



NewquayCouncil

CorporateService

Design, supply and installation of playground equipment, landscaping and surfacing at Mount Wise Gardens, Newquay

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
tenders@newquay.gov.uk



Contents

SECTION 1 – ABOUT THE COUNCIL	3
Background	3
Introduction	4
SECTION 2 – OVERVIEW OF THE COUNCIL’S REQUIREMENTS	5
Key Information	5
Budget and Contract details	5
Insurance Levels	5
Transfer of Undertakings (Protection of Employment) Regs 2006 (TUPE)	5
SECTION 3 - THE PROCUREMENT PROCESS	7
Procurement Timetable	7
How to respond to this opportunity	7
Clarification Process	8
Council Representatives	8
The assessment process and award criteria	8
Award Criteria	13
Pass / Fail Questions	13
Method Statements	13
Scoring structure for method statements	14
Commercial / Price Assessment	15
SECTION 4 – CONDITIONS (General)	17
Procedural requirements	17
Transparency (Procurement Legislation)	17
Modifying the Procurement	17
Confidentiality and publicity	17
Freedom of information and environmental information	18
Non-collusion, non-canvassing	18
Conflicts of interest	18
Anti-competitive behaviour	18
Contract	19
Supplier warranties	19
Third parties	20
Applicable law	20
SECTION 5 – CONDITIONS (Council Specific)	21
General assessment information	21
Acceptance of Tender and Award of Contract	22
Rejection of Tender	22
Notification	23
Council Representatives	23
Incomplete or Erroneous Errors / Missing information / Omissions	24
Council’s Warranties and Disclaimers	24
Suppliers Responsibilities	24
Tie Breaker	25

Intellectual Property Rights.....	25
SECTION 6 – GLOSSARY OF DEFINED TERMS.....	26

SECTION 1 – ABOUT THE COUNCIL

Background

1.1 In statistics

1.1.1 The Client for this Project and in effect Contracting Authority is Newquay Town Council. Newquay Town Council consists of 20 elected members (councillors) supported by the Chief Executive, Service Managers and staff who represent different areas of Newquay. The 20 elected members represent the wards of; Porth & Tretherras, Central & Pentire, Whipsiderry and Trenance.

1.1.2 The Council provides a wide range of facilities including parks, allotments, library services, public realm CCTV, community events, public conveniences, tourist information, grants and community donations, community space and retail units.

1.1.3 The new play area at Mount Wise Gardens will provide a vital new facility for children residing in the Centre of Newquay. The play park is aimed at primary and junior school age children with some toddler provision. The park should be a welcoming and colourful space where everyone feels safe. It will enable children to play in different ways and allow them to stretch and challenge themselves.

1.1.4 Key objectives of the Tender are:

1.1.4.1 To provide a vibrant, colourful play space with a wide range of equipment for the local residents in the area. Designs should be innovative and consider how equipment/play structures for different ages can be zoned to allow play equipment for toddlers as well as equipment aimed at primary and junior school age.

1.1.4.2 Designs should be fun, creative and imaginative with equipment that promotes healthy activity, incorporates risk and challenge and promotes inclusiveness.

1.1.4.3 Designs should make the best use of the space available with adequate space for Minimum Use Zones and allow sufficient space outside the fenced play area for seating/picnic tables. Seating provision will need to also be considered as part of the scope of this contract.

1.1.4.4 The Council's aspiration is for project completion, snagging and handover to be undertaken no later than before the end of Spring 2026.

1.2 Further information can be found here: www.newquay.gov.uk

Introduction

- 1.3 This Procurement is being conducted in accordance with the Procurement Act 2023 (“the Act”) as a below threshold 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.
- 1.4 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.
- 1.5 This document should be read in conjunction with the any relevant Notice and any other Procurement documents which have been made available at this stage of the Procurement.
- 1.6 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.
- 1.7 Please read and ensure compliance with the Procurement terms and conditions contained in Section 4 and 5.
- 1.8 Common terms and expressions shall have the meanings ascribed to them in the glossary of terms Section 6.
- 1.9 All references to a ‘section’ are to a section in the Act unless otherwise stated.
- 1.10 All references to a ‘paragraph’, ‘appendix’ or ‘annex’ are to a paragraph, appendix or annex of this document unless otherwise stated.
- 1.11 All references to dates / times shall be in accordance with UK time (i.e. GMT/BST).
- 1.12 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 invites response to this Invitation to Tender (ITT) from suitably qualified suppliers (“Suppliers”) for the design, supply and installation of playground equipment, landscaping and surfacing at Mount Wise Gardens, Newquay.
- 2.2 Full details around the Tender can be found in the accompanying documentation, in particular:
 - 2.2.1 Volume 2 – Response Document (Tender)
 - 2.2.2 Schedule 1 – Price Schedule
 - 2.2.3 Appendix 1 – Specification
 - 2.2.4 Appendix 2 – Utilities Survey Information
 - 2.2.5 Appendix 3 – Site Images
 - 2.2.6 Appendix 4 – CDM Pre-Construction Information
 - 2.2.7 Appendix 5 – Land Ownership
 - 2.2.8 Appendix 6 – Proposed Play Area
 - 2.2.9 Appendix 7 – Consultation Summary
 - 2.2.10 Appendix 8 – Mining Remediation Authority Map
 - 2.2.11 Appendix 9 – Tree Protection Order Cornwall Council Interactive Map
 - 2.2.12 Appendix 10 – Tree Survey
- 2.3 This tender is an opportunity to submit a fixed price tender for the specified Works.

