



City of Liverpool

RESOURCES PORTFOLIO

CONTRACT

966

**VENDOR NEUTRAL
MANAGING AGENT FOR
TEMPORARY WORKERS**

TENDER DOCUMENT

**Completed Tenders must be
received no later than
10:00a.m
Thursday 17th November 2005**

**ISSUED BY
The Procurement Support Unit**

**Steve Boyd
Procurement Support Unit
Tel: 0151 225 2816
e-mail:**

XXXXX.XXXX@XXXXXXXXXX.XXX.XX

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SECTION A

INTRODUCTION AND INSTRUCTIONS

SECTION A - PART 1

1. IMPORTANT NOTICE

This Invitation to Tender (“the ITT”) has been prepared by Liverpool City Council (“the Council”) in connection with the proposed contract for the provision of a Vendor Neutral Managed Service for Temporary Workers (“the Services”).

The ITT does not purport to contain all the information that a Managing Agent of the Services may require. The Council has not independently verified any of the information contained in the ITT. In all cases, interested parties should independently verify all information and data set out in this ITT.

No representation or warranty, express or implied, is or will be made in or in relation to, and no responsibility or liability is or will be accepted by the Council or by any of its Officers, servants or agents as to or in relation to the accuracy or completeness of this document or any other written or oral information made available to any interested party or its advisers at any time in connection with the proposed transaction or as to the information contained in this ITT and any liability therefore is hereby expressly disclaimed. Any successful tenderer for the Services will be required to acknowledge in any such contract that it has not relied on or been induced to enter into such contract by any representation or warranty, save as expressly set out in such contract.

This document has been delivered to interested parties on the express understanding that such parties will use it only as set out above. By accepting this document the recipient has agreed to comply with any requests to return promptly all material received from the Council (including this document) without retaining copies. In supplying this document, the Council is not obliged to provide the recipient with any additional information, to update this document or to correct any inaccuracies that may become apparent.

INVITATION TO TENDER

2. Introduction

In accordance with the terms of this document, you are hereby invited to submit a priced, detailed tender for the provision of a Vendor Neutral Managed Service for the supply of Temporary Workers to Liverpool City Council and may, at some stage, also include other public bodies within Merseyside the North West and possibly Local Authorities / public bodies across the country.

The successful tenderer shall enter into a formal Contract to provide the Services to the Council in the form based substantially on the Contract Conditions set out in the tender documents. Tenderers may provide details of additional Contract Conditions they would propose to add.

Tenderers are required to complete all sections of and supply all information required in the Certificate of Tender. Please note that information should be supplied in the order set out in the Certificate of Tender. Failure to comply with this requirement may prejudice consideration of a tenderer's offer.

The tenderer shall be deemed to have satisfied itself as to the nature, extent and content of the Services to be supplied, the numbers of staff required and all other matters which may affect its tender.

Tenderers are responsible for formulating their proposals in accordance with the provisions set out in this ITT. Non-compliance with the requirements of this ITT may result in disqualification.

3. Tenderers Queries

The Council is committed to a competitive procurement process in which a level playing field is maintained by the equal availability of information to all tenderers. The Council will respond to individual written requests for clarification or further information from any tenderer by way of circulars to all tenderers.

The "Council's Authorised Officer" for the purpose of this Tender exercise is:-

Steve Boyd
Contracts Manager
Corporate Procurement Unit
Liverpool City Council
Room 225, Municipal Buildings; Dale Street ; Liverpool ; L2 2DH

e-mail:xxxxx.xxxx@xxxxxxxxxx.xxx.xx

The Council's Authorised Officer will act as the sole point of contact and conduit for any enquiries by tenderers, their members or associates in relation to this tender. No approach of any kind should be made to any other persons in connection with the tender and the Council may, in its sole discretion, disqualify tenderers who breach this provision. All requests for clarifying information should be made in writing (this includes e-mail) and the Council's Authorised Officer will, so far as possible, respond in writing.

While tenderers are preparing tenders, they are positively encouraged to obtain further information regarding the Services to be provided by means of written requests for clarifying information to reduce the risk of unqualified tenders and to improve the quality of proposals.

Written requests for clarification should be faxed or e-mailed to the Council's Authorised Officer. The Council will endeavour to answer all requests for clarifying information as quickly as possible. The Council will not guarantee that any requests for clarifying information made within seven days prior to the deadline for receipt of tenders will be answered (i.e. the Council's Authorised Officer should receive all clarification requests by no later than **12pm ;9th November 2005**)

The Council will circulate details of enquiries and of its replies to them, except where the tenderer has indicated that an enquiry is of a commercially sensitive nature, in which case the Council will either

- a) treat both enquiry and response confidentially or
- b) where the Council disagrees with the tenderers classification the Council will invite the tenderer to re-classify or withdraw the enquiry.

The Council reserves the right to correct any omissions or inaccuracies in the tender documents and to clarify and / or amend any of the requirements up to 7 days before the date specified for return of tenders.

4. Notice to Tenderers

Tenderers will be deemed for all purposes connected with their tenders to have satisfied themselves fully as to the nature, extent and character of the Services sought, and the human resources, materials, software, equipment, machinery and other liabilities and other matters which will be required to perform the Services.

The Council reserves the right to change without notice the basis of, or the procedures for, the tender process, to reject any or all proposals for the Services, to terminate discussions with any one or more tenderers at any time and not to proceed with the proposed procurement at all. Under no circumstances shall the Council or its staff, agents or advisers incur any liability whatsoever in respect of such matters.

5. Confidentiality and Canvassing

Tenderers are required to sign and return, using the tenderer's headed stationery, an undertaking in respect of confidentiality and canvassing relating to the tender process in the form set out at Annex 1 of this Section. This undertaking shall continue in full force and effect unless specifically repealed by the Council in writing.

Any tenderer who directly or indirectly canvasses any Member, Officer, employee or agent of the Council concerning the award of the Contract (or any matter pertinent thereto) may at the discretion of the Council be disqualified.

The Council reserves the right to apply the provisions relating to recovery of costs, as set out in the Contract Conditions, to any breaches of this clause.

6. Statutory Declaration

Tenderers will also be required to sign and return to the Council, using the tenderer's headed stationery, a Statutory Declaration in the form set out at Annex 2 of this section as part of their response to the ITT. The Statutory Declaration shall continue in full force and effect until specifically repealed by the Council in writing.

7. Submission of Tenders

Tenderers are required to submit their tenders by **10am on 17th November 2005**

Tenders should provide sufficient information for the Council to evaluate the tenderer's proposals. However, in the interests of efficiency and effectiveness for all parties, tenderers are discouraged from providing detail over and above that specified or in a different form and order to that specified.

Particular attention must be paid by the tenderer in ensuring that adherence to the Certificate of Tender is strictly followed and that all information requested in the Certificate of Tender is supplied. Where insufficient space is provided for your reply, tenderers should add separate sheets clearly bearing a cross-reference to the relevant sections and questions.

Two hard copies of the tender return documents duly signed and dated together with a copy on CD or floppy disc, should be returned using the enclosed addressed envelope to reach the Head of Legal Services at the address indicated
By **10am on 17th November 2005**

Please note that a tender received after the due date and time will not be considered and that any tender packaging / envelope bearing an indication (including a franking machine stamp) of the tenderer's identity will not be considered.

8. Tender Evaluation and Clarification

The evaluation process will comprise of an initial evaluation of all tenders received by the Council for compliance with the ITT, and to assess affordability and deliverability in accordance with the Award Criteria detailed in paragraph 22 of this section of the Invitation to Tender.

Following the initial evaluation of tenders, the Council may require tenderers to attend clarification meetings and /or provide the Council with written responses to requests for clarification. Tenderers will be notified of the format of any clarification meetings in advance.

A shortlist of tenderers will be invited to make presentations and to enter into detailed discussions with the Council. The presentations will complement the service Method Statement contained in their tender submissions.

Site visits may be required.

