



**PENZANCE
COUNCIL**

PENLEE HOUSE
— ⊕ —
Gallery & Museum

CONCESSION

Coach House Cafe Tender, Penlee House Gallery and Museum

PART A: Invitation to Tender

Background, Instructions and Conditions of Tender

Suppliers should read this document first.

If you would like this information in another format please email

info@penzance-tc.gov.uk

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SECTION 1 – ABOUT THE COUNCIL

Background

- 1.1.1 Penzance Council (the Council) is the administrative authority for the most westerly large town in England and is the gateway to the beautiful Penwith Peninsula. Sited within the shelter of Mount's Bay, Penzance is an historic port and a centre of tourism, as well as a busy town.
- 1.1.2 Penzance also includes within its civic boundaries the working port of Newlyn and the picturesque villages of Mousehole, Gulval and Paul, as well as the residential village of Heamoor. Specific details around Penlee House Gallery & Museum can be found at <https://penleehouse.org.uk/> alongside the accompanying Specification (Schedule 1) See also: <https://penzance-tc.gov.uk>
- 1.1.3 The Coach House café project is part funded by the UK Government's Town Deal programme in partnership with Penzance Town Deal and Cornwall Council.

Introduction

- 1.1 This Procurement is being conducted as a below threshold concessions Tender (Open Procedure). This document describes how the Procurement will be conducted, including details of the associated Procurement timetable the process and award criteria and how to respond to this opportunity. Suppliers are strongly encouraged to read this document before preparing their submission.
- 1.2 Please read this document carefully, as failure to comply with this document may result in exclusion from the Procurement and / or the rejection of any submission.
- 1.3 This document should be read in conjunction with any relevant Notice and any other Procurement documents which have been made available at this stage of the Procurement.
- 1.4 The Council reserves the right to issue updated versions of this document to Suppliers as and when the need arises, together with any changes to the Procurement or any other new information.
- 1.5 Please read and ensure compliance with the Procurement terms and conditions contained in Section 4 and 5.
- 1.6 Common terms and expressions shall have the meanings ascribed to them in the glossary of terms Section 6.
- 1.7 All references to a 'section' are to a section in the Act unless otherwise stated.
- 1.8 All references to a 'paragraph', 'appendix' or 'annex' are to a paragraph, appendix or annex of this document unless otherwise stated.
- 1.9 All references to dates / times shall be in accordance with UK time (i.e. GMT/BST).
- 1.10 Should any additions or deletions or the provision of supplementary documentation be considered necessary prior to the date for submission of the Tender, these will be issued by the Council to Suppliers and will be deemed to then form part of the Invitation to Tender (ITT).

SECTION 2 – OVERVIEW OF THE COUNCIL’S REQUIREMENTS

Key Information

- 2.1 The Council is seeking to appoint a Concessionaire to run a café facility at the Penlee House Gallery and Museum.
- 2.2 The appointed Supplier (aka the Concessionaire) would pay a commission-based licence fee, based on percentage gross income with minimum £20,000 annual payment to operate the Café.
- 2.3 The value of the fee will be determined through this tender exercise. A proposed commission structure is set out in the Headline Terms document.
- 2.4 Full details around the Tender can be found in the accompanying documentation, in particular:
 - 2.2.1 Part B – Response Document (Tender)
 - 2.2.2 Schedule 1 Specification
 - 2.2.3 Schedule 2 Commercial Model
 - 2.2.4 Café Operator headline terms
 - 2.2.5 Operator Agreement_Final Draft
 - 2.2.6 Drawing – MJ-027-03-Proposed Plan and Elevation
 - 2.2.7 Drawing – 6129-01-Kitchen area
 - 2.2.8 Kitchen Equipment List
 - 2.2.9 Clarification log
- 2.5 This tender is an opportunity to submit a commission-based tender for the specified services.

Budget and Contract details

- 2.6 Council would be seeking a minimum Concession Fee of £20,000 (exc. VAT). Average annual income to the Council over the last three years has been £52,625 (exc. VAT). During the last three years of the current café turnover has been in the region of £360,000 to £480,000 (exc. VAT).
- 2.7 The Terms and Conditions under which any Contract would be formed are included in Draft Operator Agreement.
- 2.8 The Contract period is a 9-year Concession Agreement with the right for the Council to terminate the Agreement at the end of years 1, 3 and 6.

