

NEC4 - TERM SERVICE SHORT CONTRACT

DOCUMENT 1 OF 4 - INSTRUCTIONS TO TENDERERS

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TENDER FOR FRAMEWORK FOR BUILDING MAINTENANCE, MINOR WORKS AND COMMUNITY AIDS & ADAPTATIONS PROJECT NO: SHSCT-01-2020

TP Submission Date is shown in Section 4.1

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This document is one of nineteen parts, as listed below, which together form the Invitation to Tender package. Please ensure that no part or page is missing or duplicated.

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Document 3 of 4 Contract Forms		3A: Scope
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		2 – Contractor's deed of Warranty
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		4 - Parent Company Guarantee
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Tender Package (TP)	TP-PL	Price List
	TP-OP	Order of Preference Statement
	TP-QS	Quality Submission

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GLOSSARY

<i>Client</i>	Southern Health & Social Care Trust
Contract	NEC4 Term Service Short Contract, between the <i>Client</i> and the <i>Contractor</i>
<i>Contractor</i>	<i>Contractor</i> named in the Contract Data who submits a tender to undertake the Services and whose tender has been accepted by the <i>Client</i> .
Defined Cost	Defined Cost as set out in the Contract
Economic Operator (EO)	Has the meaning given to it by Regulation 2 of the Public Contracts Regulations. It is the single enterprise or Group of economic operators that will take contractual responsibility for delivering the Project and has submitted a completed PQQP.
EU	European Union
Managing Agent	Construction & Procurement Delivery (CPD) is the managing agent acting on behalf of the <i>Client</i> for this ITT process.
PQQ	Pre-Qualification Questionnaire
Scope	As defined by the Contract
Subcontractor	Subcontractor as defined in paragraph 3.1
Tenderer	An Economic Operator who submits a tender for the Competition
Tenderer's Team	Tenderer's Team is used to refer to the Tenderer, together with their designers, subcontractors and supply chains (see Section 3: Structure of Tenderer's Team).
TP	Tender Package.
TP-PL	Tender Package - Price List
FOT	Form of Tender.
TP-OP	Tender Package – Order of Preference Statement

TP-QS	Tender Package – Quality Submission
Service	The <i>services</i> to be provided by the successful Tenderer in accordance with the NEC4 Term Service Short Contract

1 INTRODUCTION

1.1 THE PROJECT

The *Client* invites tenderers to provide the Service in accordance with the NEC4 Term Service Short Contract for Framework for Building Maintenance, Minor Works and Community Aids and Adaptations [the services].

1.2 TIMETABLE

The indicative timetable for the main stages of the procurement process from the **TP Submission Date** to appointment of the Tenderer is anticipated as follows:

ACTIVITY	Target Date
Indicative date for return of tenders	December 2020
Tender assessment start date	December 2020
Issue intention to award letter/commencement of Standstill period (Where applicable)	December 2020
Award of contract	January 2020
The <i>Client</i>/Managing Agent reserves the right to amend these timescales within the scope of the applicable procurement regulations.	

1.3 THE CONTRACT

This contract Framework for Building Maintenance, Minor Works and Community Aids and Adaptations will be executed under deed and it is intended that this contract is and shall constitute and have effect of a sealed instrument according to law.

1.4 ROLE OF CONSTRUCTION & PROCUREMENT DELIVERY

Construction & Procurement Delivery as part of the Department of Finance is a central purchasing body acting on behalf of the *Client* in administering this competition

1.5 PURPOSE OF THE TENDER PACKAGE (TP)

The purpose of the TP is to provide the *Client*/Managing Agent with sufficient information to allow tenders to be evaluated. Tenderers (in conjunction with their Sub-Contractors) are directed to read all documents carefully before completing the TP.

Tenderer's responses to the TP will be evaluated against the criteria set out in this Instruction to Tenderers and the tender documents. Tenderers' must respond to all the questions in the TP and must provide all the supporting information requested.

Tenderers' must ensure that their response to each question is:-

- ☐ relevant and focused on addressing the question asked; and

- ☐ is representative of the entire Tenderer Team (where applicable).

1.6 INSOLVENCY DURING TENDER PROCESS

Any Tenderer subject to insolvency proceedings will not be permitted to participate in any stage of this tender process. The Tenderer is required to inform the *Client* (CA) immediately any insolvency proceedings are commenced.