9. The Contract Conditions

The successful tenderer will be required to enter into a Formal Contract with The Council

Tenderers must accept and base their tenders on the Contract Conditions included as Section D of this ITT. Tenderers may however raise any comments on the wording of individual clauses as part of their submission. Such comments must be clear and unambiguous as to their nature and effect and be supported by information which demonstrates the impact upon the tender (financial or otherwise) of such comments.

Tenderers may submit additional clauses for the Council to consider including in the Formal Contract, such additional clauses must be clear and unambiguous as to their nature and effect but it will be at the Council's sole discretion as to whether to incorporate these additions or not.

10. Tax and VAT

Tenderers will be responsible for the payment of all taxes and other associated outgoings associated with the performance of the Contract.

In respect of Value Added Tax the Council will pay to the tenderer such VAT as may be properly chargeable by the tenderer in connection with the performance of the Service.

All prices within the tender will be exclusive of VAT.

11. Collusive Tender

Tenderers must confirm in their tenders that they are submitting a *bona fide* tender. The Council shall be entitled to dismiss any tenders where the provisions of the Certificate have been contravened. Any tender which has been accepted from a tenderer who is subsequently found to have contravened the terms of the Certificate shall be liable to the Council for any loss involved.

The Council will recover the amount of any losses it has suffered including the cost of this exercise if the successful tenderer is subsequently found to have contravened the terms of the tender in this respect, or if the tenderer or any person employed or acting for them does any of the following:-

- commits any offence under the Prevention of Corruption Acts 1889 to 1916; or
- gives or offers a fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

12. Modifications and Amendments

The Council reserves the right to make changes of a drafting nature to the ITT, which must be accepted without reservation.

If the Council wishes to make more substantial alterations to the contract documentation, these will be notified to the tenderer. Tenderers may raise comments on the wording of individual clauses of the Contract Conditions where these have been modified or altered by the Council.

13. Acceptance of Any Offer

The ITT hereby extended by the Council is on the basis that it is without any commitment on the part of the Council to proceed with the award of the Contract.

Written acceptance by the Council of any tender, (whether as submitted or amended by subsequent negotiation), will create a binding Contract between the tenderer and the Council. Where a tender is accepted the tenderer shall enter into formal Contract with the Council within 14 days of notification of acceptance upon the terms of the enclosed contract documentation together with any amendments which have arisen, and such other documentation as may be prepared, pursuant to discussions. Failure to achieve this timetable to the Council's satisfaction may result in the Council proceeding with another tenderer or as it may otherwise decide.

14. Applicable Laws

The laws of England shall apply for the purposes of all proceedings relating to this tender process and any Contract awarded pursuant thereto.

15. Tender prices

The prices to be included in the Pricing Document in this tender shall be the full and inclusive price, including all charges but exclusive of VAT, for the Services described.

16. Period of Contract

It is the current intention of the Council that the Contract will be for a period of 3 years. However the Council may be willing to consider alternative Contract durations if it considers the commercial benefits to be worthwhile.

17. Underlying Assumptions

Tenderers should provide a full statement of any relevant underlying assumption in support of the bid.

18. Electronic version of the tender document

This Invitation to Tender is made available electronically and has been supplied on a floppy disc with this documentation pack. The sole purpose of this is to assist tenderers in completing the Invitation to Tender..

19. Certificate of Tender

The Certificate of Tender is attached at Annex 6 of this section. It should be completed and signed using the tenderer's headed stationery. Any alteration to the contents of the Certificate of Tender will disqualify the tenderer. The completed certificate should be returned with your completed tender document.

20. General Information

- The Council operates under a devolved management structure that enables individual departments / units of the council to commit their own expenditure within agreed budgets. Within this structure individual departments have used Temporary Workers from Supply Agencies in the field who have a proven track record of providing good quality workers and service.
- The Council is inviting tenders for a service contract for the provision of a Vendor Neutral Managing Agent across the City. Specifically, the Council are seeking a Vendor Neutral Managing Agent who's responsibilities will include entering into contract with our existing supply base of Supply Agencies currently providing temporary workers, re-negotiating charges rates, routine monitoring of these agencies and the provision of an internet based enquiry, booking and management system.
- The use of this service contract will be mandatory to all departments of the Council except schools. Schools budgets are delegated by law and they are not required to comply with the Council rules regarding corporate contracts although schools have expressed an interest in taking part dependent on the outcome of the first few months of operation.
- The Council will expect the successful tenderer to demonstrate how they intend to market their services to a very diverse organisation (including the schools) providing the numerous services for which the Council is responsible.

- The Council will not commit to a stated quantity of service or value of expenditure on these services. However, past experience suggests that expenditure on Temporary Workers throughout the Council has been in the region of £10 million per annum.

21. Freedom of Information

General guidance to contractors and tenderers on access to information about or arising under contracts.

21.1 Introduction

All information relating to any tender made to the Council or any contract to which the Council is party, including information arising under the contract or about its performance, will be covered by the Freedom of Information Act 2000 (FOIA) from January 2005 (or the date of implementation if different.) The Council will be under a legal obligation to disclose such information if requested unless an exemption applies. The legal obligation to respond to a request for information falls on the Council. The Council must determine whether an exemption applies to information and whether the request should be refused. The Council may also be subject to disclosure obligations under other legislation or codes of practice. This Guidance sets out the approach of the Council of information about contracts.

21.2 General rules on disclosure

The Council has determined that, in the absence of special circumstances:

- The Invitation To Tender (ITT) will always be available under FOIA to those who enquire.
- Responses to tenders will be held in confidence until the award of the contract.

Any person tendering for or entering into a contract with the Council must, as part of the tender process, inform the Council of information which it regards as being eligible for a claim for exemption from disclosure by the Council under FOIA. Such information will be called reserved information. Information about all tenders will be made available under FOIA to those who enquire unless, as part of the tender process, the tenderer has notified the Council that it regards any of the information supplied with the tender as falling within the categories indicated below (reserved information). Such notification must be made on a schedule as set out below.

The Council will make information about the global pricing of the bid available under FOIA after award of the contract. Those tendering should submit how that might be done.

21.3 Reserved Information

If the contractor wishes to reserve any information from disclosure under FOIA he must put forward any information or classes of information which it is wished to have (reserved information) reserved and the grounds of the exemption which relate to the information which may be one or more of the following:

- That the information constitutes a trade secret and is eligible for exemption under section 43(1)
- That the disclosure of the information would prejudice the commercial interests of any person (section 43(2))
- That the information will be disclosed by the contractor to the Council **and** that the nature of the information, or the circumstances in which it is imparted or the

circumstances are otherwise such as to justify the acceptance by the Council of an obligation of confidence in respect of it (section 41(1))

- That the information is personal data or otherwise relates to the private life of any individual which is appropriate for protection (section 40))
- Any other specific exemption under FOIA

Information which is agreed between the parties to be reserved information will be contained in a separate schedule to the contract. The schedule will list the class or category of information or the information itself and specify which exemptions under FOIA apply to each specified class category or specific information. In each case the schedule shall indicate when it is likely that the information can be made available under FOIA or if the information is unlikely ever to be made so available, that this is the case. Where such information is exempt under the rules governing commercial matters (section 43(2)), then unless special circumstances apply, it will not be withheld under FOIA for more than seven years after completion of the contract works.

Information relating to the overall value, performance or completion of the contract will not be accepted as reserved information. The Council may be however withhold access to such information under FOIA in appropriate cases. The decision as to whether to withhold information shall be for the Council alone to determine. It shall have no obligation to consult the contractor.

Information relating to contract records and administration will not be accepted as reserved information. The Council may however withhold access to such information under FOIA in appropriate cases. The decision as to whether to withhold information shall be for the Council alone to determine. It shall have no obligation to consult the contractor.

The tenderer may designate unit prices or more detailed pricing information as reserved information.

The Council will make information available under FOIA from 5 years after award of the contract, in the absence of specific Contract to the contrary. In the event that the Council receives a request for such information before the expiry of the 5 year period which it considers it may be appropriate to provide it will, wherever possible, notify the tender and take account of any representations made by the tenderer within 7 days of receipt of the notice by the tenderer.

21.4 Handling requests for information and notice to those affected

Other than as set out above the Council shall have no obligation to consult the contractor where any request for information, whether under FOIA or otherwise, touches or concerns the contract.

