

# Tender Conditions & Contractual Requirements

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## 1 1 Contracting Requirements

- 1.1 The contracting authority is NMRN Operations, or any NMRN subsidiary companies and other organisations that control or are controlled by the NMRN from time to time.
- 1.2 The appointed supplier will be expected to travel to NMRN Hartlepool.
- 1.3 The NMRN's contracting and commercial approach in respect of the required goods and/or services is set out at Appendix 7 (Terms and Conditions of contract) ("**Contract**"). By submitting a tender response, you are agreeing to be bound by the terms of this ITT and the Contract without further negotiation or amendment.
- 1.4 The Contract awarded will be for a duration as quantified by the tenderer during the tendering process with an option for an extension if the need arises and on permission by the NMRN.
- 1.5 In the event that you have any concerns or queries in relation to the Contract, you should submit a clarification request in accordance with the provisions of this ITT by the Clarification Deadline (as defined below in the Timescales section of this ITT). Following such clarification requests, the NMRN may issue a clarification change to the Contract that will apply to all potential suppliers submitting a tender response.
- 1.6 The NMRN is under no obligation to consider any clarifications / amendments to the Contract proposed following the Clarification Deadline, but before the Tender Response Deadline (as defined below in the Timescales section of this ITT). Any proposed amendments that are received from a potential supplier as part of its tender response shall entitle the NMRN to reject that tender response and to disqualify that potential supplier from this Procurement Process.

## 2 2. Policy Requirements

- 2.1 By submitting a tender response in connection with this Procurement Process, potential suppliers confirm that they will, and that they shall ensure that any consortium members and/or subcontractors will, comply with all applicable laws, codes of practice, statutory guidance and applicable NMRN policies relevant to the goods and/or services being supplied.
- 2.2 For the successful delivery of the work the tenderer should have an in-depth understanding of Project Management Services.
- 2.3 The tenderer must also comply with IOSH Health & Safety Standards when on the NMRN's site and when undertaking the tendered work [<http://www.iosh.co.uk/>]. When working in confined spaces or at height, the contractor and/or any sub-contractor must have the necessary relevant training in confined spaces and/or working at height before work commences.
- 2.4 The Copyright of any information and/or data generated by the awarded supplier as part of the works as set out in this ITT shall be considered as under the ownership of the NMRN.

### 3. General Tender Conditions (“Tender Conditions”)

- 3.1 Application of these Tender Conditions – In participating in this Procurement Process and/or by submitting a tender response it will be implied that you accept and will be bound by all the provisions of this ITT and its Appendices. Accordingly, tender responses should be on the basis of and strictly in accordance with the requirements of this ITT.
- 3.2 Third party verifications – Your tender response is submitted on the basis that you consent to the NMRN carrying out all necessary actions to verify the information that you have provided, and the analysis of your tender response being undertaken by one or more third parties commissioned by the NMRN for such purposes.
- 3.3 Information provided to potential suppliers – Information that is supplied to potential suppliers as part of this Procurement Process is supplied in good faith. The information contained in the ITT and the supporting documents and in any related written or oral communication is believed to be correct at the time of issue but the NMRN will not accept any liability for its accuracy, adequacy or completeness and no warranty is given as such. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the NMRN.
- 3.4 Potential suppliers to make their own enquires – You are responsible for analysing and reviewing all information provided to you as part of this Procurement Process and for forming your own opinions and seeking advice as you consider appropriate. You should notify the NMRN promptly of any perceived ambiguity, inconsistency or omission in this ITT and/or any in of its associated documents and/or in any information provided to you as part of this Procurement Process.
- 3.5 Amendments to the ITT – At any time prior to the Tender Response Deadline, the NMRN may amend the ITT. Any such amendment shall be issued to all potential suppliers, and if appropriate to ensure potential suppliers have reasonable time in which to take such amendment into account, the Tender Response Deadline shall, at the discretion of the NMRN, be extended. Your tender response must comply with any amendment made by the NMRN in accordance with this paragraph 3.3.5 or it may be rejected.
- 3.6 Compliance of tender response submission – Any goods and/or services offered should be on the basis of and strictly in accordance with the ITT (including, without limitation, any specification of the NMRN’s requirements, these Tender Conditions and the Contract) and all other documents and any clarifications or updates issued by the NMRN as part of this Procurement Process.
- 3.7 Format of tender response submission – Tender responses must comprise the relevant documents specified by the NMRN completed in all areas and in the format as detailed by the NMRN in Section 7 (Supplier Questionnaire). Any documents requested by the NMRN must be completed in full. It is, therefore, important that you read the ITT carefully before completing and submitting your tender response.

