

**THE LONDON BOROUGH OF
GREENWICH**

SERVICES CONTRACTS ITT

INSTRUCTIONS TO BIDDERS

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1. **INTRODUCTION**

- 1.1. All words and expressions used in these Instructions to Bidders with an initial capital letter shall have the meanings set out in the Conditions of Contract.
- 1.2. The Council on invites Bids for a contractor to [](the Services).
- 1.3. The successful Bidder will be required for to provide the Services in consideration for the prices stated in its Form of Bid.
- 1.4. The Council is procuring this contract in accordance with the **[restricted procedure]** in accordance with the Public Contracts Regulations 2006 (the Regulations) which implemented EU Directive 2004/18/EC into English Law.
- 1.5. The Contract Period is initially for a period of **[insert figure]** years although the Council reserves the right to extend the Contract on the same terms for a further period or periods of up to **[insert figure]** months making a total possible Contract Period of **[insert figure]** years.
- 1.6. These Instructions to Bidders describe the Council's requirements for the Service, the bidding process and the commercial terms on which the Council proposes to contract in due course with the successful Bidder.
- 1.7. These Instructions to Bidders also set out details for the Bidder on the form and content of Bids which are invited and the timetable and other administrative arrangements for the Biding process.
- 1.8. Bidders are (in accordance with the provisions set out below) invited to submit Bids by no later than noon on **[insert date]**.
- 1.9. Any figures provided in the Bidding Documents as to the number of [] under the proposed contract are provided as a guide only and the Council does not warrant or represent the number or volume of **[orders]** which may be placed under the proposed contract.

2. **BIDING TIMETABLE**

- 2.1. To ensure that the evaluation and award process is completed and the Contract executed prior to the start of the contract the Council has set the following Biding timetable. The Council reserves the right to amend the timetable.

ITT issued to Bidders	[]
Final date for receipt of Bidders' questions	[]
Final date for receipt of Bids	[]
First reading of Bids	[]

Clarifications including meetings if required	[]
Completion of evaluation of Bids	[]
Reports to cabinet committees, chief officers	[]
Contract Award	On or about []
Lead in period (if required)	[]
Proposed Contract Start Date	On or about []

3. **CONSIDERATIONS PRIOR TO SUBMISSION OF BID**

3.1. **Sufficiency Of Information**

3.1.1. [The Bidder shall be deemed to have inspected the Premises and Equipment to be provided by the Council and to tender on the basis that their condition is as seen.]

3.1.2. The Bidder shall ensure that it is familiar with the content, the extent and nature of its obligations as outlined in the Bid Documents and shall in any event be deemed to have done so before submitting its Bid.

3.1.3. The Bidder will be deemed for all purposes connected with the Bid Documents to have carried out all research, investigations and enquiries which can reasonably be carried out and to have satisfied itself as to the nature, extent, volume and character of the Services (in the context of and as it is described in the Council's requirements) and the extent of the personnel, equipment, assets, plant and machinery which may be required and any other matter which may affect its Bid.

3.2. **Costs And Expenses**

3.2.1. All costs, expenses and liabilities incurred by the Bidder in connection with preparation and submission of the Bid will be borne by the Bidder.

3.2.2. The Bidder 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 Bidder or any other Bidder save as expressly provided for in the resulting contract and (save to the extent set out in the Bid Documents) no compensation or remuneration shall otherwise be payable by the Council to the successful Bidder in respect of the Services by reason of the scope of the Services being different from that envisaged by the successful Bidder or otherwise.

3.3. **Further Information And Enquiries**

- 3.3.1. At any time before [] the Bidder may write to the Council requesting any information or raising any query in connection with the Bid Documents, the procedure leading to award of Contract or any other matter relating to the Services. Any such communication must be in writing clearly marked for the attention of Peter Norman, by post to Corporate Procurement, London Borough of Greenwich, 45-53 Wellington Street, Woolwich, London SE18 6RA or by e-mail to peter.norman@greenwich.gov.uk
- 3.3.2. Questions will be answered in a single letter which will be circulated to all Bidders.