Information about the provision of the services which is the subject matter of the contract which arises in the course of performance of the contract.

The Council will have obligations to respond to FOI and other requests for information and the contract will include appropriate terms requiring the contractor to supply such information as requested by the Council.

22. Award Criteria

General

The Tenders should, as a minimum, demonstrate how Tenderers will fully meet the Service Specification and all other requirements set out in the ITT. The Tenders shall also include the Tenderers' detailed pricing proposal.

Tenderers are encouraged to formulate innovative Tenders that offer value for money.

The Council will review and evaluate the Tenders. The aim of this review and evaluation will be to award a contract to the Tenderer whose proposal represents the Most Economically Advantageous Tender based on .

- Tender Compliance
- Skills and Competencies of tenderer
- Price
- Feasibility of proposal
- Financial Stability of Tenderer
- Quality

The order of the list does not necessarily reflect the importance of each of the criteria

Summary of Evaluation Methodology

22.1. Tender Compliance

The Council wishes to ensure that all Tenders comply with the Tender procedures and the contract objectives set out in this ITT. Only those Tenders that pass the compliance assessment will progress to the quantitative and qualitative assessment stages.

Procedural compliance will be achieved by following the specimen Form of Tender as set out in Annex 1 of Section A - Part II, including all the enclosures.

The Council's contract objectives are laid down in the Service Specification. These objectives are mandatory and failure to achieve them will result in exclusion. It is necessary for the tenderer to indicate within the Method Statement how the requirements of the Service Specification are to be delivered.

The output from the compliance assessment will be the identification of those Tenders (including variant Tenders) which are capable of implementation. This will ensure that the qualitative and quantitative assessment can concentrate on identifying the "Most Economically Advantageous" Tender.

22.2. Skills and Competencies of Tenderer

The Council will consider the extent to which the Tender demonstrates:

- possession of the understanding of the requirement, skills and resources necessary to meet the requirements of the specification
- knowledge and experience of the Temporary Workers Supply Agency market
- knowledge and experience of effective strategies for retaining supply agencies on their programme
- knowledge and experience of previous implementation within a large organisation

- Knowledge and experience of relevant Statutes/laws governing Supply Agencies and Temporary Workers.

22.3. Price

The Council will consider:

- Proposal put forward for management fee structure
- competitiveness of prices
- the breakdown of your prices as required in Section C paragraph 2.

22.4. Feasibility of proposal

The Council will consider:

- deliverability of proposal
- achievability of timetable leading to implementation of the full service
- The overall assessment of the proposals will also contain a view of the risk/level of confidence associated with each proposal

22.5 Quality

The qualitative assessment shall have regard for:

- meeting the Service requirements
- quality control / vetting procedures of the intake of new Supply Agencies
- arrangements for managing / monitoring the Supply Agencies
- quality and range of management information available

The Tenders will be assessed by a panel comprising representatives of the Council

23. Outline Timetable

Issue notice calling for expressions of interest using Restricted procedure via OJEU	17.03.2005
Closing date for expressions of interest and return of PQQ's	25.04.2005
Evaluate PQQ's	13.07.2005
Issue ITT (Invitation To Tender)	05.10.2005
Tender due date	17.11.2005
Tender Opening ceremony	18.11.2005
Tender evaluation and short listing	21.11.2005 to 24.11.2005
Notify outcome of initial evaluation to tenderers	25.11.2005
Interview / presentations from short listed tenderers	29.11.2005 & 30.11.2005
Site visit as deemed necessary / required	w.c 21.11.2005
Successful / Unsuccessful tenderers notified	02.12.2005
Contract award	12.12.2005
Implementation / Transition Period	19.12.2005 31.01.2006
Contract start date	01.02.2006

FORM OF CONFIDENTIALITY UNDERTAKING

Re: Provision of Vendor Neutral Managing Agent (Temporary Workers)

To: Liverpool City Council
("the Council")

Date

TENDERER'S UNDERTAKING IN RESPECT OF CONFIDENTIALITY AND CANVASSING

Wehereby undertake as follows:

1. to treat all information contained in the following as strictly private and confidential:
 - i. the Invitation to Tender (ITT) document, complete with all annexes and schedules;
 - ii. all telephone conversations, meetings and correspondence with the Council or its Advisors;
 - iii. any other information gained from any other contact whatsoever made with the Council, its Officers, employees, representatives or agents;
2. to ensure that the ITT or any other documents relating to the project are only ever made available to a tenderer who has entered into this undertaking and its directors, employees and professional advisers and/or financiers who are directly involved in the process of submitting a tender;
3. to ensure that the ITT or any other documents relating to the project are not copied in whole or in part, reproduced, distributed or otherwise made available to any third parties in any circumstances nor use them for any purpose other than that for which they are intended by the Council without the prior written consent of the Council; and
4. to ensure that we do not undertake any publicity activities with any section of the media in relation to the project without the prior written consent of the Council.

The above undertaking does not apply to any information which is or becomes publicly available or is shown by reference to written records to have been properly obtained from a third party (in each case otherwise than through a breach of any confidentiality undertaking).

We also hereby undertake that neither we nor any person employed by us or acting on our behalf will canvass or solicit any Member, Officer or Employee of the Council in connection with the tendering process for the Service.

We understand and accept that this letter shall continue in full force and effect unless specifically repealed by the Council in writing and agree to be legally bound by all the undertakings in this letter.

Yours faithfully

Authorised Signature
Name
Title
Organisation

STATUTORY DECLARATION

I [insert name] of [insert name and address of Firm] **do solemnly and sincerely declare** as follows:-

- 1 I am the (insert title, e.g. managing partner) of [insert name of Firm];
- 2 I am fully conversant with the business activities of [insert name of Firm] and am authorised to issue a statutory declaration on their behalf;
- 3 My attention has been drawn to the extract of the provisions of Regulation 14(1) of Statutory Instrument 3228 of 1993 (The Public Services Contracts Regulations) which is appended hereto;
- 4 I can state with complete certainty and based on my own knowledge and experience that, whilst I have held the position of [insert], none of the rejection factors specified in Regulation 14(1) of Statutory Instrument 3228 of 1993 apply to [insert name of Firm] nor do I know of any other reason relating to these factors why [insert name of Firm] should not be selected to tender for the vendor neutral management agent of temporary workers

and I make a solemn declaration conscientiously believing the same to be true and by virtue of the [Statutory Declaration Act 1835].

Declared at
in the County of [insert]
by [insert declarant]
this [] day of [] 200[]

Before me [] Commissioner for Oaths/Solicitor/Notary Public

**Appendix to the Statutory Declaration of [insert] name of declarant
declared on [] day of [] 200[]**

Extract from the provisions of Regulation 14(1) of SI 3228 of 1993

- a being an individual is bankrupt or has had a receiving order or administration order made against him or has made any composition or arrangement with or for the benefit of his creditors or has made any conveyance or assignment for the benefit of his creditors or appears unable to pay, or to have no reasonable prospect of being able to pay, a debt within the meaning of Section 268 of the Insolvency Act 1986, or article 242 of the Insolvency (Northern Ireland) Order 1989, or in Scotland has granted a trust deed for creditors or become apparently insolvent, or is the subject of a petition presented for sequestration of his estate, or is the subject of any similar procedure under the law of any other state
- b being a partnership constituted under Scots law has granted a trust deed or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of its estate
- c being a company has passed a resolution or is the subject of any order by the court for the company's winding up or otherwise than for the purposes of bona fide reconstruction or amalgamation, or has had a receiver, manager, or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof or is the subject of proceedings for any of the above procedure or is the subject of similar procedures under the law of any other state
- d has been convicted of a criminal offence relating to the conduct of his business or profession
- e has not fulfilled obligations relating to the payment of social security contributions under the law of any part of the United Kingdom or of the member State in which the services/works Managing Agent is established
- f has not fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or of the state in which the services/works Managing Agent is established

GUARANTEE UNDERTAKING

Re: Provision of Vendor Neutral Managing Agent (Temporary Workers)

To: Liverpool City Council
("the Council")

We [Name]
being the ultimate holding company ("Parent Company") of our subsidiary company

.....
[the Tenderer] hereby irrevocably and unconditionally undertake under seal that in the event of the Tender submitted by the same being accepted by you and if requested to do so by you, we shall forthwith upon request, and in any event not later than seven days prior to the date agreed for the completion of the Contract for Services to which this undertaking relates, properly execute and deliver to you a Deed of Guarantee in the form attached hereto, but subject to the insertion of such details and the making of such revisions as the Council may require in the light of the terms and the nature and effect of the contract constituted by your acceptance of the Tender.