Insurance Levels

- 2.9 The Council’s minimum requirements for insurance (Minimum Cover for each and every incident) are:
 - 2.9.1 Employer’s Liability (minimum statutory limit as laid down by legislation) = £5m.
 - 2.9.2 Public Liability Insurance = £5m

Transfer of Undertakings (Protection of Employment) Regs 2006 (TUPE)

- 2.10 It is the responsibility of the Supplier to consider whether or not TUPE is likely to apply in the particular circumstances of this tender exercise and to act accordingly. Suppliers should therefore take their own advice regarding the likelihood of TUPE applying.
- 2.11 In this case the Council believes that TUPE may apply to this tender. Current cafe roles include manager, cook/baker, kitchen assistant, front of house and barista. All roles except cook/baker work across all areas of the cafe provision.
- 2.12 For more information please use the websites listed below: www.gov.uk/transfers-takeovers / <https://www.legislation.gov.uk/uksi/2006/246/contents/made>

SECTION 3 - THE PROCUREMENT PROCESS

Procurement Procedure

Procurement Timetable

- 3.1 The Procurement Timetable for the Procurement is set out below. Failure to meet these deadlines may result in a Supplier's submission not being considered unless there are exceptional mitigating circumstances such as a technical failure.
- 3.2 Please note the Council reserves the right, in its absolute discretion, to amend the Procurement Timetable or extend any time period in connection with the Procurement. Any changes to the Timetable will be notified to the Suppliers.

Procurement Stage	Dates
Date Below Tender Threshold Notice published	14/11/2025
Deadline for Supplier clarification questions to be submitted	12/12/2025
Clarification responses to be issued by	19/12/2025
Bid Deadline (23.59 deadline)	11/01/2026
Assessment period (completed)	21/01/2026
Notification of Contract award (Contract Award Notice)	22/01/2026
Below Threshold Contract Details Notice published	26/01/2026
Mobilisation period	09/02/2026
Contract start – Main Contract	09/02/2026
Initial Contract end date then review points at end of years 3 and six with formal end day at year 9.	08/02/2029

How to respond to this opportunity

- 3.3 All response must be written in English and costs submitted are to be presented in Pounds Sterling, exclusive of VAT, but inclusive of all other costs where not stated in the Pricing Schedule.
- 3.4 The response must be delivered by no later than the time and submission date stated.
- 3.5 Suppliers must consider the necessary document sizes, speed of Internet connection, system configuration and general web traffic that may impact on the time required to complete the transaction.
- 3.6 Information submitted must be relevant and proportional to what has been set out within the Tender Pack. Where details are provided by the Supplier in literature that they submit in connection with the response, they must ensure that clear cross-references are given to the Council.

- 3.7 The Council has not provided a word limit for responses to the Award questions however, the Council would like to inform Suppliers that responses should be relevant to the question and be proportionate in length. Supporting information may be submitted, provided it is clearly referenced in the question to which it relates and appended to the main bid.
- 3.8 Suppliers must not be qualified, conditional or accompanied by statements that might be construed as rendering the tender equivocal. Qualified or conditional tenders are very likely to be rejected. The Council's decision as to whether a tender is acceptable will be final.
- 3.9 Tender response must remain valid for acceptance for a period of 90 days from return date.
- 3.10 Information provided by the Supplier in the Tender shall constitute an irrevocable offer to the Council that shall form part of any subsequent contract between the parties.
- 3.11 All information related to the Council and supplied in connection with this procurement shall be kept by the Supplier in strictest confidence.
- 3.12 Suppliers are advised that the Council is not bound to accept the lowest tender submitted, nor to reimburse any expense incurred during the tender process.

Clarification Process

- 3.13 All clarification enquiries should be directed to the Authorised Representative and by no later than the date indicated in the Procurement Timetable detailed elsewhere in this document.
- 3.14 Suppliers are advised that where such enquiries have been made, and it is appropriate to do so, the Council will distribute to all Suppliers a copy of the Clarification and the written reply, with anonymity preserved.

Council Representatives

- 3.15 No person in the Town Council's employ or other agent, except as so authorised by the Council Authorised Representative, has any authority to make any representation or explanation to Suppliers as to the meaning of the Contract or any other document or as to anything to be done or not to be done by Suppliers or the successful Supplier or as to these instructions or as to any other matter or thing so as to bind the Council.

Council Authorised Representative contact details:

Name: *Verity Anthony, Director (maternity cover) / Visitor Experience & Retail Manager*

Email: *vanthony@penleehouse.org.uk*

The assessment process and award criteria

- 3.16 The objective of the assessment process is to assess the responses to the Tender and select an organisation to deliver the contract for the Council at best value.
- 3.17 Tenders will be assessed on the basis of the Most Advantageous Tender (MAT) offer i.e. the offer that is considered to provide best value to the Council based on an effective combination of quality, cost and service factors.
- 3.18 The assessment will be carried out as below:

Preliminary Checks

- 3.19 Tenders will be subject to preliminary checks to verify that the submission is complete and compliant, including:
- 3.19.1 Tenders have been submitted on time, are considered complete and meet the requirements of the ITT to enable them to be assessed.
- 3.19.2 Supplier has not contravened any of the terms and conditions of the Tender process.
- 3.20 Tenders that do not meet the above preliminary checks will not proceed to the next stage of the assessment.