Definition of Insolvency Proceedings:

An individual who:

- has presented a petition for his or her own bankruptcy.
- has had a bankruptcy order made against him or her.
- has had a receiver appointed over assets.
- has made an arrangement with his or her creditors to avoid debt.

is deemed insolvent.

A company or partnership which:

- has had a winding up order made against it.
- has had a provisional liquidator appointed to it.
- has passed a resolution for winding-up.
- has entered administration.
- has had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets.
- has made an arrangement with its creditors to avoid debt.

is deemed insolvent.

1.7 TENDER PACKAGE

The three documents collectively referred to as the Tender Package (TP) are to be completed and returned by the Tenderer by the due date and time.

Document No		TITLE
Tender Package (TP)	TP - PL	Price List
	TP-OP	Order of Preference Statement
	TP-QS	Quality Submission

1.8 THE *CLIENT* SVALUES

The *Client* fully subscribes to the values of the Department, namely:-

- ❑ clear direction and strong leadership;
- ❑ customer focus;
- ❑ respect for people;
- ❑ open communication;
- ❑ working to deliver best value;
- ❑ development of positive working relationships with others;
- ❑ commitment to the highest ethical standards of public service, and
- ❑ valuing and harnessing the diversity of our staff.

1.9 COMPLAINTS PROCEDURE

If you feel CPD has fallen short of demonstrating its values, or meeting the guiding principles set down in the Northern Ireland Public Procurement Policy, then please submit a message through the on-line messaging facility provided for on the Call for Tender (CfT); select “CfT Menu” and the “Messaging” on the eTendersNI portal setting out the detail of your complaint. The message should be marked for the attention of: - Head of Procurement Operations Branch, Construction & Procurement Delivery, who will try to resolve your problem.

Should Procurement Operations Branch be unable to resolve your complaint and you wish to take the matter further CPD has a formal complaints procedure which can be followed in such cases.

Full details of the Complaints Procedure are available from:

[CPD Complaints Procedure](#)

2 OVERVIEW OF THE SERVICE

2.1 DESCRIPTION OF THE SERVICE

The Contract is for the provision of building maintenance, minor building works and community aids and adaptations.

The above paragraph is only a short form description of the Service. The Tenderer shall provide the Works in accordance with the Scope (see Document 3 of 4 – Contract Forms – 3A: Scope).

2.2 FORM OF CONTRACT

The Contract will be an NEC4 Term Service Short Contract

3 STRUCTURE OF TENDERER'S TEAM

3.1 DEFINITIONS

The Tenderer's Team is used to refer to a Tenderer, their sub-contractors and their supply chains.

The Tenderer is the single point of contact that takes both contractual and organisational responsibility for delivering the Service.

The term Sub-Contractor is used to refer to the parties selected by the Tenderer to act as the following: -

- ☐ Building Contractor
- ☐ Mechanical Building Services Contractor
- ☐ Electrical Building Services Contractor

3.2 CHANGES TO THE TENDERER'S TEAM STRUCTURE DURING TENDER, POST TENDER AND AFTER AWARD

A Tenderer who has been shortlisted for this competition will be required to confirm the structure of its team as part of its tender.

Where a Tenderers PQQP submission was a Group of economic operators at PQQ stage then the members of the Group of economic operators submitting the tender must also be the same as those submitted within the PQQP.

A Tenderer must also base its tender on the use of the same Subcontractors and Other Entities as submitted by the Tenderer as part of its PQQP.

Tenderers are required to confirm the structure of their Team as part of their TP- QS.

A Tenderer's tender which does not include the same team (Group of economic operators members, Other Entities and Subcontractors) structure as listed in the PQQP will, except in exceptional circumstances, (i.e. Other Entity / Subcontractor goes into administration, ceases trading, bankruptcy etc..) be **rejected**.

Tenderers should note that for any proposed change to be considered it must be supported by robust reasoning and any replacement team member must be assessed by the *Client/Managing Agent* as being at least equal, in all respects, to the team member being replaced.