4. **BID DOCUMENTS**

- 4.1. the Bid Documents comprise:
 - 4.1.1. the Instructions to Bidders;
 - 4.1.2. the Conditions of Contract together with the Response Document. The Response Document, for convenience only, is bound as a separate document and comprises:
 - 4.1.2.1. the unconditional and irrevocable offer to the Council;
 - 4.1.2.2. the Pricing Document;
 - 4.1.2.3. parent company guarantee; and
 - 4.1.2.4. compliance checklist.
 - 4.1.3. The Response Document shall be regarded as an integral part of the Instructions to Bidders

4.2. **Bid Certificate**

- 4.2.1. The Bid Certificate must be signed:
- 4.2.2. Where the Bidder is a partnership, by two duly authorised partners;
- 4.2.3. Where the Bidder is a company, by two directors or by a director and the secretary of the company, such persons being duly authorised for the purpose;
- 4.2.4. Where the Bidder is an individual by that individual.
- 4.2.5. The Bidder shall produce forthwith upon request by the Council documentary evidence of any authorisation referred to in paragraph 4.2.1 and 4.2.2 above.

4.3. **Pricing Document**

- 4.3.1. The Bidder shall complete all sections of the Pricing Document.
- 4.3.2. All prices and rates requested in the Pricing Document shall be inclusive of all disbursements and any other costs or expenses necessary for the proper

- performance of the Services and exclusive of Value Added Tax. The Council shall not pay any sum or sums other than those set out in the Pricing Document.
- 4.3.3. Bidders may complete the Pricing Document on the basis that TUPE either applies or does not apply. In accordance with paragraph 15 below the Bidder must state the basis upon which their tender is submitted.
- 4.3.4. **[include any other instructions as to how Bidders are to complete the Pricing Document]**
- 4.4. **Parent Company Guarantee**
- 4.4.1. If the Bidder is a subsidiary company the Parent Guarantee Undertaking must be duly executed by the Bidder's ultimate holding company.
- 4.5. **Accompanying Documents**
- 4.5.1. By the deadline for receipt of Bids identified in paragraph 1.6 above the Bidder shall submit with the completed Response Document together with the following documents in support of its Bid details in writing of the Bidder's proposed arrangements for performing the Services including but not limited to:
- 4.5.1.1. details of the Bidder's experience , expertise and proposals for carrying out the Services throughout the contract period;
 - 4.5.1.2. the resources which the Bidder would be willing to commit prior to the start of the contract and so ensure that there is no discernible break in the Services between the present and the new operation;
 - 4.5.1.3. details of the Bidder's information systems including proposals for the monitoring reports required by the Specification;
 - 4.5.1.4. the Bidder's proposals for ensuring effective quality management of the Services;
 - 4.5.1.5. the Bidder's proposals for the number, qualification, experience, training and supervision of personnel to be engaged in relation to the performance of the Services;
 - 4.5.1.6. an outline of the management reporting structure of the Bidder and its suitability to the performance of the Services;
 - 4.5.1.7. the Bidder's proposals for the establishment and maintenance of regular contact with relevant officers;
 - 4.5.1.8. details of the Bidder's existing insurance policies (if any) and evidence that they will take out insurance in accordance with the Conditions of Contract;
 - 4.5.1.9. details of the Bidder's proposals for sub-contracting (if any) in accordance with paragraph 14 below;