STAGE ONE – Procurement Specific Questionnaire

- 3.21 Tenders that meet the above preliminary checks must also meet the minimum requirements (Score question and / or Pass / Fail questions) of the Procurement Specific Questionnaire of the Invitation to Tender Response Document (Part B).
- 3.22 The Procurement Specific Questionnaire can be seen in the Tender Response Document (Part B), this is based on the Government Commercial Function standard template PA2023. The table below sets out the questions and the methodology of how each question will be assessed.

No.	Question (Please refer to Tender Response document for full question)	Criteria	Methodology
Preliminary Questions			
1	What is your name? (supplier name)	n/a	For information
2	Do you have a central digital platform unique identifier?	n/a	For information (but note, where above threshold Supplier would be required to be registered

No.	Question (Please refer to Tender Response document for full question)	Criteria	Methodology
3	Bidding as a single supplier (with or without sub-contractors) or as part of a group or consortium	n/a	For information
Part 2 – additional exclusions information			
Part 2A – associated persons (to be completed if using associated persons)			
8	(if yes to 7 above) Supplier/associated person, please confirm which condition(s) of participation you are relying on them to satisfy	n/a	For informatin
Part 3 – questions relating to conditions of participation			
Part 3A – standard questions			
13	Financial Capacity Assessments	Pass / Fail	Please see risk score as set out below.

PLEASE NOTE: This assessment model will be applied where financial assessments are conducted.

The Council requires Suppliers to self-certify that they are able to provide at least one of the documents listed in 13.1 – 13.3. If you are unable to self-certify this will result in a FAIL. If a Supplier scores a FAIL, it will be excluded from further participation in this tender process.

The table below details the areas that will be assessed and the weightings that will apply to the financial assessment of Suppliers:

Category	Range	Score	Max Score	Data Required and calculation
Gross Turnover covers multiple (X) of annual contract value	0 – 1.9999 X 2 – <10 X 10 - <50 X 50 or more X	0 10 20 40	40	Gross turnover for latest completed financial year divided by estimated annual contract value
Pre-tax profit	Loss 0 — 5.00% 5.01 - 10% 10% +	0 10 20 30	30	Pre-tax profit for latest available and previous financial year, as percentage of gross turnover for latest completed financial year
Change in profit	Still loss Down Up	0 0 30	30	Pre-tax profit for 2 years (the difference between the latest two completed financial years)
Total			100	

The following scoring mechanism will be used to assess the financial assessment:

Risk Score	Assessment outcome
Score between 0 and 40	Fail – if this is the resulting score following the assessment then at the discretion of the Council, further financial information may be requested from the supplier to enable further financial analysis to be conducted to confirm whether this should be a fail. This could be in the form of a credit check or consideration of the market in which the supplier is operating. <u>If, following this further analysis, the Council considers the result to remain a 'Fail', the supplier will be excluded from further participation in this tender process.</u>

No.	Question (Please refer to Tender Response document for full question)	Criteria	Methodology
	If, following this further analysis, the Council rescores and the result to move in a 'Pass' then this may be subject to provision of a suitable parent company guarantee or evidenced commitment to provide a performance bond to any minimum standards as requested by the Council, that assures the Council that the supplier can deliver the contract for its entire terms in accordance with the terms of the contract, either in its own right or as a result of its willingness to provide a parent company guarantee or performance bond. If a parent company guarantee or performance bond is requested by the Council and any minimum standards for these are stated to the supplier, and but the supplier is <u>unable or unwilling</u> to provide <u>at least</u> one of these, this will result in a 'Fail' <u>and the supplier will be excluded from further participation in this tender process.</u> Please note: a financial appraisal (using the same financial appraisal and assessment process) will be carried out on the Parent Company <u>(where applicable)</u> to assess their <u>its</u> suitability to act as Guarantor, <u>and it must score a 'Pass' in order for the supplier to be awarded a Pass.</u>		
Score between 40 and 70	Conditional Pass – this may, at the discretion of the Council, be subject to provision of a suitable parent company guarantee or commitment to provide a performance bond if/when deemed appropriate. If deemed appropriate and the supplier is <u>unable or unwilling</u> to provide <u>at least</u> one of these, this will result in a "Fail:." Please note: a financial appraisal (using the same financial appraisal and assessment process) will be carried out on the Parent Company <u>(where applicable)</u> to assess their <u>its</u> suitability to act as Guarantor, <u>and it must score a 'Pass' in order for the supplier to be awarded a Pass.</u>		
Score 70 and over	Pass with no conditions.		