If there is a change to a Tenderer's Team before or after it submits its tender or once the contract has been awarded, it must seek prior approval for any change from the *Client/Managing Agent* by

- explaining in writing to the *Client/Managing Agent* the exceptional circumstances (Subcontractor goes into administration, ceases trading, bankruptcy etc.) for any change;
and
- providing full details of any proposed replacement/alternative team member (This will entail the completion of the relevant PQQ and the score awarded must be equal to or higher than that attained by the Subcontractor being replaced).

The *Client/Managing Agent* will consider a request for approval of such changes only if they are received at least 21 calendar days prior to the date for submission of tenders.
or

following submission of tender /or where the Contract has been awarded then as soon as the Tenderer becomes aware of the exceptional circumstances (Subcontractor goes into administration, ceases trading, bankruptcy etc.) regarding the Group of economic operators /Subcontractor.

This will be a matter for the sole discretion of the *Client /Managing Agent*.

3.3 CONTRACTUAL STRUCTURE

Where a Tenderer's PQQP submission relied on the capacity of Other Entities in terms of economic and financial standing and/or technical and professional ability the following provisions apply:

- ❑ With regard to criteria relating to economic and financial standing; the Tenderer and those Entities will be jointly and severally liable for the execution of the contract. Prior to contract award the Tenderer will be required to demonstrate to the *Client* that a legal agreement is in place with those Other Entities which provides joint and several liability to the *Client*.
- ❑ With regard to criteria relating to educational and professional qualifications, or to relevant professional experience, if awarded the contract those Entities will be required to perform the works or services for which their capacities are required; Prior to contract award the Tenderer will be required to produce a commitment to the *Client* to that effect.

4 TENDER PACKAGE

4.1 SUBMISSION DATE AND TIME

The TP must be submitted no later than **3pm on the TP Submission Date** shown on the eTendersNI portal.

4.2 AMENDMENTS TO TENDER PACKAGE

If it is necessary for the *Client/Managing Agent* to amend the TP documentation in any way, prior to receipt of TPs, all Tenderers will be notified via the eTendersNI portal. If appropriate, the deadline for receipt of TPs will be extended.

No amendments to the documents shall be made by Tenderers.

4.3 ACCEPTANCE OF TENDER PACKAGE SUBMISSION

The *Client/Managing Agent* is not obliged to consider or accept alternative offers and similarly, offers made subject to additional or alternative conditions will be rejected.

Tenders may also be rejected if complete information is not given at time of submission.

4.4 ORAL COMMUNICATION

Oral discussions will not be considered binding. A Tenderer shall not rely on any statements or representations made to it during any site visit or at any other time by persons acting on behalf of *Client/Managing Agent* unless they are confirmed in writing as an amendment to the Invitation to Tender documentation.

4.5 CANVASSING

Any Tenderer who directly or indirectly canvasses any official of *Client/Managing Agent* or the *Client* concerning any award in respect of this competition, or who directly or indirectly obtains or attempts to obtain information from such officials concerning the proposed or any other competition will be disqualified.

4.6 EXTENSION TO SUBMISSION DATE

Any request for an extension of the period for submission of TP must be received at least 6 calendar days before the due date for return, but no undertaking can be given that an extension will be granted.

4.7 EXPENSES AND LOSSES

Tenderers shall be liable for all their own costs and expenses arising from preparation and submission of their tenders in response to this competition. Neither *Client/Managing Agent* nor the *Client* will be responsible for, or pay, any expenses or

losses which may be incurred by any individual or organisation in responding to this procurement competition.

4.8 COMPLIANCE

TPs must be submitted in accordance with the Invitation to Tender documents and any request for additional information notes as may be issued by the *Client/Managing Agent* during the tender period. Failure to comply may result in a tender being rejected by the *Client/Managing Agent*.

4.9 TENDER VALIDITY PERIOD

Tenders are to remain open for acceptance for a period of 120 calendar days beyond the submission date.

4.10 PUBLICITY

Any publicity in respect of the Contract to third parties by any part of the Tenderer will require prior approval of the *Client*.

4.11 FREEDOM OF INFORMATION

A Tenderer should treat the Invitation to Tender documents as private and confidential between themselves and the *Client*. However Tenderers are advised that they must provide all such information as *Client/Managing Agent* and the *Client* may require to ensure full compliance with the Freedom of Information Act. Please note that the Freedom of Information Act states that unless an exemption provided for under the Act is applicable in relation to any particular information, a public authority will be obliged to disclose that information in response to a request regardless of the terms of the contract.