Dated 200

IN WITNESS whereof the Parent Company has hereunto affixed its common seal with the intent that this instrument have effect as a Deed

EXECUTED and DELIVERED as a Deed on behalf of []
by:

Director

Director/Secretary]

FORM OF DEED OF PARENT COMPANY GUARANTEE

THIS DEED OF GUARANTEE is made theday of2005
BETWEEN..... ('the Guarantor') whose registered office is at
.....of the one part and **Liverpool City Council :**
Municipal Buildings Dale Street; Liverpool: L2 2DH.

WHEREAS:-

- (1)("the Managing Agent") whose registered office is athas executed on the day of2005. an Contract ("the Contract") with the Council for theand the Council has executed the Contract in consideration inter alia of the Managing Agent procuring this Deed by the Guarantor.
- (2) The Guarantor is the parent company of the Managing Agent.
- (3) The Guarantor agrees to guarantee the performance by the Managing Agent of its obligations under the Contract in accordance with the terms and conditions hereinafter appearing.

NOW THIS DEED WITNESSES as follows:

- 1 In consideration of the Council agreeing to enter into the Contract with the Managing Agent the Guarantor guarantees to the Council the punctual true and faithful performance and observance by the Managing Agent of all the obligations terms and conditions on its part to be performed and observed under the terms of the Contract and any extension or amendment thereof and binds itself properly to perform and observe or cause to be performed and observed any such obligations terms and conditions which the Managing Agent shall fail to perform and observe.
- 2 The Guarantor hereby agrees to indemnify and keep indemnified the Council against all losses damages costs and expenses which may be incurred by the Council by reason or in consequence of any failure by the Managing Agent punctually truly and faithfully to perform and observe all or any of the obligations terms and conditions on its part to be performed and observed under the terms of the Contract and any extension or amendment thereof provided that the obligations of the Guarantor under this Guarantee shall be no greater than the obligation of the Managing Agent under the Contract.
- 3 The Guarantee and Indemnity hereby given shall not in any way be discharged nor the liability of the Guarantor hereunder be affected by any alteration to or variation of the Contract or by any time or any other indulgence granted to the Managing Agent by the Council or by the release of the Managing Agent by operation of law and if this Guarantee and Indemnity shall not operate for any reason as a Guarantee the Guarantor shall nevertheless be liable as principal in respect of the Indemnity.
- 4 This Deed shall be subject to English Law in all respects (including formation) and shall be construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England.

Executed as a Deed by the parties on the date which first appears in this instrument.

THE COMMON SEAL of []

was hereunto affixed by Order of the Board in the presence of:

Director

Secretary

COLLUSIVE TENDER CERTIFICATE

Collusive Tender Certificate to be produced on the Tenderers headed notepaper.

To Liverpool City Council
Corporate Procurement Unit; Municipal Buildings ; Dale Street; Liverpool:L2 2DH

Having examined the Specification, the Appendices to the Specification (if any), the Conditions of Contract with Annexes (if any), the Pricing Document and this Form of Tender (the "Tender Documents"), we offer to supply the Services specified in the Tender Documents at the prices stated in the Pricing Document.

We undertake to perform the Contract in accordance with the Tender Documents.

We agree that this tender shall remain open for acceptance by the Council for 3 months from the date stipulated for the return of tenders.

Unless and until a formal Contract is prepared and executed this tender, together with your written acceptance thereof, shall constitute a binding contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive.

We certify that this is a bona fide tender, intended to be competitive, and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any Contract or arrangement with any other person. We also certify that we have not done and we undertake that we will not do at any time before the hour and date specified for the return of this tender any of the following acts:-

- (a) communicating to a person other than the person calling for these tenders the amount or approximate amount of the proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium or performance bond quotations required for the preparation of the tender;
- (b) entering into any Contract or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted;
- (c) offering or paying or giving or agreeing to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said system any act or thing of the sort described above.

In this certificate, the word "person" included any person or any body or association, corporate or un-incorporate; and "any Contract or arrangement" includes any such transaction, formal or informal, and whether legally binding or not.

Yours faithfully

Signature
Full name of Signatory &
position in Company

Date

Annex 5

Information Considered to be exempt from Freedom of Information requests

Any information supplied, which the Tenderer considers may be potentially exempt from disclosure under the Freedom of Information Act MUST be set out in this Section.

Any information contained outside of this section will be subject to disclosure without consultation.

The information considered to be exempt must be referred to in the table below, this could be a whole section of the documentation provided, a clause or paragraph in the documentation provided.

The Tenderer should set out in this section of the Tender documents to be returned, that information which it considers to be exempt from disclosure, the reason for non-disclosure, the exemption that might be applicable and the time period for which this information will be considered to be exempt.

The Tenderer should also include in this section the name and contact details of a link person who will be able to handle Freedom of Information requests.

Name of Link Person:

Address

.....

.....

.....

.....

Telephone Number

Fax Number

Email

CERTIFICATE OF TENDER

Re: Provision of Vendor Neutral Managed Service (Temporary Workers)

To: Liverpool City Council ("the Council")

We.....
Whose registered office is at

1. Having examined all the tender documents and having satisfied ourselves as to all other matters relevant thereto, we hereby confirm our tender to enter into the Contract for the Services.
 - (a) We enclose all documentation prepared in accordance with the Invitation to Tender.
 - (b) We enclose a Confidentiality Undertaking prepared and signed in accordance with Annex 1
 - (c) We enclose a Statutory Declaration prepared and signed in accordance with Annex 2
 - (d) We enclose an Undertaking sealed by our Parent Company for it to enter into the Guarantee in accordance with Annex 3.
 - (e) We enclose a signed Collusive Tender Certificate in accordance with Annex 4.
 - (f) We enclose a completed exemptions from Freedom of Information Act form as specified in Annex 5.
 - (g) We enclose the completed Method Statement and Pricing Document prepared in accordance with Section C and confirm they are correct.
 - (h) We enclose the completed General Information Questionnaire in accordance with Section C
2. We confirm that this is a *bona fide* Tender to perform the Contract.
3. We confirm that all discussions remain "Subject to Contract" and that the Council's acceptance of any offer will not constitute a binding Contract or contract between us until a formal written Contract or Contracts have been executed. We agree that the formal Contract shall comprise the completion of the Contract Conditions in the form contained in the Tender Documents subject to any amendments that have arisen in subsequent discussions together with the completion of other requisite documentation.

In the event of your written acceptance of our offer we undertake:-

- (a) to execute the Contract Conditions (substantially in the form set out in Section D on a date set aside by you for completion of the Contract); and
- (b) (where applicable) to have had sealed and delivered to you the Guarantee of our ultimate holding company, in the form set out in Annex 3, 7 days from award of contract and
- (c) to complete all necessary steps and execute all documentation which is agreed following submission of our offer. In the event that, exceptionally, these matters are

not completed by 14 days from award of contract, the Council will supply a timetable for their completion.

4. We confirm that in submitting our tender, we have satisfied ourselves that we understand the information contained in the Specification.
5. We confirm that this tender is valid for a period of three months unless we agree with the Council to extend the period.
6. We confirm we are of sound financial standing and have and will continue to have sufficient capital, skilled staff, equipment and other resources available to provide the Services.
7. We confirm we have full power and authority to enter into the Contract and ability to provide the Services.

Signed..... Signed.....

Name..... Name.....

Position..... Position.....

Duly authorised to sign on behalf of

Name of Tenderer.....

Address.....

Date.....