No.	Question (Please refer to Tender Response document for full question)	Criteria	Methodology
15	Levels of insurance cover	Pass / Fail	Suppliers will be required to self-certify whether they already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover. This will be marked on a “pass/fail” basis. If you does not meet or does not commit to the Council’s minimum requirements, this will be classed as a “fail”. If you are the Preferred Supplier and you fail to provide the necessary evidence then Preferred Supplier status will move to the provider in 2nd place and so on if necessary.

No.	Question (Please refer to Tender Response document for full question)	Criteria	Methodology
18	[Technical Ability – Relevant Experience and contract examples] The following will be required to be provided:	Pass / Fail	Pass – Technical and professional ability is demonstrated based on the information provided in relation to the delivery of contracts of a similar nature. Fail – Does not meet the requirement. Does not comply and / or insufficient information provided to demonstrate that the Supplier has the relevant technical and professional ability of delivering contracts of a similar nature. The Council reserves the right to take up the references named and further inspection of current contracts may also be made to resolve any questions about technical efficiency, quality, service levels and reliability.

No.	Question (Please refer to Tender Response document for full question)	Criteria	Methodology
20	Technical Ability – Organisational Standards	Pass / Fail	Pass – Where the information has been provided complete and provides an evidence base for existing quality of operation Fail – Where the operator has no evidence of successful operation or sample menus and pricing deemed inappropriate for the operation
21	Technical Ability – Health and Safety All employees will be required to be trained to a minimum Foundation Certificate in Food Hygiene and Safety	Pass / Fail	Pass - Where the information has been provided complete and in line with the requirements set out in the Procurement Specific Questionnaire and deemed to have met the conditions as set out. Fail - Where either this has not been provided and / or the information is insufficient or false information.

3.23 If all aspects of this Procurement Specific Questionnaire are passed, then the submission will be subject to the price and qualitative assessment as detailed below.

Award Criteria

3.24 The following Award Criteria / weightings will be used in qualitative assessment of the Suppliers response.

Method Statements

Sub Criteria		Main Criteria
Criteria: Quality		70%
MS1 Supporting the Objectives / Vision	25%	
MS2 Commercial Consideration – Operational delivery	50%	
Delivering Social Value outcomes	25%	
Criteria: Price		30%
Sub-Criteria – See Schedule 2	100%	
TOTAL Quality / Price		100%

3.25 Technical assessment of the qualitative elements are carried out independently of the Pricing aspects, with the intention that the information on the Pricing element only be disclosed to the assessors post the completion of the qualitative assessment specifically:

3.25.1 Score objectively in line with set questions and score methodology as set out in the Tender pack

3.25.2 Scores to be recorded and comments recorded on the reasons to justify the score

3.25.3 Scores to form part of overall scores around the Award decision.

Scoring structure for method statements

SCORING MATRIX FOR QUALITY CRITERIA		
Score	Assessment	Definition
5	Excellent	An excellent response submitted in terms of detail and relevance which clearly fully meets or meets the vast majority the requirements with no negative implications and evidence in their ability and / or proposed methodology to deliver a solution. Excellent evidence has been provided to show not only what will be delivered but will give comprehensive detail of how this will be achieved. The response will have made clear how their proposal relates directly to the requirements and is specific, rather than general, in the way proposed solutions will deliver the desired outcomes.
4	Good	A good response submitted in terms of detail and relevance that

		meets the requirements without significant negative implications or inconsistencies. The Supplier demonstrates the understanding of the requirement and evidence of their ability and / or proposed methodology to deliver the requirements. Good evidence has been provided to show not only what will be delivered but will give relevant detail of how this will be achieved. The response will have made clear how the proposal relates directly to the requirements and is specific, rather than general, in the way proposed solutions will deliver the desired outcomes.
3	Satisfactory	A satisfactory response submitted in terms of the level of detail, accuracy, relevance and evidence in their ability and / or proposed methodology to deliver the requirements. Aspects of the response may be satisfactory but there are some omissions of important factors or negative indications that reduce the extent to which the requirements will be met. There is a lack of some clarity or detail in how the required outcomes will be achieved. Evidence is provided but may be generic in parts and is not specifically directed toward the desired outcomes.
2	Reservations	The response meets some of the requirement but there are clearly reservations, either in understanding the requirement, and / or details around proposed methodology, and / or limited evidence to support the response. There would be concerns that the approach would require intervention or create ongoing issues in delivery of the requirements. Not sufficient evidence has been provided to suggest how the requirements will be met. Parts of the response is vague with little or no detail and evidence given on how to meet requirements. Evidence provided is considered weak or is unclear on how this relates to the requirements.
1	Serious reservations	Limited response provided, or a response that is inadequate, inaccurate and / or only partially addresses the question. Serious reservations of the response provided, either in understanding the requirement, and / or details around proposed methodology, and / or little evidence to support the response. This includes major weaknesses or gaps in the information provided. The response displays a poor understanding of the requirement and there are major doubts around the ability to deliver the requirements. The whole response is vague with little or no detail given of how to meet the requirements. Evidence provided is considered inappropriate or has a lack of clarity on how it relates to the requirements.
0	Unacceptable	The response is unacceptable and does not comply with the requirements. Insufficient or no information provided to demonstrate that the requirement is understood and no relevant evidence to support the response.