Tenderers are asked to consider if any of the information supplied in the course of this Tender Competition should not be disclosed because of its sensitivity. Tenderers must complete the "Freedom of Information Declaration", included in the Tender Package (TP), to detail which information is considered sensitive and specify the reasons for its sensitivity. The *Client* will consult with Tenderers about sensitive information before making a decision on any Freedom of Information requests received.

In accordance with the obligations and duties placed upon public authorities by the Freedom of Information Act 2000 (the 'FoIA'), all information submitted to the *Client* may be disclosed in response to a request made pursuant to the FoIA.

In respect of any information submitted by a Tenderer that it considers to be commercially sensitive the Tenderer should:

1. clearly identify such information as commercially sensitive;
 2. explain the potential implications of disclosure of such information; and
-

3. provide an estimate of the period of time during which the Potential Provider believes that such information will remain commercially sensitive.

Where a Tenderer identifies information as commercially sensitive, the *Client* will endeavour to maintain confidentiality. Tenderers should note, however, that, even where information is identified as commercially sensitive, the *Client* might be required to disclose such information in accordance with the FoIA. Accordingly, the *Client* cannot guarantee that any information marked 'commercially sensitive' will not be disclosed.

4.12 FALSE INFORMATION

Tenderers must ensure that all information included within their TP is accurate. The inclusion of information that is found to be false or misleading will result in the Tenderer's exclusion from this procurement process.

Furthermore, in the event that false or misleading information comes to light after a Tenderer has been awarded a contract, this may result in termination of the contract.

4.13 VERIFICATION OF EXPERIENCE PROVIDED BY FIRMS DURING THE PROCUREMENT PROCESS

Economic Operators must ensure that all information included within their PQQ submission is accurate. The inclusion of information that is found to be false or misleading may result in the Economic Operator's exclusion from this procurement process.

At any time prior to award of contract, the *Client* reserves the right to validate the information (or some of the information) provided within the PQQ submission belonging to the Economic Operator to which it is intended to award the contract.

In particular, prior to award of the contract, the *Client* will check with the relevant client bodies referred to in the PQQ submission that the Economic Operator and its Subcontractors' claims at the PQQ stage are accurate. If as part of this validation process, an Economic Operator, or any of its subcontractors, is found to have provided false information or to have embellished the experience which they relied upon within their PQQ submission, then this may result in the Economic Operator being excluded from further participation in the competition.

In addition, the *Client* may also regard the provision of false or inaccurate information as an act of grave professional misconduct and the Economic Operator may be excluded from other Government procurement competitions.

5 TENDER EVALUATION PROCESS

5.1 TENDER QUALITY / PRICE EVALUATION

Economic Operators are invited to submit tenders on the basis of Price alone. The contract will be awarded on the basis of the lowest acceptable ***Tender Assessment Total Price***.

5.2 NOT USED

5.3 PRICE SUBMISSION

The Tenderer shall enter its commercial details into the Tender Package – Price List (TP-PL). This uses data entered by the Tenderer to calculate a Tender Assessment Total Price in pounds sterling (GBP £).

The prices entered in Tender Package – Price List (TP-PL) must be exclusive of Value Added Tax.

Tenderers shall complete Tender Package – Price List (TP-PL) in full.

5.4 EVALUATION OF TENDER DOCUMENTS

In order to identify the most economically advantageous tender the *Client* will implement an evaluation process in five steps, as described below.

Step 1: Completeness and Compliance check

- ❑ The completeness check will be used to verify that all required information has been submitted. In the event that an Appendix(ces) is missing then the Tenderer may be requested to provide it within 2 working days of a request to do so.
- ❑ Failure to provide the required information, complete a satisfactory response to any question or supply documentation that is requested within the specified timescales may result in the Economic Operator being disqualified.

Note: Economic Operators should note that the process to request omitted information will not apply to price information to be submitted as part of Tender Package – Price List (TP-PL). Failure to complete this document in full and

submit as part of the TP by the due date and time may result in the tender being rejected.