- 4.5.1.10. details of the Bidder's organisational and management policies (including but not limited to those on recruitment, staff discipline and grievances and equal opportunities);
 - 4.5.1.11. details of the Bidder's business and proposed base for the provision of the Services;
 - 4.5.1.12. details of the Bidder's proposals for resolving any conflicts of interest which may arise from time to time;
 - 4.5.1.13. details of the Bidder's proposals for self monitoring of the performance of the Services and any appropriate monitoring arrangements;
 - 4.5.1.14. details of the Bidder's health and safety record together with full details of previous convictions, current prosecutions or complaints against the Bidder in relation to health and safety;
 - 4.5.1.15. any information requested by the Pricing Document; and
 - 4.5.1.16. Any additional information which the Bidder feels may support its Bid.
- 4.5.2. The Bidder shall include in its Bid details of all information or assumptions which it has taken into account in relation to the submission of its Bid.
- 4.5.3. In addition, the Bidder shall give such further or other verbal or written details and information as may reasonably be requested by the Council.

5. **TERMS AND CONDITIONS**

- 5.1. The principal Conditions of Contract are as follows:
- 5.1.1. The Contract Period will be for **[insert number]** years from the Commencement Date subject to earlier termination in whole or in part (howsoever occurring) with an option for the Council to extend the Contract for a period or periods of up to a further **[insert number]** months.
 - 5.1.2. The Contractor shall provide the Service to the Council during the Contract Period to the Contract Standard in consideration of the payment of the Contract Price.
 - 5.1.3. The Contractor will be required to have in place and operate approved quality systems.
 - 5.1.4. The Council in certain circumstances may vary the Contract. Such a variation may have an impact on the Contract Price.
 - 5.1.5. The Contractor shall maintain specified minimum levels of insurance.
 - 5.1.6. The Council may terminate the Contract on the occurrence of defined events of default by the Contractor.

- 5.1.7. The Council will examine particularly critically any matters which were not raised on submission of Bids but which are subsequently identified by the Bidder. The Council reserves the right to reject a Bid from a Bidder who raises during the evaluation and negotiation period proposed amendments which were not identified as part of its Bid.
- 5.2. The Council proposes to conclude the Contract substantially on the terms set out in the Conditions of Contract although may in its absolute discretion entertain proposed amendments provided such amendments are set out in full by the Bidder when its Bid is submitted.

6. **RETURN OF BIDS**

- 6.1. The Response Document must be duly completed and returned with all accompanying documentation identified in paragraph 4 above in the Bid envelope supplied and addressed to Peter Norman, Corporate Procurement, London Borough of Greenwich, 45-53 Wellington Street, Woolwich, London SE18 6RA by no later than noon on **[insert date.]**
- 6.2. [Bidders shall return 2 paper copies of the Response Document together with 1 copy on CD ROM which shall be in a read only format.]
- 6.3. It is the Bidder's sole responsibility to obtain a receipt bearing the date, time and Bid envelope reference for any Bid delivered by hand.
- 6.4. Any Bid or any accompanying documentation submitted after such date may not be considered.
- 6.5. The Bid must be sealed in the envelope provided by the Council. Any such envelope shall not bear any name or mark by which the Bidder can be identified including any name or mark appearing on the envelope by virtue of the method of delivery, such as Post Office Recorded Delivery or courier.

7. **REJECTION OF BIDS**

- 7.1. The Council reserves the right to reject any Bid submitted by a Bidder in respect of which the Bidder:-
- 7.1.1. Discloses to any third party prices shown in its Bid except where such disclosure is made in confidence in order to obtain quotations necessary for the purposes of financing or insurance and/or
- 7.1.2. Enters into any agreement with any other person that such other person shall refrain from submitting a Bid or shall limit or restrict the prices to be shown by any other Bidder in its Bid and/or
- 7.1.3. Fixes prices in its Bid in accordance with any arrangement with any person or by reference to any other Bid and/or

