitled to recover from the Contractor by way of liquidated damages any additional costs to the Council incurred as a result of engaging others to carry out the necessary work for the unexpired period of the contract.

If the Contractor is subject to receivership, liquidation or similar, or if they are subject to a change of ownership, or in the event that the Contractor is in breach of any provisions of this contract and does not remedy the same, within 14 days of notification of this breach by the Council.

2.11 Bankruptcy or Breach of Contract

If the Contractor shall commit any act of bankruptcy, or if (the Contractor being a Company) proceedings shall be commenced for the winding up of the Contractor, or if the Contractor shall make any arrangement or composition with their creditors or shall suffer any execution to be levied on their goods or shall fail to observe or perform any of the terms and conditions of the Contract or shall not, in the opinion of the Council, exercise such due diligence as will enable the Contract to be performed during the Contract Period, then and in any such case the Council may be noticed in writing under the hand of the Chief Legal Officer, given or addressed to the Contractor in the manner hereinafter provided, determine the Contract but without prejudice to the liabilities of the Contract already accrued thereunder.

2.12 Re-letting

Where the Contract is determined by the Council due to the Contractor's default, the Contractor shall make good to the Council and all other persons or bodies entitled thereto all loss, damages and expenses they or any of them may incur or be liable to in consequence of re-letting this contract for the period which this contract should have existed had the Contractor not defaulted.

2.13 Indemnity and Insurance

The Contractor shall indemnify and keep indemnified the Council against all losses and claims for injuries (including death, illness and disease) or damage to any person or property whatsoever which may arise out of or in consequence of the execution of this contract and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. Provided always that the Contractor's liability to indemnify the Council as aforesaid shall be

reduced proportionately to the extent that the act or neglect of the Council, their servants or agents may have been contributed to the said loss, injury or damage.

The indemnity given by the Contractor in this clause shall insure against any damage, loss or injury which may occur to any property or to any person by or arising out of the execution of the Contract or in carrying out of the Contract. Such insurance shall be affected with an insurer and in terms approved by the Council and for at least the sum of £5,000,000 any one claim, unlimited in any one period of insurance or for any higher amount specified by the Council.

The terms shall include a provision whereby in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Council, the insurer will indemnify the Council against such a claim and any costs, charges and expenses in respect thereof. The Contractor shall wherever required produce to the Council the policy or policies of insurance and receipts for payment of the current premiums.

2.14 Power of "Set-off"

The Council shall have power to set off any sums due from the Contractor to the Council against any sums due from the Council to the Contractor under the Contract.

2.15 Notices

Any documentation to be given to the Contractor pursuant to the Contract may, in the case of an individual or partnership, be left at or sent by prepaid post to their or their principal place of business in the United Kingdom, or if no place of business shall be known to the Council at the date of service, their or their last known private address or addresses in the United Kingdom, and in the case of a Company may be left at or sent by prepaid post to the Registered Office for the time being.

2.16 Data Protection

The Contractor shall at all times abide by the Data Protection Act 1998 and shall indemnify the Council against any loss claims and expenditure resulting from the Contractor's breach of this Clause.

2.17 Human Rights

- a) The Contractor shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights.
- b) The Contractor shall not do or permit or allow anything to be done which may result in the Council acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.
- c) The Contractor shall indemnify the Council against any loss claims and expenditure resulting from the Contractor's breach of Clauses 2.25 a) and b) above.

2.18 Equality & Diversity

a) The Contractor must include with their tender submission, a copy of their Equality Policy which relates to employment and service delivery and comply with the following legislation:-

- Equal Pay Act 1970 (Amended)
- Sex Discrimination Act 1975
- Race Relations Act 1976
- The Disability Discrimination Act 1995
- The Human Rights Act 1998
- Sex Discrimination (Gender Reassignment) Regulations 1999
- Race Relations Amendment Act 2000
- Employment Equality (religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- The Gender Recognition Act 2004
- The Civil Partnership Act 2004
- Employment Equality (Sex Discrimination) Regulations 2005
- Disability Discrimination Amendment Act 2005
- Employment Equality (Age) Regulations 2006
- Racial and Religious Hatred Act 2006
- Equality Act 2006

b) The Equality and Diversity policy should specifically seek to ensure that the Contractor will not treat one group of people less favourably than others because of their colour, race, ethnic or national origin, disability, gender, marital status, age, religion or belief, sexual orientation, membership of a Trade Union or political beliefs, in relation to decisions to recruit, train, promote or the treatment of employees, and also in relation to decisions in relation to the purchasing or service delivery activities of the Contractor.

c) The equality and diversity policy must, furthermore, ensure that the Contractor shall set out its policies on race, disability, gender, age, religion or belief, and sexual orientation:

- In instructions to those concerned with recruitment, training, promotion, employee management in relation to disciplinary actions or employee grievances;
- In documents available to employees, recognised trade unions or other representative groups of employees;
- In recruitment advertisements or other literature;
- As information provided for employees and customers in accessible formats for disabled people;