- ❑ That the tender is compliant with the requirements set out in the Invitation to Tender documents and any subsequent clarification (if any) as may be issued by the *Client*. TPs which are not compliant will be rejected.
- ❑ Economic Operators should note that the *Client* reserves the right to re-apply the completeness and compliance checks set at PQQ, specifically the Criteria for the rejection of Economic Operators, the Information as to Economic and Financial Standing and the Health and Safety requirements at any stage prior to Contract award. Economic Operators that fail to meet and maintain the minimum standards set in the PQQ will be rejected from this competition.

In addition the *Client* reserves the right to require the submission of any additional, supplementary or clarification information as it may, at its absolute discretion, consider appropriate.

Step 2: Assessment of Price Submission

The contract will be awarded on the basis of the lowest acceptable ***Tender Assessment Total Price (TATP)***.

If, in the Employer's opinion, the TATP is abnormally low or any tendered percentage (where relevant) or amounts (including the rates tendered within the TP-CD2 - Contract Data Part 2 (Including Price Submission Spreadsheet) are abnormally low or abnormally high, the Employer will require the Economic Operator to provide further written details of the constituent elements of the overall tendered amount or the tendered rates or any other information which the Employer considers relevant.

Failure to provide such information, where requested, may result in the exclusion of the Economic Operator's tender from further consideration. If, having considered the information provided, the Employer is of the view that either the TATP is abnormally low or any tendered amounts are abnormally low or abnormally high, the Employer may reject the Economic Operator's tender.

Examination of documents may detect errors in computation that may undermine the reliability of the tender. Tenderers will be notified and asked within five working days/by return to either stand over their tender or withdraw from the competition.

❑ Abnormally Low Tenders

Any tender price that

- is more than 15% lower than the *adjusted average* price; and

- exceeds the *proximity margin*, that is, is more than 1% lower than the *lowest qualifying price*.

will be deemed to be abnormally low and

may be excluded from this competition.

The ***adjusted average price*** is the average of all the tender prices provided excluding the highest tender price.

The ***proximity margin*** shall be limited to a minimum value of £1,000 and a maximum value of £100,000.

The ***lowest qualifying price*** is the lowest price submitted that is more than or equal to 85% of the 'adjusted average price'.

Where fewer than four tenders are received the Contracting Authority reserves the right not to apply this process.

See also: [PROCUREMENT GUIDANCE NOTE 03/13 - Abnormally Low Tenders](#)

Step 3: Selection of Contractor

- The Tenderer with the most economically advantageous tender submission/lowest acceptable price shall be selected for the award of contract, without prejudice to the *Client's* right to decline to accept any tender.

The *Client's* tender assessment panel may seek clarification of any matter contained within a Tenderer's TP.

This clarification process will not be a separately scored element of the tender evaluation, but may be used to inform and validate the scoring given for the assessment of the TP.

5.5 NOTIFICATION OF AWARD

The *Client/Managing Agent* will notify all Tenderers of the results of the competition.

This will include written debriefing notes, to provide constructive and positive feedback to help Tenderers improve performance on future competitions.

The *Client* does not guarantee to accept the lowest or any tender.

5.6 SIGNING OF THE CONTRACT

This contract Framework for Building Maintenance, Minor Works and Community Aids and Adaptations will be given under deed and it is intended that this contract is and shall constitute and have effect of a sealed instrument according to law.

As soon as possible after the *Client* has notified the successful Tenderer that his tender has been accepted, the *Client* will send the Tenderer all documents as appropriate including agreements between the parties for formal signing (but not dating) and execution.

5.7 MONITORING OF PERFORMANCE

The *Contractor's* performance will be regularly monitored and measured by the PM. Refer to Document 3 of 4 – Contract Forms – 3B: General Constraints, section 1.3.2 for Contract requirements.

6 CONFLICT OF INTEREST

Tenderers are advised that the *Client/Client* has appointed the following firms to act on its behalf in this procurement competition:-

Macauley Heaney Partnership
Arcen Architects
Sammon Surveyors

Given their existing involvement in the procurement process, none of the above firms may be part of any Tenderers Team. Tenderers must not contact any of the above firms with regard to this competition. All requests for additional information must be submitted to the *Client* as instructed within the document entitled 'Suppliers Guide – Tender Preparation'.