- 3.8 Modifications to tender response documents once submitted – You may modify your tender response prior to the Tender Response Deadline by giving written notice to the NMRN. Any modification should be clear and submitted as a complete new tender response in accordance with Section 7 (Supplier Questionnaire) and these Tender Conditions.
- 3.9 Rejection of tender responses or other documents – A tender response or any other document requested by the NMRN may be rejected which:
- contains gaps, omissions, misrepresentations, errors, uncompleted sections, or changes to the format of the tender documentation provided;
  - contains hand written amendments which have not been initialled by the authorised signatory;
  - does not reflect and confirm full and unconditional compliance with all of the documents issued by the NMRN forming part of the ITT;
  - contains any caveats or any other statements or assumptions qualifying the tender response that are not capable of evaluation in accordance with the evaluation model or requiring changes to any documents issued by the NMRN in any way;
  - is not submitted in a manner consistent with the provisions set out in this ITT;
  - contains information which is inconsistent with answers already given in the pre-qualification questionnaire completed as part of this Procurement Process or;
  - is received after the Tender Response Deadline.
- 3.10 Disqualification – If you breach these Tender Conditions, if there are any errors, omissions or material adverse changes relating to any information supplied by you at any stage in this Procurement Process, if any other circumstances set out in this ITT, and/or in any supporting documents, entitling the NMRN to reject a tender response apply and/or if you or your appointed advisers attempt:
- to inappropriately influence this Procurement Process;
  - to fix or set the price for goods or services;
  - to enter into an arrangement with any other party that such party shall refrain from submitting a tender response;
  - to enter into any arrangement with any other party (other than another party that forms part of your consortium bid or is your proposed sub-contractor) as to the prices submitted;
  - to collude in any other way;
  - to engage in direct or indirect bribery or canvassing by you or your appointed advisers in relation to this Procurement Process; or
  - to obtain information from any of the employees, agents or advisors of the NMRN concerning this Procurement Process (other than as set out in these Tender Conditions) or from another potential supplier or another tender response,

The NMRN shall be entitled to reject your tender response in full and to disqualify you from this Procurement Process. Subject to the “Liability” Tender Condition below, by participating in this Procurement Process you accept that the NMRN shall have no liability to a disqualified potential supplier in these circumstances.

- 3.11 Tender costs – You are responsible for obtaining all information necessary for preparation of your tender response and for all costs and expenses incurred in preparation of the tender response. Subject to the “Liability” Tender Condition below, you accept by your participation in this procurement, including without limitation the submission of a tender response that you will not be entitled to claim from the NMRN any costs, expenses or liabilities that you may incur in tendering for this procurement irrespective of whether or not your tender response is successful.
- 3.12 Rights to cancel or vary this Procurement Process - By issuing this ITT, entering into clarification communications with potential suppliers or by having any other form of communication with potential suppliers, the NMRN is not bound in any way to enter into any contractual or other arrangement with you or any other potential supplier. It is intended that the remainder of this Procurement Process will take place in accordance with the provisions of this ITT but the NMRN reserves the right to terminate, suspend, amend or vary (to include, without limitation, in relation to any timescales or deadlines) this Procurement Process by notice to all potential supplier in writing. Subject to the “Liability” Tender Condition below, the NMRN will have no liability for any losses, costs or expenses caused to you as a result of such termination, suspension, amendment or variation.
- 3.13 Consortium Members and sub-contractors – It is your responsibility to ensure that any staff, consortium members, sub-contractors and advisers abide by these Tender Conditions and the requirements of this ITT.
- 3.14 Liability – Nothing in these Tender Conditions is intended to exclude or limit the liability of the NMRN in relation to fraud or in other circumstances where the NMRN’s liability may not be limited under any applicable law.