Tel:.....

Fax:.....

e-mail address



SECTION B

SERVICE SPECIFICATION

1. Introduction / Background

Liverpool City Council wishes to establish a contract for the management and supply of agency staff.

The contract will run for a period of 3 years from the date of commencement.

The vendor neutral contractor will manage the entire recruitment supply chain for temporary workers, including the management of the council's existing supply base for temporary workers.

2. Disclaimers / caveats

Whilst every effort has been made to quantify the figures supplied within this Service Specification and this ITT, a number of assumptions have been made:

- A review of the City Council's finance system indicates that up to £10m per annum is spent with "agencies". Unfortunately, we cannot define the scope of the search any further and suspect this will include areas of spend which are not directly related to Temporary Workers. However, we also suspect that due to wrong or inappropriate coding not all the spend on Temporary Workers has yet been identified.

3. Future state objectives

Overall, the Council are seeking a more co-ordinated approach to the sourcing and management of Temporary Workers. Specifically we are seeking to achieve:

- A reduction in the total annual cost of utilising Temporary Workers
- Streamlined supply chain for sourcing and managing Temporary Workers including a single consolidated weekly invoice.
- To manage the inherent risk and liability issues more effectively and pro-actively
- To develop a range of management information regarding trend analysis to enable more effective workforce planning

4. Policies / Standards

The City Council is currently reviewing its procedures relating to the use of Temporary Workers. This will be further developed once we have a defined process in place with the successful tenderer. It will be mandatory for Ordering Officers to utilise any new arrangements put in place.

5. ICT requirements

Liverpool City Council are currently implementing SAP a corporate financial system and any electronic trading arrangements for sourcing Temporary Workers will need to link electronically with the SAP system. Detailed process flows will be developed with the successful tenderer.

6. Scope of the contract

This contract will cover all LCC's agency requirements except for Executive Recruitment.

7. Outcomes Required

1. Streamlined ordering, timesheet and invoicing process including a single dedicated point of access, (e-mail, fax, phone) available 365 days per year, 24 hours per day.
2. Appropriate terms, conditions and pricing structures in place with all Supply Agencies including temp to perm fees structure.
3. A monitoring and quality control programme with all Supply Agencies.
4. Reduced direct and in-direct costs associated with the sourcing, utilisation and management of Temporary Workers including a single consolidated weekly invoice and supporting statement.
5. A sourcing strategy that may include:
 - a. qualification and acceptance criteria for Supply Agencies
 - b. Utilisation of an e-procurement solution, possibly via a managing agent nominated by LCC to enquire, make bookings and provide access to management information.
6. Ensure risk is identified, assigned and managed appropriately including the establishment of a risk register.
7. 100% fulfilment rate
8. Access to a wide range of management information including cost / trend analysis. Further details are provided within paragraph 12 - Outputs.
9. It is a key requirement that there be total transparency of the tenderers costs including detailed accounting and reporting of labour rates paid to Temporary Workers employed, and any management fees, bonuses, loyalty payments, mark-ups etc etc.
10. Substantial reduction in the level of cold calling to Council Officers from Supply Agencies.

8. Service Level Requirements

1. We expect requests for Temporary Workers to be made via a web enabling solution in a format agreed between both parties which will include, as a minimum, the start and expected end date of the assignment, the job title, associated job profile, ceiling charge rate and coding for invoicing purposes.
2. Occasionally, it will not be possible to request a Temporary Worker electronically. Therefore, it is essential that a process is available to make booking requests via phone or fax. The minimum information required will be as described in 8.1.
3. The Managing Agent will acknowledge receipt of all requests within 30 minutes electronically.
4. For short notice bookings (same or next day) the Managing Agent will respond with one or more named individuals within two hours from receipt of the initial request. For next day plus bookings, the Managing Agent will respond within four hours from receipt of the initial request.
5. If the request is for a highly specialist role, the Managing Agent will agree with the Originating Officer the required timescale and provide accurate and timely progress reports.

6. As a minimum, the Managing Agent will record all requests from the Council for Temporary Workers, response times, name of worker allocated, name of supplying agency, length of placement, the Council budget code charged, job type (general/professional/technical/administrative) and details of any complaints received. Further aspects to be agreed with the successful tenderer.
7. The Managing Agent will provide basic LCC induction details (details to be agreed with the successful tenderer) to all Supply Agencies to enable Temporary Workers to be briefed prior to arriving on-site.
8. The Managing Agent shall ensure that Temporary Workers supplied under this Contract have had references checked from at least two previous employers. One reference must be taken from the immediate past employer. The Managing Agent shall take all reasonable precautions to ensure the suitability of Temporary Workers supplied to the Council.
9. Where necessary, the Managing Agent shall ensure that Temporary Workers supplied under this Contract hold a current and valid CRB (Criminal Records Bureau) check appropriate to the nature of the work involved.
10. The Managing Agent shall ensure that all Supply Agencies utilised by it in performance of the Service shall take full account of the sensitivities of children and other vulnerable persons when performing the Service.
11. If, for any reason, Temporary Workers supplied via the Managing Agent, are found by the Council, to be unsuitable or incapable of carrying out the work required, or, is found to be disruptive to other members of staff, the Managing Agent will be notified to terminate the placement with immediate effect and supply a suitable replacement within 24 hours or at a time agreed with the Originating Officer. A charging structure for such incidents to be agreed between the parties as part of the implementation programme.
12. The Managing Agent will update all on-line systems in an accurate and timely manner and have a contingency / disaster recovery plan in the event of any kind of failure which could have an adverse impact on the Service.
13. The Managing Agent will maintain a list of the Council establishment's addresses for use by its staff when dealing with requests. (Original list to be supplied by the Council on award of the contract).
14. The Managing Agent shall maintain up to date management information systems (in a format to be agreed as part of the implementation process) to ensure continuous access to relevant accurate information. A weekly report of the areas agreed between the parties is to be sent via e-mail to the Council Nominated Officer and other key stakeholders.

9. Minimum terms with Supply Agencies

The Managing Agent will be required to enter into contract with Supply Agencies and will provide the Council with a copy of the proposed Terms and Conditions prior to implementation. The Council reserves the right to make reasonable additions or changes to these terms and conditions.

The Managing Agent shall ensure clauses are incorporated to ensure:

1. Compliance with all applicable legislation and employment regulations.
2. Background checks are carried out on all Temporary Workers including:

- a. 2 years references including 1 from the immediate past employer
 - b. Evidence of eligibility to work legally within the UK
 - c. Evidence of current Criminal Records Bureau disclosure check
 - d. Check that professional qualifications are true and accurate
3. Protection of confidentiality
 4. Dispute resolution process
 5. Adequate and appropriate insurance cover is maintained including Public (£5m minimum), Professional (£2m minimum) and Employers (£10m minimum) Liability Insurance. And such vehicle insurance as may be required.
 6. Temporary Workers wear suitable clothing (smart and clean at all times) and safety footwear whilst on duty where necessary
 7. A clear process for temp to perm transfers including some form of pro-rata charging mechanism to be agreed between the parties.
 8. A clause clearly stating that the Supply Agency are not prevented from doing business directly with LCC or any of the Council if, for any reason, the arrangements with the Managing Agent are terminated or suspended.
 9. Any and all intellectual property rights developed by a Temporary Worker whilst engaged by the Council shall belong to the Council (see clause 28 within the Contract Conditions).

10. Sourcing strategy to be employed

In the first instance all current suppliers of Temporary Workers will be assigned to the successful tenderer who will be responsible for reviewing the current charge rates and ensuring appropriate terms and conditions are in place. Details of existing and on-going charge rates are to be made available to the Council as required.

Within the first 4 weeks of the contract being awarded, the Council and the successful tenderer shall have established an appropriate sourcing strategy which will involve an e-procurement solution. Dependent on the successful tenderers experience, the Council may choose to utilise a specialist organisation to facilitate.

Approved and preferred lists of Supply Agency shall be established and maintained, these lists taking into account the agreed qualification criteria and e-Procurement results, the weighting of each selection parameter having been agreed between LCC and the successful tenderer. For other more specialist categories of Temporary Workers, discrete preferred supplier lists / tiers shall be established.