Tenderers must confirm that, if ultimately awarded the tender, there would be no conflict or perceived conflict of interest in relation to their completing the contract. Tenderers must complete the "Conflict of Interest Statement" in the Declaration section of their submission on the eTendersNI portal.

7 DISCLAIMERS

Neither the *Client* nor Managing Agent accept any responsibility or liability for the information contained in this Instructions to Tenderers or for its fairness, accuracy, adequacy or completeness, and no warranty, express or implied, is given. Nor shall the *Client* or Managing Agent be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication. Only the express terms of any written contract relating to the subject matter of the Instructions to Tenderers, as and when it is executed, shall have any contractual effect in connection with the matters to which it relates.

These provisions extend to liability in relation to any statement, opinion or conclusion contained in, or any omission from, this document and in respect of any other written or oral communication transmitted or otherwise made available to any person, and no representations or warranties are made in relation to such opinions, statements or conclusions. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the *Client* or Managing Agent.

Any persons considering making a decision to enter into contractual relationships with the *Client* should make their own investigations and their own independent assessment of the Tenderer role and should seek their own professional financial, legal and other advice. This document should not be regarded as an investment recommendation made by the *Client*. Each person considering making a decision to enter into contractual relationships with an *Client* must rely on its own enquiries and on the terms and conditions set out in those contract(s) as and when finally executed, subject to such limitations and restrictions as may be specified in such contract(s). Neither the issue of the Instructions to Tenderers nor any of the information presented in it should be regarded as a commitment or representation on the part of the *Client* or Managing Agent to enter into a contractual arrangement.

None of the information contained in the Instructions to Tenderers, or any part of the Invitation to Tender documentation, shall constitute a contract or part of a contract in any way, and none of the information is or should be relied on as a promise or representation as to the *Client's* ultimate decisions in relation to this Contract.

No contractual rights, express or implied, arise out of the procedures set out in the Instructions To tenderers.

The award process may be terminated or suspended at any time without cost or liability to the *Client* or Managing Agent.

In this document, words such as "anticipate", "expects", "intends", "plans", "believes", "envisages", "will", and words and terms of similar substance, indicate the present expectation of future events, which are subject to a number of factors and uncertainties that could cause actual requirements to differ materially from those described

The *Client* and Managing Agent reserves the right to disqualify any Tenderer who:

- ❑ Provides information or confirmations which later prove to be untrue, or incorrect;
- ❑ Submits their Tender Package late;
- ❑ Submits a Tender Package that is completed incorrectly;
- ❑ Submits a Tender Package that is incomplete;
- ❑ Submits a Tender Package that fails to meet the *Client*/CPD's Tender Package submission requirements;
- ❑ There is a change in identity, control, financial standing or other factor impacting on the Tenderer; and/or
- ❑ Fulfils any one or more of the criteria detailed in Regulation 57 of the Public Contracts Regulations.
- ❑ Is the subject of multiple Notices of Written Warning or a Notice of Unsatisfactory Performance or a contract termination within the three year period before the closing date of the ITT submission.

The *Client* and Managing Agent reserves the right to require the submission of any additional, supplementary or clarification information as it may, at its absolute discretion, consider appropriate.

The *Client* and Managing Agent reserves the right:

- ❑ To waive any requirements of this procurement process (to the extent permitted by law);
- ❑ To disqualify any Tenderer who does not submit a compliant response in accordance with the instructions in the Invitation to Tender documents;
- ❑ To withdraw this Invitation to Tender or procurement process at any time or to re-invite responses on the same or any alternative basis;
- ❑ Not to award any Contract as a result of the current procurement process; and
- ❑ To make whatever changes it sees fit to the timetable, structure or content of the procurement process, dependent on the *Client* and Managing Agent's approvals processes or for any other reason.

The Tenderer will be responsible for obtaining all information necessary for the preparation of their TP. The *Client* and Managing Agent will not be liable for any bid costs, expenditure, work or effort incurred by Tenderer in proceeding with or participating in this procurement, including if the procurement process is terminated or amended by the *Client* or Managing Agent.

The submission of a completed TP will be deemed to imply the Tenderer's acceptance of the foregoing provisions without qualification.