	No response to the question or a response that is significantly irrelevant or inaccurate.
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Commercial / Price Assessment

3.26 The Commercial Schedule contains details and requirements relating to the tender price element. This may include, but is not limited to, the inclusion of specific instructions, documents, templates, pricing structures, for the Applicant's to return as part of their response.

3.27 Price shall be evaluated using the following scoring methodology, with the Tenderer's prices being scored on a comparative basis.

3.28 This will be done by recording the highest concession sum at the 3-year total in the price submitted by any of the Tenderers in the Price Schedule accompanying this tender. Then for each Tenderer, dividing this price by the Tenderers' price and then multiplying it by the allocated weighting (e.g. 40% if that is the percentage chosen by the Town Council). The equation set out below explains this in a simpler way:

$$(\text{Tenderer price} \div \text{Highest Concession Sum Tenderer's price}) \times \text{Weighting} = \text{Score}$$

3.29 To accompany the above there is a worked example below to help explain this. The example assumes only 3 prices were submitted and that price was awarded 30% of the overall marks (i.e. quality / Social was awarded 70%). Figures as shown are for illustrative purpose only:

	L	W	Tenderer 1		Tenderer 2		Tenderer 3	
Evaluation Elements	Highest Concession Sum Submitted price (£)	Max Weighting %	Tendered Price	Score	Tendered Price	Score	Tendered Price	Score
Total Contract Sum (as per price schedule)	£25,000	30%	£25,000	30.0%	£23,200	27.6	£20,000	24.0%
Quality and Social Value Score		70%		52.0%		63.0%		61.0%
Total Score				82.0%		90.6%		85.0%

SECTION 4 – CONDITIONS (General)

Procedural requirements

- 4.1. This document together with all other associated documents provided to Suppliers in connection with this Procurement contain procedural requirements which Suppliers must follow. Failure to comply with or follow any procedural requirement may result in the exclusion of the Supplier from the Procurement at the Council's sole discretion.

Transparency (Procurement Legislation)

- 4.2. Suppliers should note that, in accordance with general transparency obligations and procurement law obligations under the Act, the Council routinely publishes details of its procurement processes and awarded contracts. This includes, but is not limited to, the contract value, the identity of the successful Supplier, compliance with payment obligations and contract performance. Compliance with these obligations may involve the Council taking steps without consultation with Suppliers. Where required under the Act, a copy of the contract will be published (subject to making any reasonable and proportionate redactions permitted under the Act).
- 4.3. Where required, the Council will disclose on a confidential basis any information it receives from Suppliers during the Procurement to any third party engaged by the Council for the specific purpose of assessing or assisting the Council in assessing the Supplier's submission. In providing such information the Supplier consents to such disclosure.

Modifying the Procurement

- 4.4. Neither the Below Threshold Tender Notice, this document nor any information given as part of the Procurement shall be regarded as a commitment or representation on the part of the Council (or any other person) to enter into a contractual agreement.
- 4.5. The Council reserves the right amend, modify, issue additional information or to cancel the Procurement at any point and / or to choose not to award any contract [or lot] as a result of this Procurement.
- 4.6. Suppliers will remain responsible for all costs and expenses incurred by them, their staff, and their advisers or by any third party acting under their instructions in connection with this Procurement. For the avoidance of doubt, the Council is not liable for any costs or expenditure resulting from any cancellation or amendment of this Procurement.

Confidentiality and publicity

- 4.7. Save to the extent made publicly available by the Council, the information in this document (together with all attachments and any other information communicated to Suppliers during the Procurement) is made available on the condition that it is treated as confidential information by the Supplier and is not disclosed, copied, reproduced, distributed or passed to any other person at any time except in order to comply with legal obligations or for the purpose of enabling a submission to be made to the

Council, provided that such person has given an undertaking prior to the receipt of the relevant information (and for the benefit of the Council) to keep such information confidential.

- 4.8. Suppliers must not take part in any publicity activities with any part of the media about this Procurement without obtaining the express prior written agreement of the Council. When requesting prior written agreement, Suppliers are required to detail the proposed media coverage including format and content of any publicity.