- 7.1.4. 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 Bidder or any other person's proposed Bid any act or omission and/or
- 7.1.5. In connection with the award of the Contract commits an offence under the Prevention of Corruption Acts 1889 - 1916 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
- 7.1.6. 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 Bidder or Bid submitted by any other Bidder and/or
- 7.1.7. Has done anything improper to influence the Council during the Bid period and/or
- 7.1.8. Has put any name or mark on the envelope in which the Bid is contained identifying the Bidder and/or
- 7.1.9. Has failed to use the English language and/or
- 7.1.10. Has failed to return the Response Document fully completed and signed or any of the accompanying documents identified in paragraph 6 above.
- 7.2. The Council shall also be entitled to reject a Bid:-
 - 7.2.1. From a Bidder if another Bidder has to the knowledge of the first named Bidder named that first named Bidder as a subcontractor.
 - 7.2.2. From a Bidder if that Bidder has named as subcontractor another person who to the knowledge of the first named Bidder has submitted or intends to submit a Bid.
 - 7.2.3. From a group company of another Bidder.
 - 7.2.4. From a person who is a member of a partnership or consortium which has submitted or intends to submit a Bid; or;
 - 7.2.5. From a Bidder where the Council believes that there has been any form of co-operation or collusion with another Bidder.
 - 7.2.6. For the avoidance of doubt any non-acceptance or rejection in accordance with paragraphs 7.1 and 7.2 above shall be without prejudice to any other civil remedies available to the Council or any criminal liability which such conduct by a Bidder may attract.

8. **NON CONSIDERATION OF BID**

- 8.1. The Council may in its absolute discretion refrain from considering any Bid if:
 - 8.1.1. It is not in accordance with these Instructions to Bidders and all other instructions issued by the Council during the Bid period.

8.1.2. The Bidder does not tender for the provision of the whole of the Service.

9. **BID EVALUATION AND AWARD PROCEDURE**

9.1. The Council intends to award the Contract on the basis of the Bid which represents the most economically advantageous offer to the Council.

9.2. In evaluating Bids the Council shall have regard to the following factors:

Criteria	Weightings/Range of Weightings
	[]
	[]
	[]
	[]

9.3. The Council shall under no circumstances be bound to award the Contract to the Bidder with the lowest price structure.

9.4. This ITT does not constitute an offer and the Council is not committed to any course of action as a result of issuing this ITT. In particular Bidders should note that the Council reserves the right, in its absolute discretion:-

9.4.1. to award the Contract to any Bidder;

9.4.2. to award a Bidder either the whole of the Contract or part thereof;

9.4.3. not to award the Contract to any of the Bidders or at all;

9.4.4. to divide the Contract into parts and to award such parts to one or more Bidder in any combination the Council may decide;

9.5. The Council also reserves the right to hold meetings with Bidders concerning any aspects arising from the Bid documents after the submission of the Bids. Such meetings may include (but shall not be limited to) issues relating to quality and performance.

9.5.1. The Council may refrain from considering any Bid if it is not in accordance with the requirements and conditions set out in these Instructions to Bidders or the provisions of this ITT as a whole.

9.5.2. The Council reserves the right with or without notice to amend or add to this ITT in any way and to extend or vary the project timetable in relation to any or all of its stages.

10. **ACCEPTANCE OF BID**

- 10.1. Any acceptance by the Council of a Bid shall be notified to the successful Bidder in writing by the Council's solicitors. The effect of the Bid and the Acceptance Letter shall be to form a binding contract between the successful Bidder and the Council which Contract shall commence on the date of the Acceptance Letter.
- 10.2. The successful Bidder will be required to commence the provision of the Service on **[insert date]** (or such other date to be advised) being the Commencement Date.

11. **THE CONTRACT**

- 11.1. The successful Bidder will be required to execute a formal Contract which embodies the terms of all the Bid Documents. The Contract will be executed as a deed as directed by the Head of Legal Services for the Council.
- 11.2. The successful Bidder will be required to execute the Contract promptly and shall not commence the provision of the Services nor be entitled to any remuneration whatsoever until it has done so.
- 11.3. In accordance with Condition 8.2 of the Conditions of Contract the successful Bidder shall be liable for any loss or damage incurred by the Council if the Service cannot commence on the Commencement Date as a result of the successful Bidder's failure to execute the Contract properly.