11. Outputs

Additional information requirements will be agreed with the successful tenderer as part of the implementation process. However, the Managing Agent shall provide a weekly report in a format to be agreed which will include as a minimum:

Fulfilment levels

This will include positions required, positions filled and reasons for non fulfilment.

Length of assignment

Broken down as 1 month or less, 1 – 3 months, 4 – 6 months, 7 - 9 months, 10 – 12 months. The Managing Agent will notify the Council of any assignments approaching 10

months continuous employment to enable the Council to manage the risk associated with long term temporary placements.

Hours / spend analysis

Broken down by category of Temporary Worker, Team making the booking and to include the number of hours utilised and spend during the previous week.

Agency Usage

Broken down by Supply Agencies, spend and headcount supplied.

Order Justification

A report detailing why Temporary Workers are being used. Order justification categories to be agreed between the parties.

Direct / Indirect Cost Analysis

It is crucial that the Council are able to clearly demonstrate direct and indirect savings achieved. Therefore, both parties shall agree a mechanism for reporting and demonstrating the direct and indirect cash savings achieved.

Supply Agency Monitoring

A report detailing which Supply Agencies have been visited as part of the monitoring cycle within the previous 7 days along with details of any adverse outcomes and remedial actions agreed.

Training

Indicate how many agency workers that have been identified as needing training have actually received training.

12. Monitoring and review

1. During the implementation phase it is expected that the Managing Agent will provide weekly reports to the Council's Nominated Officer in a format to be agreed.
2. Reports to be provided on a weekly basis as outlined within paragraph 11 (Outputs) of this Service Specification
3. Managing Agent performance measurements shall be identified and developed between the parties during the implementation phase.
4. Monitoring meetings will be held on a fortnightly basis during the implementation phase and then on a quarterly basis and will include, as a minimum, the information requested in paragraph 11 (Outputs) to reflect the previous quarters performance. The make up of the Council's monitoring group will be notified once known but will consist of the Council's Nominated Officer and representatives from services.
5. An on going review will be arranged between both parties and a report detailing the previous 12 months activity will be required from the Managing Agent in a format and with content to be agreed between both parties.

13. Measures of success

Whilst we envisage developing Measures of Success with the successful tenderer including who is responsible and accountable for each measure, the following are proposed as a minimum:

1. 100% of Ordering Officers identified have been contacted and informed of the new arrangements.
2. 100% of existing Supply Agencies have been contacted and informed of the new arrangements.
3. Rolling implementation programme established, agreed and started within 4 weeks of contract award date
4. 100% of orders being placed by Council Ordering Officers via the new system
5. 100% of orders / timesheets being entered onto any new system by Supply Agencies
6. 100% fulfilment levels achieved and maintained
7. 100% of Supply Agencies receive a monitoring visit every six months
8. a significant reduction in overall supply chain costs specifically including the agency fee element.



SECTION C

METHOD STATEMENT AND PRICING DOCUMENT

1. METHOD STATEMENT

The Organisation is required to submit the Method Statement listed below with their tenders.

The Method Statement is to be employed by the tenderer should they be awarded the Contract in order to comply with the terms of the Contract. The Method Statement therefore forms a material part of the tender. The Council may wish to negotiate changes in the Method Statement and may require the Tenderer to provide full details of the procedures to be implemented for all areas of the Service.

The role of the Method Statement is to allow the Organisation to state the processes and the inputs / outputs they propose to employ to ensure that the Service Specification is met.

The Council will use the Method Statement to:

- assess the content and quality of tenders presented.
- test that tenderers have understood and related their bids to the requirements of these tender documents.
- test the sufficiency of the resources in the context of the tenderers intended methods of working.

The Method Statement should cover:

Accessibility of the service

- process for accessing the service
- responsiveness to requests for service.
- method of matching the required skills to that of the Temporary Worker
- provision of Temporary Worker curriculum vitae and other support documents to Originating Officer
- contingency / disaster recovery plan

Ongoing support and development of the Service and relationship with the Council

- a structured plan which will ensure full implementation of this contract
- market development including getting existing Supply Agencies signed up to your Terms and Conditions.
- Process for monitoring service delivery including proposed measures for success
- plan to guarantee best value and competitiveness throughout the term of the contract
- detail how the tenderer will work with the Council to continuously improve the provision of the Service and achieve continued efficiency gains

Administration and compliance with regulatory requirements

- process and policy for ensuring the vetting of Temporary Workers e.g security checks, police checks, employment checks, immigration checks (where appropriate)
- health & safety policy
- complaints procedure
- confidentiality and disclosure of information policy
- compliance with EU Working Time Directive
- terms and conditions for Supply Agencies
- invoicing process to be employed between Supply Agencies and the Managing Agent and the Managing Agent and LCC.

2. Pricing Document

1. In the following table, tenderers are invited to make suggestions as to how they propose to charge the Council's for the provision of the services outlined within this ITT. This may be a set management fee, a percentage of any savings achieved, a set % included on the value of each invoice or any other mechanism deemed appropriate.

Management Fee

2. The Price quoted shall remain as competitive during the whole of the Contract Period. The Council Contract Manager shall from time to time during the life of the contract, monitor the competitiveness of the Managing Agents Price and reserves the right, after the Managing Agent has been given the opportunity to review his Price structure on the evidence produced by the Contract Manager, to terminate the Contract if in the opinion of the Contract Manager the Managing Agents Price structure are no longer competitive.
3. The Prices tendered must be inclusive of all fees, management costs, overheads and expenses incurred to comply with the Contract
4. All Prices must be quoted in £ sterling and all payments shall be made in £ sterling.
5. Prices shall remain fixed for the duration of the Contract.

2.1 Breakdown of Price

Tenderers should complete the following table to indicate the overall cost breakdown of their Management Fee:

Type of Expenditure	% of overall fee
Direct Employees include. NI and Pension	%
Employee Management & Supervision	%
Employee Training	%
Other Employee costs	%
Transport	%
Premises	%
Property Maintenance	%
Stationery/Telephones	%
Equipment	%
Direct profit	%
Other (please specify)	%
	%

2.2 Placement of Staff Introduced by Liverpool City Council

There are occasions when the Council wishes to use known staff (such as former employees) but would wish them to be administered through the Managing Agent. In such cases the Council would introduce the person to the Managing Agent and agree the hourly rate to be paid to the Temporary Worker. The tenderer should insert below an on-cost percentage to cover the administrative costs, other payroll costs and any other costs associated with the placement.

On-cost percentage required by the Managing Agent for situations where the City Council introduces a person to the Agency.”

%

2.3 Transfer of Temporary Workers to Council's permanent staff

Tenderers shall provide commission rates where the Council recruits a Temporary Worker onto its payroll as a Council employee. It is expected that these rates should reflect time already spent in placement with the Council.

Length of service	% Commission payable
2 weeks	
4 weeks	
6 weeks	
8 weeks	
10 weeks	
12 weeks	
14 weeks	
Onwards	No commission payable



SECTION D

GENERAL TERMS AND CONDITIONS OF CONTRACT

LIVERPOOL CITY COUNCIL (LCC)

GENERAL TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES

VARIATION

1. These Terms and Conditions may only be varied with the prior written agreement of Liverpool City Council (LCC).

DEFINITIONS

2. In these Terms and Conditions of Contract the following definitions shall apply:

'Contractor' means the person, firm or company to whom the Contract is issued;

'Services' means the services to be provided which are specified in the Contract or in any Purchase Order placed in relation to or arising out of the Contract and shall include any materials, articles and/or goods necessary to provide the Services;

'Premises' means the location where the services are to be performed;

'Contract' means the agreement between LCC and the Contractor consisting of the specification, the LCC form of agreement, these Conditions and any other documents, or parts of documents, specified in the form of agreement;

'Purchase Order' means the formal request from LCC to supply services;

where the services include the provision of computer equipment or software, "Date Format" means the field configuration which contains the date information within any part of any computer software or system.

- .3. In all cases the masculine includes the feminine and the singular includes the plural and vice versa.