Freedom of information and environmental information

- 4.9. The Council is subject to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). All information submitted to the Council may be disclosed in response to a request made pursuant to the FOIA or the EIR.
- 4.10. In respect of any information submitted by a Supplier that it considers to be commercially sensitive.
- 4.11. The Council will endeavour to hold confidential all information submitted by a Supplier that it identifies as being commercially sensitive, however, that the final decision on any FOIA request and EIR request rests with the Council, subject to applicable law.
- 4.12. The Council cannot guarantee that any information marked 'commercially sensitive' will not be disclosed.

Non-collusion, non-canvassing

- 4.13. Any attempt by a Supplier or their advisers to influence the Procurement in any way may result in the exclusion of the Supplier, without prejudice to any other civil or legal remedies available to the Council and without prejudice to any criminal liability that such conduct by a Supplier may attract.
- 4.14. By participating and submitting a formal declaration in line with this procurement Suppliers are confirming that they (and / any parties related to this procurement) do not breach non-collusion and non-canvassing requirements stated. The Council will be entitled to rely on the acceptance of this position.

Conflicts of interest

- 4.15. Suppliers are responsible for ensuring that no actual, potential or perceived conflicts of interest (within the meaning of the Procurement Act 2023) exist between themselves and the Council or its advisers. Suppliers must notify the Council immediately of any actual, potential or perceived conflict of interest.
- 4.16. The Council strongly encourages Suppliers to contact the Council as soon as possible should it have any concerns regarding actual, potential or perceived conflicts of interest.

Anti-competitive behaviour

- 4.17. Suppliers are reminded of their obligations under applicable competition laws. The Council may require evidence from Suppliers that their arrangements are not anti-competitive and reserves the right to require any Supplier to comply with any reasonable measures which may be needed to verify that no anti-competitive arrangements are in place.

Contract

- 4.18. A Tender submission is an offer to enter into a contract on the terms of the contents of the submission. Notification of an award decision does not constitute acceptance by the Council. Any document submitted by a Supplier shall only have contractual effect when it is contained within an executed written contract.

Supplier warranties

- 4.19. In responding to this invitation, the Supplier warrants, represents and undertakes to the Council that:
- 4.19.1. It understands and has complied with the conditions set out in this document
 - 4.19.2. All information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council are true, complete and accurate in all respects
 - 4.19.3. It has made its own investigations and undertaken its own research and due diligence, and has satisfied itself in respect of all matters (whether actual or contingent) relating to the invitation and its response
 - 4.19.4. it has full power and authority to respond to this document and to perform the obligations in relation to the contract
- 4.20. Suppliers should note that the potential consequences of providing incomplete, inaccurate or misleading information include that:
- 4.20.1. the Council may exclude the Supplier from participating in this Procurement
 - 4.20.2. the Supplier may be excluded from bidding for contracts under Schedule 7, Paragraph 13 of the Act
 - 4.20.3. the Council may rescind any resulting contract under the Misrepresentation Act 1967 and may sue the Supplier for damages
 - 4.20.4. if fraud or fraudulent intent can be proved, the Supplier may be prosecuted and convicted of the offence of fraud by false representation under section 2 of the Fraud Act 2006, which can carry a sentence of up to 10 years or a fine (or both) – if there is a conviction, then the Supplier may be excluded from bidding for contracts under Schedule 6, Paragraph 15 of the Act and may be added to the debarment list

Third parties

- 4.21. Nothing in these terms is intended to confer any rights on any third party under the Contracts (Rights of Third Parties) Act 1999. This does not affect any right or remedy of any person which exists or is available apart from that Act.

Applicable law

- 4.22. The law of England is applicable to this Procurement.
- 4.23. Suppliers must agree to submit to the exclusive jurisdiction of the Courts of England and Wales in relation to any dispute arising out of or in connection with this Procurement.

SECTION 5 – CONDITIONS (Council Specific)