12. **CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTS**

- 12.1. The Bid Documents and all other documentation issued by the Council relating to the Contract shall be treated by the Bidder as private and confidential for use only in connection with the Bid and any resulting contract and 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 Bid.
- 12.2. The Bid Documents 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.

13. **THE FREEDOM OF INFORMATION ACT 2000**

- 13.1. The Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") make provision for the disclosure of information held by public authorities or by persons providing services for them. The legislation provides that anyone can ask the Council for any information and, unless an exemption applies, the information must be supplied. This means that all the information which a Bidder provides to the Council under this tendering process will be subject to the FOIA/EIR disclosure provisions.

- 13.2. If a Bidder believes that any of the information contained in its Bid, or otherwise supplied to the Council as part of this tendering process, is either confidential, commercially sensitive or constitutes a trade secret it should make a statement to that effect in a schedule to its Bid (marked "FOIA/EIR Schedule"), with a brief description of each item of information affected and the reason why it has included that information in the Schedule. It is the Bidder's responsibility to keep this Schedule updated as the Bid Process progresses, for example where further information is elicited from Bidders through clarification questions.
- 13.3. Bidders should appreciate that the simple marking of information with words such as "commercial in confidence" only has the effect of identifying to the Council that an exemption could potentially apply under the FOIA/EIR. The issue will not simply be whether information is marked as confidential but whether, for example, a duty of confidence in fact applies in law to that piece of information or whether release "would be likely to prejudice" your company's interests.
- 13.4. Bidders are advised to read the Code of Practice issued by the Department for Constitutional Affairs under Section 45 of the FOIA, which gives guidance to public authorities on the handling of requests for information the disclosure of which may affect the interests of third parties. The code can be accessed on the internet at:
<http://www.justice.gov.uk>
- 13.5. If the Council receives a request under the FOIA/EIR which involves information listed in the FOIA/EIR Schedule in your Bid, then the Council will use its reasonable endeavours to consult you prior to making a final determination as to how to deal with the request. However, the Council has a very limited time in which to decide whether or not information can be released, so it is imperative that you ensure that the Council has up-to-date contact details and that the contact is able to respond to a request quickly.
- 13.6. Bidders should bear in mind that the listing by them of information in an FOIA/EIR Schedule cannot provide an automatic guarantee that the Council will not disclose such information (or the fact that it holds it) since the Council cannot fetter the application of the FOIA/EIR.

14. **SUB-CONTRACTING**

- 14.1. Bidders must be able to satisfy the Council as to their ability to perform the Services in accordance with the Contract. Nevertheless the Council will consider proposals from the Bidder for part of the Services to be performed by sub-contractors provided that:
- 14.2. The proposed part of the Services and the sub-contractors are approved by the Council which may include the prior approval of the terms of the sub-contractor's appointment or contractual arrangements to be entered into between the Bidder and any such sub-contractor.