- In relation to instructions or procedures for employees in relation to service delivery, customer care and procurement of services and goods;
- d) The Contractor shall comply with their equality and diversity policy submitted to the Council as part of its tender submission and finally agreed by the Council.
 - e) In the event of any finding of unlawful discrimination being made against the Contractor in the last three years by any court or tribunal, or any adverse finding by any formal investigation by any Equalities Commission over the same period, the Contractor shall take appropriate steps, to the satisfaction of the Council, to prevent any further or repeated unlawful discrimination. The Contractor shall, on request, provide the Council with details and evidence of steps taken to remedy any unlawful discrimination or to prevent any further unlawful discrimination.
 - f) The Contractor shall, on request, provide the Council with details and evidence of steps taken to remedy or prevent any formal complaint being made against the Contractor under the Council's Complaints Policy/Procedures.
 - g) The Contract shall be performed by the Contractor in accordance with any statutes, directives, regulations, codes and industry practice which shall exist either at the commencement date of the Contract, or may come into force at any time thereafter until the expiry or termination of the Contract

2.19 Force Majeure

The Contractor's performance against the contract will be monitored against the specification. Failure on the part of the contractor to meet the specification requirements or to perform their obligations under the contract, except due to circumstances beyond their reasonable control, will constitute a material breach of the contract, and the Council shall be entitled to cancel the Contract.

2.20 Environmental Policies and Legislation

The Contractor shall comply with their statutory obligations under Environmental Legislation and for the purposes of this Contract specifically:

Provide sufficient bins in a prominent position for the disposal of rubbish associated with their business, whether generated by suppliers or customers.

Ensure that traffic is not obstructed in any way during the pursuance of their trade.

2.31 Freedom of Information Act 2000

Information in relation to this tender/contract may be made available on demand in accordance with the requirements of the Freedom of Information Act 2000. When required by the Council, the Contractor shall assist the Council at no additional charge in meeting its obligations under the Freedom of Information Act 2000 and the Data Protection Act 1998, or any statutory modification or re-enactment thereof or any related guidelines or codes of practice.

Tenderers should state if any of the information supplied by them is confidential or commercially sensitive or should not be disclosed in response to a request for information under the Act. Tenderers should state why they consider the information to be confidential or commercially sensitive.

This will not guarantee that the information will not be disclosed but will be examined in the light of the exemptions provided in the Act.

It is important to note that information may be commercially sensitive for a time (e.g. during a tender process) but afterwards it may not be. The timing of any request for information may be extremely important in determining whether or not information is exempt. However Tenderers should note that no information is likely to be regarded as exempt forever.

QUESTIONS FOR CONTRACTORS

Equality & Diversity

As an employer and service provider, the Council of the Isles of Scilly takes a proactive approach to its obligations arising from Equality and Diversity legislation and regulations, as previously listed under section 2.25 a).

The Council therefore considers it essential that all organisations wishing to provide services on land owned by the Council or on behalf of the Council are able to demonstrate that all reasonably practicable steps are taken to allow equal access and equal treatment in employment and service delivery for all.

Q1. Do you have an Equal Opportunities Policy/ Equality and Diversity Policy?

Yes No

If yes, please provide a copy of your policy.

If No, you will not be automatically excluded from our tender but we strongly advise that you develop a policy on equal opportunities.

Q2. Is it your policy as an employer to comply with your statutory obligations under the current legislation/ regulations relating to employment practice equal opportunities and accordingly, your practice not to treat one group less favourably than others because of their colour, race, nationality, ethnic origin, gender or transgender, disability, age, religion or belief, or sexual orientation in relation to decisions to recruit, train or promote employees?

Yes No

Q3. In the last 3 years has any court (whether civil or criminal) or tribunal found a case of unlawful discrimination or other breaches of employment legislation (including health and safety legislation) against your company or do you have such current outstanding claims against your company ?

Yes No

(Enforcement action will not disbar your Company from inclusion, but failure to disclose will).

If, Yes, please provide details of the nature of the claim(s) and of the action your Company has taken to prevent a re-occurrence.

Q4. In the last 3 years has your Company been the subject of a formal investigation by the Commission for Racial Equality, Disability Rights Commission or the Equal Opportunities Commission on grounds of alleged unlawful discrimination?

Yes No

(Investigation will not disbar your Company from inclusion, but failure to disclose will).

If Yes please provide details and the action taken to prevent a re-occurrence.

Q5. Does your Company observe, as far as possible, the Commission for Racial Equality's statutory Code of Practice for Employment as approved by Parliament in 1983 which gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment, including the steps that can be taken to encourage members of ethnic minority communities to apply for jobs or take up training opportunities?

Yes No

Q6. Does your Equal Opportunities Policy/ Equality and Diversity Policy?

a) Set out your approach to equality in recruitment, training or promotion of employees?

Yes No

b) Set out your approach to equality in the way you manage and treat your employees?