General assessment information

- 5.1. Suppliers may be required to clarify its submission. If in the opinion of the Council the Supplier fails to provide an adequate response to one or more points of clarification, or fails to respond by the given deadline, the Supplier may be excluded from progressing further in the process.
- 5.2. The Council is under no obligation to “follow up” with the Supplier to obtain information found to be missing.
- 5.3. Suppliers may provide information to support their responses to the method statement questions, provided the supporting information is cross-referred to in the relevant method statement(s). The supporting information must be provided as separate attachments and submitted via the details provided. The supporting information must be listed/attached in the same order as it is cross-referenced in the numbered method statements and the cross-reference must identify the specific information within the supporting document which is being relied on to support the substantive response. Supporting information which is not cross-referenced in a method statement response will not be considered. Where word limits are applicable to a question, these do not include the supporting information itself (certificates etc.) but the cross-references to the supporting material within the method statement response will count towards the word limit. Diagrams, pictures and charts embedded into the method statement response may include words but only to the extent that those words are necessary to enable the assessment panel to understand or interpret the diagram, picture etc. The inclusion of any words within diagrams, pictures etc. which go beyond what is strictly necessary to enable the assessment panel to understand the diagram, picture etc. will be disregarded for the purpose of the evaluation of a Supplier’s substantive response to the method statement. The referenced supporting information and any diagrams, pictures etc. embedded in the method statement itself must only support the substantive response to the method statement question and not provide the answer by its content. Where word limits are applicable to a question, any words found to be over the limit will not be assessed.
- 5.4. Suppliers must make sure that they answer what is being asked. Anything that is not directly relevant to the particular question should not be included.
- 5.5. Suppliers should also make sure that their answers inform not just what they have or will do, but how they did it or will do it, and what their proposed timescales are (as relevant) supported by examples or evidence to support the responses as appropriate.
- 5.6. Please do not cross reference for other responses or information as each question will be assessed individually, one by one in order.

Acceptance of Tender and Award of Contract

- 5.7. The Tender Pack and the submission of the Tender shall not in any way bind the Council to enter into a contract with the Supplier or involve the Council in any financial commitment whatsoever in this respect.
- 5.8. It is the responsibility of the Supplier to ensure that the pricing and delivery methodology within its supply chain will hold for the acceptance period. The Supplier must notify the Council immediately if anything affects their Tender within the acceptance period.
- 5.9. No alteration to the successful Tenderer's position post award of the contract will be accepted, unless this is due to external factors beyond the control of the Tenderer, is acceptable to the Council and is in accordance with any applicable legislation.
- 5.10. Unless and until a formal agreement is prepared and executed, the Tender Pack, the Supplier's submission, together with the Council's written acceptance shall constitute a binding contract between both parties.
- 5.11. The Council is not bound to accept the lowest or any Tender and may accept the whole or part of any Tender at its discretion.
- 5.12. Where the pricing of a Tender is abnormally low the Council reserves the right to reject the Tender in accordance with the requirements for further investigation under the Procurement Act 2023 Section 19 (3) c.

Rejection of Tender

- 5.13. The Council may disqualify any Supplier who:
 - 5.13.1. Fails to meet the requirements set out in the Tender Pack;
 - 5.13.2. Fails to provide a satisfactory response to any questions in the Tender Response Document (Part B) or inadequately or incorrectly completes any question;
 - 5.13.3. Is awarded a score of '0' for any of the qualitative questions at stage one or two;
 - 5.13.4. Submits an incomplete or vague Tender or submits its Tender later than the prescribed date and time;
 - 5.13.5. Submits a Tender that is qualified, conditional or accompanied by statements that might be construed as rendering the tender equivocal;
 - 5.13.6. (whose) circumstances change to the extent that the Supplier ceases to meet the qualification criteria, or who makes material changes to any aspect of its Tender, unless substantial justification can be provided to the satisfaction of the Council and such change is in accordance with applicable legislation;
 - 5.13.7. Has directly or indirectly canvassed any official of the Council or obtained information from any other person who has been contracted by the Council

- concerning the award of the contract or who has directly or indirectly obtained or attempted to obtain such information;
- 5.13.8. Fixes or adjusts the amount of their Tender by or in accordance with any agreement or arrangement with any other person;
 - 5.13.9. Communicates to any person other than the Council the amount or approximate amount of the figures shown in the proposed Tender except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Tender or for the purposes of insurance or financing;
 - 5.13.10. Enters into any agreement with any other person that such other person shall refrain from submitting a Tender or shall limit or restrict the figures to be shown or referred to by another Supplier;
 - 5.13.11. Offers to agree to pay to any person having direct connection with the Tender process or does pay or give any sum of money, inducement or valuable consideration, directly or indirectly, for doing or having done or causing or having caused to be done in relation to any other Supplier or any other person's proposed Tender, any act or omission;
 - 5.13.12. In connection with the award of the contract commits an offence under the Prevention of Corruption Acts 1889 to 1916 or gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
 - 5.13.13. The Council shall reserve the right to conduct due diligence to check Supplier details with Companies House and other open information sources or seek verification directly from the Supplier in relation to this information.

Notification

- 5.14. Following assessment of the Tenders the Council will make a decision on which, if any, Tender shall be accepted.
- 5.15. Suppliers will be notified of whether they are in Preferred Supplier status, or not. The Council will contact the Supplier assessed as Preferred Supplier status to request all necessary evidence from the self-declarations made within the Procurement Specific Questionnaire when the Council will carry out the final assessment to ensure the evidence is satisfactory. If the evidence is satisfactory, the Council will provide all suppliers with details of the outcome of the assessment along with feedback of the submissions received.