Budget and Contract details

- 2.4 The estimated overall maximum budget for the tender is £150,000.00 (exc. VAT).
- 2.5 The Terms and Conditions under which any Contract would be formed are JCT Minor Works Building Contract with Contractor’s Design (MWD 2024).
- 2.6 The Contract period is 12 months.

Insurance Levels

- 2.7 The Council’s minimum requirements for insurance (Minimum Cover for each and every incident) are:
 - 2.7.1 Employer’s Liability (minimum statutory limit as laid down by legislation) = £5m.
 - 2.7.2 Professional Indemnity = £2m.
 - 2.7.3 Public Liability Insurance = £10m

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

- 2.8 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.

2.9 In this case the Council believes that TUPE does not applies to this tender.

2.10 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 Timetable

- 1.1 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.
- 1.2 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	20/10/2025
Deadline for Supplier clarification questions to be submitted	28/11/2025
Clarification responses to be issued by	12/12/2025
Bid Deadline (noon)	09/01/2026
Assessment period (completed)	12/01/2026 – 19/01/2026
Notification of Contract award (Contract Award Notice)	21/01/2026
Below Threshold Contract Details Notice published	21/01/2026
Contract start – Main Contract	26/01/2026
Initial Contract end date	26/01/2027

How to respond to this opportunity

- 1.3 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.
- 1.4 The response must be delivered by no later than the time and submission date stated.
- 1.5 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.
- 1.6 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.
- 1.7 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.

- 1.8 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.
- 1.9 Tender response must remain valid for acceptance for a period of 90 days from return date.
- 1.10 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.
- 1.11 All information related to the Council and supplied in connection with this procurement shall be kept by the Supplier in strictest confidence.
- 1.12 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

- 1.13 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.
- 1.14 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

- 1.15 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: Joe Piwecki – Deputy Town Clerk
Email: joe@newquay.gov.uk

The assessment process and award criteria

- 1.16 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.
- 1.17 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.
- 1.18 The assessment will be carried out as below:

Preliminary Checks

- 1.19 Tenders will be subject to preliminary checks to verify that the submission is complete and compliant, including:

1.19.1 Tenders have been submitted on time, are considered complete and meet the requirements of the ITT to enable them to be assessed.

1.19.2 Supplier has not contravened any of the terms and conditions of the Tender process.

1.20 Tenders that do not meet the above preliminary checks will not proceed to the next stage of the assessment.

STAGE ONE – Procurement Specific Questionnaire

1.21 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).

1.22 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	What is your central digital platform unique identifier?	n/a	For information (but note, where above threshold Supplier would be required to be registered
3	Bidding as a single supplier (with or without sub-contractors) or as part of a group or consortium	n/a	For information
4	Please indicate which lot(s) being bid for (where applicable)	n/a	For information

No.	Question (Please refer to Tender Response document for full question)	Criteria	Methodology
5	Are you on the debarment list?	Pass / Fail	<p>Pass – A pass will be where the information has been provided in the Tender Response Document is complete and it is assessed that the Supplier is not on the debarment list or following assessment conditions of Regulations 57, 58 and 59 of the Procurement Act 2023 are met.</p> <p>Fail - A Supplier may “fail” and therefore be excluded from the procurement on the grounds of providing insufficient or false information or where highlighted that they are on the Government disbarment list and conditions in Regulations 57, 58 and 59 of the Procurement Act 2023 are not met.</p>
Part 1 – confirmation of core supplier information			
6	Provision of up to date information on Central Digital Platform (either share code or PDF download)	Pass / Fail	<p>Pass - Where the information has been provided complete and up to date and in line with the requirements set out in the Tender Response Document and it is assessed as up to date and complete.</p> <p>Fail – Where following assessment either this has not been provided and / or the information is insufficient or false information.</p> <p>[Please Note: Financial assessments will be conducted in line with disclosed criteria in question 13 below].</p>
Part 2 – additional exclusions information			
Part 2A – associated persons (to be completed if using associated persons)			