## **4 4. Mandatory Requirements / Constraints**

- 4.1 As part of your tender response, you must confirm that you meet the mandatory requirements / constraints, if any, as set out in the NMRN’s specification forming part of this ITT. A failure to comply with one or more mandatory requirements or constraints shall entitle the NMRN to reject a tender response in full.

## 5. Confidentiality and Information Governance

- 5.1 All information supplied to you by the NMRN, including this ITT and all other documents relating to this Procurement Process, either in writing or orally, must be treated in confidence and not disclosed to any third party (save to your professional advisers, consortium members and/or sub-contractors strictly for the purposes only of helping you to participate in this Procurement Process and/or prepare your tender response) unless the information is already in the public domain or is required to be disclosed under any applicable laws.
- 5.2 You shall not disclose, copy or reproduce any of the information supplied to you as part of this Procurement Process other than for the purposes of preparing and submitting a tender response. There must be no publicity by you regarding the Procurement Process or the future award of any contract unless the NMRN has given express written consent to the relevant communication.
- 5.3 This ITT and its accompanying documents shall remain the property of the NMRN and must be returned on demand.
- 5.4 The NMRN reserves the right to disclose all documents relating to this Procurement Process, including without limitation your tender response, to any employee, third party agent, adviser or other third party involved in the procurement in support of, and/or in collaboration with, the NMRN. The NMRN further reserves the right to publish the Contract once awarded and/or disclose information in connection with supplier performance under the Contract in accordance with any public sector transparency policies (as referred to below). By participating in this Procurement Process, you agree to such disclosure and/or publication by the NMRN in accordance with such rights reserved by it under this paragraph.
- 5.5 The use of blanket protective markings of whole documents such as “commercial in confidence” will not be sufficient. By participating in this Procurement Process you agree that the NMRN should not and will not be bound by any such markings.
- 5.6 In addition, marking any material as “confidential” or “commercially sensitive” or equivalent should not be taken to mean that the NMRN accepts any duty of confidentiality by virtue of such marking. You accept that the decision as to which information will be disclosed is reserved to the NMRN, notwithstanding any consultation with you or any designation of information as confidential or commercially sensitive or equivalent you may have made. You agree, by participating further in this Procurement Process and/or submitting your tender response that all information is provided to the NMRN on the basis that it may be used by the NMRN in accordance with the provisions of this ITT.
- 5.7 Tender responses are also submitted on the condition that the appointed supplier will only process personal data (as may be defined under any relevant data protection laws) that it gains access to in performance of this Contract in accordance with the NMRN’s instructions and will not use such personal data for any other purpose. The contracted supplier will undertake to process any personal data on the NMRN’s behalf in accordance with the relevant provisions of any relevant data protection laws and to ensure all consents required under such laws are obtained.

## **6 6. Tender Validity**

- 6.1 Your tender response must remain open for acceptance by the NMRN for a period of ninety days from the Tender Response Deadline. A tender response not valid for this period may be rejected by the NMRN;

## **7 7. Payment and Invoicing**

- 7.1 The NMRN will pay correctly addressed and undisputed invoices within 30 days in accordance with the requirements of the Contract. Suppliers to the NMRN must ensure comparable payment provisions apply to the payment of their sub-contractors and the sub-contractors of their sub-contractors. General requirements for an invoice for the NMRN include:
- A description of the good/services supplied is included.
  - The NMRN's reference number/Purchase Order number is included.
  - The address must reflect that supplied on the NMRN Purchase Order.
- 7.2 The NMRN will retain 5% of the total contract value until the project has been delivered to agreed standards as detailed on appointment of the successful contractor. Payment of this final invoice will be subject to NMRN's standard 30 day terms of payment.