HEADINGS

4. The headings in these Conditions are solely for convenience of reference and shall not affect their construction or interpretation.

VARIATION OF THE SERVICES

5. LCC reserves the right to give written notice to the Contractor of modifications to the quality or quantity of the Services. Any alteration to the Contract price or the completion date arising from such modifications shall be agreed between the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Clause 49 to 50.

INSPECTION OF PREMISES AND NATURE OF SERVICES

6. Where Services are to be carried out on LCC premises the Contractor is deemed to have inspected the Premises before tendering so as to have understood the precise nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and Premises.- LCC shall grant such access as may be reasonable for this purpose.

CONTRACTOR'S STATUS

7. In carrying out the Services the Contractor shall be acting as principal and not as the agent of LCC. Accordingly:
 - a. the Contractor shall not, and shall procure that their agents and servants do not, say or do anything which might lead any other person to believe that the Contractor is acting as the agent of LCC;
 - b. nothing in this Contract shall impose any liability on LCC in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of LCC to the Contractor which may arise by virtue of either a breach of this Contract or any negligence or the part of LCC, their staff or agents.

CONTRACTOR'S PERSONNEL

8. The Contractor shall provide and maintain an Organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the tasks identified in the specification.
9. All persons employed on work relating to the Contract must have appropriate qualifications and competencies and be acceptable to LCC in all respects. Where requested full particulars of all personnel to be used shall be forwarded in advance to LCC for confirmation of their acceptability.
10. Where requested the Contractor shall provide LCC with a list of names and official addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are to be employed and giving such other particulars and evidence of identity and any other supporting information which LCC may reasonably require.
11. The Contractor shall take all reasonable steps to avoid changes of original personnel assigned to and accepted for the work under the Contract except where changes are unavoidable or of a temporary nature caused by sickness, holidays etc. The Contractor shall give at least one months notice to LCC of proposals to change key personnel and Clauses 9 and 10 shall apply to the replacement personnel.
12. The Contractor shall take the steps reasonably required by LCC to prevent unauthorised persons being admitted to the Premises. Where LCC gives the Contractor notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if requested by LCC the Contractor shall replace any person removed under this Condition with another suitably qualified person and ensure that any pass issued to the person removed is surrendered.
13. The decision of LCC as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required in Clauses 9 to 12 shall be final and conclusive.
14. The Contractor shall bear the cost of any notice, instruction or decision of LCC under Clauses 9 to 12.

MANNER OF CARRYING OUT THE SERVICES

15. The Contractor shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the prior consent of LCC.
16. Access to the Premises shall not be exclusive to the Contractor but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as LCC may reasonably require.
17. At any time during the progress of the Services LCC shall have the authority to order, in writing:
 - a. the removal from the premises of any materials which in the opinion of LCC are either hazardous, noxious or not in accordance with the Contract, and/or
 - b. the substitution of proper and suitable materials, and/or
 - c. without prejudice to Clauses 20 to 25, the removal and proper re-execution, notwithstanding any previous test of or interim payment for any work which, in respect of material or workmanship, is not in the opinion of LCC in accordance with the Contract.
18. On completion of the Services the Contractor shall remove their plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in the condition as found.

DUTY OF CARE

19. The Contractor shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Services properly and efficiently in accordance with the Contract.

DEFAULT

20. Where the Services, or any portion of the Services, are not carried out within the time or times specified within the Contract, LCC shall have the option, without prejudice to any of its other rights or remedies, to:
 - a. claim liquidated damages of 0.5% of the purchase order value for each complete day of delay up to a maximum of 5% of the purchase order value; or
 - b. terminate the Contract by giving notice in writing to the Contractor.
21. Where the Services, or any portion of the Services, are not carried out satisfactorily LCC shall have the option, without prejudice to any of its other rights or remedies, to terminate the Contract by giving notice in writing to the Contractor.
22. Where LCC has terminated the Contract under Clauses 20(b) or 21, and without prejudice to any other rights or remedies, LCC may obtain all or any of the Services in respect of which the Contract is so terminated by arranging for those services to be carried out by alternative means.
23. Where LCC obtains all or any of the Services by alternative means they shall be able to

recover from the Contractor the amount by which the aggregate of the cost of obtaining Services in this way exceeds the amount which would have been payable to the Contractor in respect of all the Services replaced if they had been carried out in accordance with the Contract.

24. Where the Contractor fails to carry out any Services in accordance with these Clauses LCC shall be entitled, without prejudice to any other rights and remedies available, to:
- a. deduct such sum as LCC considers appropriate from any account rendered by the Contractor in respect of unsatisfactory or delayed Services;
 - b. have such Services carried out satisfactorily by other means in accordance with Clauses 22 to 23 and, in the meantime, debar the Contractor, their servants and agents from the Premises.
25. On the occurrence of a relevant termination the Contractor shall, notwithstanding such termination, co-operate in the transfer of the Services to which the termination relates to any alternative Organisation under Clause 22 of these Conditions in accordance with arrangements notified to the Contractor by LCC.
26. The provisions of Clauses 22 to 25 shall not be invoked where failure to carry out the Services within time is due to circumstances outside the control of the Contractor.

FREE-ISSUE MATERIALS

27. Where the Contract requires LCC to issue materials free of charge to the Contractor such materials shall be and shall remain the property of LCC. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify LCC of any surplus materials remaining after completion of the Services and shall dispose of them as LCC may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of their servants, agents or sub-Contractors shall be made good at the Contractor's expense. Without prejudice to any other rights and remedies of LCC the Contractor shall deliver up such materials to LCC on demand, whether processed or not.

AUDIT

28. The Contractor shall maintain, and keep until two years after the Contract has been completed, records to the satisfaction of LCC of all expenditures which are reimbursable by LCC and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by LCC on a time charge basis. The Contractor shall make available to LCC such access to those records as LCC or its representatives may reasonably request from time to time.

INDEMNITY AND INSURANCE

29. The Contractor shall indemnify LCC, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against LCC, its servants or agents in respect of any loss or damage or personal injury, whether fatal or otherwise, which arises out of or in connection with this Contract.
30. Except in the case of loss, damage or personal injury, whether fatal or otherwise, suffered by an employee of the Contractor (in respect of which the indemnity in Clause 29 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of LCC, or any servant or agent of LCC) the indemnity contained in

Clause 29 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of LCC, or any servant or agent of LCC.

31. The Contractor shall have in force and shall require any sub-Contractor to have in force:
- a. employer's liability insurance in accordance with any legal requirements for the time being in force, and
 - b. public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £2,000,000 for any one incident and unlimited in total.
32. The policy or policies of insurance referred to in Clause 31 shall be available on request to LCC together with satisfactory evidence of payment of premiums.

SAFETY

33. The Contractor shall be responsible for the observance by himself, their employees and sub-Contractors of all safety precautions necessary for the protection of himself, their employees, sub-Contractors and any other persons including all precautions required to be taken by or under any Act of Parliament including any regulations or bye-law of any local or other authority. The Contractor shall co-operate fully with LCC to ensure the proper discharge of these duties.

ACCIDENTS TO CONTRACTOR'S SERVANTS OR AGENTS

34. Accidents to the Contractor's servants or agents which ordinarily require to be reported in accordance with the Health and Safety at Work etc. Act 1974, shall be reported immediately to LCC.

SPECIAL HEALTH AND SAFETY HAZARDS

35. Throughout the life of the Contract LCC shall notify the Contractor of any known special health and safety hazards which may be involved or introduced on site and which may affect the Contractor. The Contractor shall similarly notify LCC of any hazards which may affect LCC.
36. The Contractor shall draw any such health and safety hazards to the attention of their employees and sub-Contractors or any other persons under their control engaged on the work being performed on the site. Arrangements shall be made by the Contractor so that such persons and other persons employed by or controlled by sub-Contractors and working on the Contractor's tasks on the site are adequately informed and instructed on the hazards and any necessary associated safety measures.