- 14.3. Upon request by the Council, the Bidder procures a collateral warranty (in a form approved by the Council) from the proposed sub-contractors to the Council in respect of the performance of the relevant part of the Services.
- 14.4. Bidders should also refer to the Conditions of Contract as they relate to sub-contracting.
15. **TUPE**
- 15.1. Bidders shall seek independent professional advice on the effect of TUPE (including any subsequent amendments to TUPE) on their Bids and the Contract. The Council gives no assurances, warranties or assumptions as to the effect of TUPE on the Contract or otherwise.
- 15.2. The successful Bidder will be deemed to have satisfied itself as to the applicability of TUPE and shall indemnify the Council for any claims made by an aggrieved employee in connection with TUPE or otherwise and shall not itself bring proceedings against the Council in connection with TUPE.
- 15.3. The Council will on request supply Bidders with information relating to the existing workforce from the existing contractor performing the Service. This information is not guaranteed accurate or complete by the Council. Bidders shall not at any time make use for their own purposes or disclose to any person (except as may be required by law) any such information provided to them (or communicated orally) by the Council and such information shall be deemed to be confidential.
16. **CODE OF PRACTICE ON WORKFORCE MATTERS IN LOCAL AUTHORITY SERVICE CONTRACTS**
- 16.1. Bidders may be aware that the Office of the Deputy Prime Minister published a Circular in March 2003 which, amongst other things, provided that Best Value Authorities (of which the Council is one) should follow a Code of Practice in relation to staffing matters in service contracts. The Code of Practice on Workforce Matters in Local Authority Service Contracts is set out in two Annexes to that Circular (annex C and annex D).
- 16.2. Bidders will see that the Code has two aspects. The most important (but not only) provisions are described below:
- 16.2.1. **Applicability of TUPE**
- 16.2.1.1. The first is that TUPE shall be treated as applying in so far as there are any relevant staff even where there is doubt as to whether in fact an economic undertaking is transferring. Although Bidders are asked as per paragraph 15 above as to their views as to the applicability of TUPE, if there is any doubt that TUPE might apply, the Council may be bound to apply the Code. However in reaching a view, the Council would of course take Bidder's views into account. The Council does not expect in this instance for this to be contentious.

16.2.1.2. The identity of the actual staff to be transferred is a matter for Bidders to take a view on and the provisions of paragraph 15 of these Instructions to Bidders will apply. For the avoidance of doubt the Council does not warrant the accuracy or completeness of the workforce information but in so far as the same is within its reasonable control and the issue is relevant the Council will assist in arranging and facilitating meetings with the outgoing contractor in order to enable the incoming contractor to take its own view.

16.2.2. **Two Tier Workforce**

16.2.2.1. A number of staff on the workforce information list are former local government employees. This means that new joiners to the service should, if the Code is included as a contractual requirement, be employed on terms no less favourable to the former Council employee terms. New joiners should also benefit from a comparable pension.

16.2.3. **Bidders' views sought**

16.2.3.1. This Code is new and its full effect has not yet become fully apparent. Accordingly at this stage Bidders are asked for their specific comments in relation to the Code including a specific commentary to include:

- The extent to which the Bidder believes TUPE applies and if not why not;
- Generally what are the Bidder's general intentions in relation to taking on staff;
- Whether there are any financial or practical implications for the Bidder in complying with the Code;
- What pension arrangements Bidders will put into place and are these broadly comparable with the local government superannuation scheme (if it becomes relevant you will be asked in due course to provide an actuary's or government actuary's department certificate to that effect)? and
- A general commentary as to the effect of the Code on the Bidder and its service.

17. **BIDDER'S WARRANTIES**

17.1. In submitting a Bid the Bidder warrants, represents and undertakes to the Council that:

17.1.1. It has not done any of the acts or matters referred to in paragraph 7 above and has complied in all respects with these Conditions of Bidding.

17.1.2. All information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Bidder or its staff in connection with or arising out of the Bid are true, complete and accurate in all respects.

- 17.1.3. It has carried out its own investigations and research, has satisfied itself in respect of all matters relating to the Bid Documents and that it has not submitted the Bid 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.
- 17.1.4. 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.
- 17.1.5. It is of sound financial standing and the Bidder 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 Bidder) submitted to the Council which may adversely affect such financial standing in the future.
- 17.1.6. It has, and has made arrangements to ensure that it will continue to have, sufficient working capital, skilled staff, equipment, machinery and other resources available to carry out the Services in accordance with the contract and for the contract period.

18. **ANNOUNCEMENTS**

- 18.1. The Council reserves the right to publish the amounts of Bids and the name of the successful Bidder and to publish such other information regarding Bids as it may be required to publish in accordance with EU or other procurement rules with which the Council must comply.