No.	Question (Please refer to Tender Response document for full question)	Criteria	Methodology
7	Are you relying on any associated persons	n/a	For information (if unsure reference should also be made to conditions in Regulations 22(9) and 26 and 57, 58 and 59 of the Procurement Act 2023)
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 information
9	(if yes to 7 above) For each associated person, you must confirm they are registered on the CDP	Pass / Fail	<p>Pass - Where the information has been provided complete and up to date and in line with the requirements set out in the Tender Response Document and it is assessed as up to date and complete.</p> <p>Fail – Where following assessment either this has not been provided and / or the information is insufficient or false information.</p>
10	(if yes to 7 above) Are any of your associated persons on the debarment list?	Pass / Fail	<p>Pass – A pass will be where the information has been provided in the Tender Response Document is complete and it is assessed that the Associated Person is not on the debarment list or following assessment conditions of Regulations 57, 58 and 59 of the Procurement Act 2023 are met.</p> <p>Fail – An Associated Person may “fail” and therefore be excluded from the procurement on the grounds of providing insufficient or false information or where highlighted that they are on the Government disbarment list and conditions in Regulations 57, 58 and 59 of the Procurement Act 2023 are not met.</p> <p>[Please Note: Financial assessments will be conducted in line with disclosed criteria in question 13 below].</p>

No.	Question (Please refer to Tender Response document for full question)	Criteria	Methodology
Part 2B – list of all intended sub-contractors (to be completed if intending to use sub-contractors)			
11	Provide: details of all suppliers who you intend to sub-contract	n/a	For information
12	Are any of your intended sub-contractor is on the debarment list.	Pass / Fail	<p>Pass – A pass will be where the information has been provided in the Tender Response Document is complete and it is assessed that the sub-contractor is not on the debarment list or following assessment conditions of Regulations 57, 58 and 59 of the Procurement Act 2023 are met.</p> <p>Fail - A sub-contractor may “fail” and therefore be excluded from the procurement on the grounds of providing insufficient or false information or where highlighted that they are on the Government disbarment list and conditions in Regulations 57, 58 and 59 of the Procurement Act 2023 are not met.</p>
Part 3 – questions relating to conditions of participation			
Part 3A – standard questions			
13	Levels of insurance cover	Pass / Fail	<p>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.</p> <p>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”.</p> <p>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.</p>

No.	Question (Please refer to Tender Response document for full question)	Criteria	Methodology
14	Technical Ability – Health and Safety	Pass/Fail	<p>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.</p> <p>Fail - Where either this has not been provided and / or the information is insufficient or false information.</p>

1.23 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

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

Pass / Fail Questions

1.25 Question 1: Comply with all elements of this requirement in line with the specification as set out in the tender pack.

Method Statements

Sub Criteria		Main Criteria
Criteria: Quality		70%
Experience and how this would be used within this contract.	15%	
Innovative Design	20%	
Robustness, Maintenance and Warranties	20%	
Project Delivery	15%	
Criteria: Price		30%
TOTAL Quality / Price		100%

1.26 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:

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

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

1.26.3 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.

Commercial / Price Assessment

- 1.27 The Pricing Document contains the details and requirements relating to the price element of this Tender. This may include, but is not limited to, the inclusion of specific instructions, documents, templates, pricing structures, etc for the Supplier's to return as part of their response.
- 1.28 Price shall be evaluated using the following scoring methodology, with the Tenderer's prices being scored on a comparative basis. For example:
- 1.29 This will be done by recording the lowest price submitted by any of the Tenderers, then for each Tenderer, dividing this lowest price by the Tenderers' price and then multiplying it by the allocated weighting. The equation set out below explains this in a simpler way:
- 1.30 $(\text{Lowest Price} \div \text{Tenderer's price}) \times \text{Weighting} = \text{Score}$
- 1.31 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 60% of the overall marks (i.e. quality 40%). Figures shown are purely illustrative:

	L	W	Tenderer 1		Tenderer 2		Tenderer 3	
Assessment Elements	Lowest Submitted price (£)	Sub Weighting %	Tendered Price	Score (%)	Tendered Price	Score (%)	Tendered Price	Score (%)
Total Contract Sum	£65,000	60	£75,000	52.00	£65,000	60.00	£85,000	45.88
Price Score (%)		60		52.00		60.00		45.88

1.32 These scores would be added to the quality scores for the individual suppliers in this example Tenderer 1 being the preferred supplier to be awarded the contract.

	Sub Weighting %	Tenderer 1	Tenderer 2	Tenderer 3
Price score	60	52.00	60.00	45.88
Quality	40	38.00	27.00	38.00
TOTALS	100	90.00	87.00	83.00

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 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.

Tie Breaker

- 5.27. In the event of a tied score of two or more Suppliers following the assessment of the tenders then the award of the preferred Supplier will be based on the most competitive price received, that being the lowest total price of the bids returned
- 5.28. In the event that lowest total price is not a determining factor around the tie, then the scores will be based on the highest individually weighted method statement for the quality assessment, where there is more than one method statement which has a same weighting then it will be the combined scores of those method statements with that weighting.

Intellectual Property Rights

- 5.29. 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 Newquay Town Council.

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.