Council Representatives

- 5.16. No person in the Council's employ or other agent, except as so authorised by the Authorised Officer, has authority to make any representation or explanation to Suppliers as to the meaning of the agreement or any other document within the Tender Pack or as to anything to be done or not to be done by Suppliers or the Successful Supplier.

Incomplete or Erroneous Errors / Missing information / Omissions

- 5.17. The Council reserves the right to seek clarification from Suppliers in connection with their responses where information submitted appears to be incomplete or erroneous or where specific documents are missing. The Council reserves the right for to request the Supplier to submit, supplement, clarify or complete the information or documentation provided in connection with the response to this invitation. Any information requested must be returned in the defined period set by the Council.
- 5.18. The Council reserves to right to discount any information from the clarification not received in line with the defined steps outline to the Supplier and is not under any obligation to use that information further as part of the process.
- 5.19. Suppliers should be aware that submission of a Tender that contains incomplete or erroneous errors, missing information or omissions such as required documents may result in their Tender being deemed a non-compliant submission.

Council's Warranties and Disclaimers

- 5.20. The Council may require further information as appropriate and assess this as part of the Tender assessment process.
- 5.21. The Supplier shall have no claim whatsoever against the Council in respect of such matters and in particular (but without limitation) in respect of the contract by reason of the specification being different to that envisaged by the Supplier or otherwise.
- 5.22. Whilst the information in the Tender Pack has been prepared in good faith, it does not purport to be comprehensive or to have been independently verified. The Council does not make any representation or warranty (express or implied) with respect to the information contained in the Tender Pack or with respect to any written or oral information made or to be made available to any Supplier or its professional advisors.
- 5.23. Each Supplier who downloads the Tender Pack must make its own independent assessment of the proposed terms after making such investigation and taking such professional advice as it deems necessary to determine its interest in the Agreement.
- 5.24. This Tender Pack is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a Supplier to submit a Tender or enter into any other binding agreement.

Suppliers Responsibilities

- 5.25. A Supplier shall be deemed to have satisfied itself before submitting its Tender as to the accuracy and sufficiency of the information provided within the Tender Pack which shall cover all obligations under the contract and a Supplier shall also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect its Tender.
- 5.26. The Supplier is responsible for obtaining all information necessary for the preparation of its Tender and all costs, expenses and liabilities incurred by a Supplier in

connection with the preparation and submission of a Tender shall be borne by the Supplier.

Intellectual Property Rights

- 5.27. Intellectual property rights (IPR) to any original ideas, designs, concepts or plans contained in any document, plan, specification, drawing or design submitted in response to this process will vest with the Town Council unless copyright is claimed prior to the lodgement of such materials with the Town Council.

SECTION 6 – GLOSSARY OF DEFINED TERMS

Assessment Panel shall mean the assembled personnel with the relevant qualifications, skills and experience to assess Supplier submissions.

Central Digital Platform shall mean the central platform for the transfer of information between Contracting Authorities and Suppliers as set out in Regulations 5 of the Procurement Regulations 2024.

Council shall mean Penzance Council and the Town Council's representative, appointed for the purpose of managing the contract.

Invitation to Tender (ITT) shall mean the process related to this Tender.

Invitation to Tender Response Document (Part B) shall mean the document supplied as part of this Tender Pack which is designed for Supplier submissions.

Most Advantageous Tender (MAT) shall mean the method to be applied when considering the assessment and award criteria of the Tenders as set out in Regulation 19 (2) of the Act.

Notices shall mean the relevant formal Notices referred to within the Act and the Procurement Regulations 2024.

Procurement shall mean the process in relation to this specific Tender.

Procurement Act 2023 (the Act) shall mean the formal procurement legislation which governs public sector procurement

Procurement Specific Questionnaire shall mean the questionnaire used within this procurement process for determining grounds for inclusion of a Supplier which is informed and based on the Government Commercial Function template - [\(PA 2023\) Procurement specific questionnaire | Procurement Pathway](#)

Procurement Timetable shall mean the table within this document which sets out key dates and times (where relevant) related to this Procurement, and includes the formal date and time for the formal submission of Tenders by Suppliers.

Social Value shall mean the Public Services (Social Value) Act 2012

Suppliers shall mean the collective term for suitably qualified suppliers, who may potentially bid or not to this Tender.

Tender shall mean the Tender in connection to this specific Procurement process.

Tender Pack shall mean all of the documents which form part of this Procurement process.

Terms and Conditions shall mean the formal contractual terms under which any awarded contract would be formed.