Yes No

c) Set out your policies or practice in relation to service delivery and how your Company performs its work?

Yes No

d) Is your policy available to all employees, recognised Trade Unions or other employee representative groups?

Yes No

e) If your policy relates to service delivery, is it available to any customer upon request, or reprinted in a document which is available to your customers?

Yes No

Competition Act 1988

(a) Are you currently or ever been under suspicion or investigation by the Office Fair Trading? If so, please provide full details.

Yes No

(b) Have you ever approached the Office of Fair Trading and made a leniency application? If so, please give full details.

Yes No

Public Contracts Regulations 2006

Does your [organisation] or any of your [organisation's] directors (of a company), partners (of a firm) or anyone in an equivalent position e.g. any other senior managers "who (have) powers of representation, decision or control" have any convictions relating to any of the offences listed under Regulation 23(1), of "the Public Contracts Regulations 2006"? If yes, please list each conviction with full details.

Yes No

3. SPECIAL CONDITIONS OF CONTRACT

The Council's Terms and Conditions shall apply, together with the following:-

- a) The contract period commences on () and will expire on (), with an option to extend for a further () years, to be reviewed annually subject to satisfactory performance of the contract].
- b) All prices quoted shall remain fixed for the duration of the initial contract.
- c) Tenderers must enclose all documentation as requested, indicating that they have done so on Special Conditions of Contract Agreement Form A.

3. SPECIAL CONDITIONS OF CONTACT AGREEMENT FORM A

Tender for ()

THE FOLLOWING DOCUMENTATION IS ENCLOSED:-

A brief summary should be provided of the Company, (include details of parent or subsidiary companies) [level of experience, scale of operation and financial stability] and details of reference sites including contact names and addresses.

Copies of insurance policies.

Copies of references from other Local Authorities if appropriate.

Two year's accounts

[Copies of any trade certificates/examinations held

Statement of Facilities Offered But Not Requested:-

Tenderers are free to provide additional information and costs, relating to other associated services, facilities and features offered which are of relevance but not specified within the Invitation to Tender as they see fit, but it should be included as a separate section to that specifically requested.

Signed:

Tel:

Name:

Designation:

Company:

Date:

4. Specification

- a) The Council offers a designated position and the side/rear of the Town Hall for mobile hot food sales.
- b) The site will consist of a marked area approximately 25 feet long by 8 feet wide.
- c) The site will be provided with electricity to the Level (.....)
- d) Costs for the provision of power will be invoiced by the Council and will be payable within 28 days by the contractor.
- e) The site will be vacated when sales are not taking place.
- f) No deliveries may be made to any building owned or operated by the Council of the Isles of Scilly without prior written permission from the nominated officer.
- g) No storage is permitted on site or in any of the buildings belonging to the Council, without prior written permission from the nominated officer
- h) Prominently labelled rubbish bins shall be provided in the car park, at the Contractors expense, for the disposal of rubbish from clients as well as disposal of rubbish from the Contractor.
- i) Normal collection rates for the disposal of rubbish for a trade contractor will be charged by the Council on an ongoing basis.

5 **Tender for:**

COLLUSIVE TENDERING CERTIFICATE OF BONA FIDES

I/ We certify that this is a bona fide tender, and that I/ We have not fixed or adjusted the prices in the submission by or in accordance with any agreement with any other person. I/ We also certify that I/We have not done and I/We will not do at any time before the hour and date specified for the return of this submission, any of the following procedure acts:-

- a) offer or give or agree to give any officer of the Council any gift or consideration of any kind as an inducement or bribe to influence its decision in the tendering procedures;
- b) communicate to a person other than the person calling for submissions, the amount or approximate amount of the proposed submission;
- c) enter into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any submission to be made;
- d) offer or pay or give 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 having caused to be done in relation to any other submission or proposed submission in response to the invitation relating to the above requirements, any act or thing of the sort described above.

In this Certificate the word “person” includes any persons and anybody or association, corporate and unincorporated and, “any agreement or arrangement” includes any such transactions formal or informal and whether legally binding or not. For the avoidance of doubt, the acts covered by this Certificate include the acts of all persons employed by the tenderer, or who are purporting to act on the tenderer’s behalf, whether the tenderer is aware of their acts or not.

**COLLUSIVE TENDERING CERTIFICATE OF BONA FIDES
(CONTINUED)**

TENDER FOR ()

Signature : _____

Name : _____

Designation : _____

On behalf of : _____

Signature : _____

Name : _____

Designation : _____

On behalf of : _____

Date : _____

6 ENVIRONMENTAL IMPACT STATEMENT/SCHEMES

TENDER FOR ()

The Council has a policy of reviewing environmental issues on an on-going basis.

Please state below any current environmental issues which affect the products / services you are offering and also any initiatives your company is undertaking to resolve them. Please continue on a separate sheet if necessary. You should also include a copy of your environmental policy statement.

Signed Print Name

Designation

Date