THE PRICE

37. The price of the Services shall be as stated in the Contract.

INVOICING AND PAYMENT

38. Invoices for the provision of Services shall be submitted at agreed intervals during the Contract period.

39. Payment will be made within 30 days of receipt and agreement of invoices for Services provided to the satisfaction of LCC.
40. Any complaints which may arise concerning late payment of invoices should be addressed in the first instance to the purchasing manager at the address shown within the Contract as the invoice point. Where a Contractor is not satisfied with the response they may write to The Procurement Manager at Municipal Buildings who will see that their complaint is followed up promptly and fairly. LCC aims to reply to complaints within 10 working days.

VALUE ADDED TAX (VAT)

41. Where applicable the prevailing rate and total of Value Added Tax (VAT) shall be shown separately on all invoices.

PATENTS AND INFORMATION

42. It is a condition of the Contract that the Services will not infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party, except to the extent that the Services incorporate designs furnished by LCC, and the Contractor shall indemnify LCC against all actions, claims, demands, costs and expenses which LCC may suffer or incur as a result of or in connection with any breach of this Condition.
43. All rights, including ownership and copyright in any specifications, instructions, plans, drawings, patents, models, designs, documents or other materials:
 - a. furnished to or made available to the Contractor by LCC are hereby assigned to and shall vest in LCC absolutely,
 - b. prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in LCC absolutely, and (without prejudice to Clause 46) the Contractor shall not and shall ensure that their servants and agents shall not (except to the extent necessary for the implementation of this Contract) without prior written consent of LCC use or disclose any such specifications, instructions, plans, drawings, patents, models, designs, documents or other material or any other information (whether or not relevant to this Contract) which the Contractor may obtain through the execution of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular the Contractor shall not refer to LCC or the Contract in any advertisement without the prior written consent of LCC.
44. The provisions of Clauses 42 to 43 shall apply during the continuance of this Contract and after its termination howsoever arising.

FREEDOM OF INFORMATION ACT 2000

45 The Contractor recognises that the Council is subject to legal duties which may require the release of information under FOIA or the Environmental Information Regulations 2004 or any other applicable legislation or codes governing access to information and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Agreement in any way.

46 Notwithstanding anything in this Agreement to the Contrary, in the event that the Council receives a request for information under the FOIA or any other applicable

legislation governing access to information, the Council shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOIA or other applicable legislation governing access to information, save that in relation to any such information that is Exempted Information, the Council shall use reasonable endeavours to consult[the Contractor as soon as reasonably practicable and shall not:

- (a) confirm or deny that the information in question is held by the Council, or
- (b) disclose the information requested, to the extent that in the Council opinion (having taken into account the views of the Contractor) that exemption is or may be applicable in accordance with the relevant section of the FOIA in the circumstances.

- 47 In the event that the Council incurs any costs, including but not limited to external legal costs, in seeking to maintain the withholding of the information, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to the disclosure, the Contractor shall indemnify the Council.
- 48 In the event, the Council shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any Exempted Information or other information relating to this Agreement under FOIA or other applicable legislation governing access to information.
- 49 The Contractor will assist the Council to enable the Council to comply with its obligations under FOIA or other applicable legislation governing access to information. In particular it acknowledges that the Council is entitled to any and all information relating to the performance of this Agreement or arising in the course of performing this Agreement. In the event that the Council receives a request for information under the FOIA or any other applicable legislation governing access to information, and requires the Contractor assistance in obtaining the information that is the subject of such request or otherwise, the Contractor will respond to any such request for assistance from the Council] at its own cost and promptly and in any event within **5 working days** of receiving the Council request.
- 50 The Council agrees that it will consult the contractor, following its receipt of a request for information under the FOIA where:-
- a) disclosure of information in response to a request might prejudice the legal rights or commercial interests of the contractor
 - b) the views of the contractor may assist the Council in determining whether an exemption under the FOIA would apply to the information requested
 - c) the views of the contractor may assist the Council to determine where the public interest lies under section 2 of the FOIA
- 51 The contractor agrees to respond to any consultation from the Council under 12.6 above, within 5 working days and notes...
- a) that the Council may be obliged, in pursuance of its duties under the FOIA, to release information in any event if the Contractor does not respond.
 - b) that the decision to disclose information in response to a request is that of the Council alone, having regard to the provisions of the FOIA

DISCRIMINATION

52 The Contractor shall:

- a) in performing the contract comply with the provisions of S.71(1) of the Race Relations Act 1976(as amended)(the "Act") as if the Contractor were a body within the meaning of Schedule 1A of the Act (or any European equivalent which shall be deemed to include without limitation an obligation to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups.
- b) Comply with the provisions of Parts II,III & IV of the Act, where appropriate.
- c) Comply with the provisions of S.7 of the Act in all dealings with the Sub-Contractors
- d) Not discriminate directly or indirectly against a person because of their colour, race, nationality or ethnic or national origin in decisions to recruit, train, promote, discipline or dismiss employees and
- e) For the purpose of ensuring compliance with the sub-clauses above, observe as far as possible the provisions of the Commission for Racial Equality's Code of Practice in Employment.

Where in connection with this agreement the Contractor, its agents or Sub-contractors or the Contractor staff are required to carry out work on the Authority's premises or on any other premises where the Authorities employees are required to carry out work, the Contractor shall, to the extent required to comply with Clause a), comply with the Authority's own employment policy and codes of practice relating to racial discrimination and equal opportunities.

12 months from the date of this agreement and annually thereafter submit a report statement to the Authority demonstrating compliance with clauses a) to c)

in addition to the report statement referred to above, the Contractor shall provide such additional information as the Authority may reasonably require for the purpose of assessing the Contractor's compliance with clauses a) to c)

where the Contractor commits a breach in respect of clauses a) to c) which amounts to a failure to meet the Service Levels, the provision of clause 2 (service levels and remedies) shall apply.

The Contractor shall notify the Authorised Officer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the Act.

Where any investigation is undertaken by a person or body empowered to conduct such investigations and/or proceedings are instituted in connection with matters referred to in this agreement being in contravention of the Act, the Contractor shall free of charge

- a) Provide any information requested in the timescales allotted
- b) Attend any meetings as required and permit Contractor staff to attend
- c) Promptly allow access to and investigation of any documents or data deemed to be relevant

- d) Allow itself and any Contractor staff to appear as witness in any ensuing proceedings; and
- e) Cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation

Where any investigation is conducted or proceedings are brought which arise directly or indirectly out of any act or omission of the Contractor, its agents or Sub-contractors, or the Contractor's staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Authority with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.

In the event that the Contractor enters into any sub-contract in connection with this agreement, it shall impose obligations on its Sub-contractors in terms substantially similar to those imposed on it pursuant to clause 52.

CORRUPT GIFTS AND PAYMENT OF COMMISSION

- 53. The Contractor must not offer or give, or agree to give, to any member or officer or servant of LCC any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract for LCC or for showing or refraining from showing favour or disfavour to any person in relation to this or any other Contract for LCC.
- 54. Any breach of Clause 46 by the Contractor or by anyone employed by them or acting on their behalf (whether with or without the knowledge of the Contractor) shall entitle LCC to terminate this contract summarily and recover from the Contractor the amount of any loss resulting from such termination. (Note. The attention of the Contractor is drawn to the criminal offence provisions of the Prevention of Corruption Acts 1889 to 1916).

(Note: Nothing contained in Clauses 46 and 47 prevents the Contractor paying such commissions or bonuses to their own staff as are within their agreed Contract of Employment).

ARBITRATION

- 55. Disputes, differences or questions between the parties to any Contract with respect to any matter arising out of or relating to the Contract other than a matter as to which the decision of LCC is to be final and conclusive and except as may be otherwise provided in the Contract shall be referred to the Arbitration of two persons, one to be appointed by LCC and one by the Contractor, or their Umpire, in accordance with the provisions of the Arbitration Act 1950, 1975, 1979 and 1996 or any statutory modification or reenactment thereof.
- 56. Where it is considered appropriate, subject to the agreement of both parties, alternative methods of dispute resolution shall be considered including adjudication and mediation.

LEGITIMACY OF THE WORKFORCE

- 57. The Contractor shall take all reasonable steps to ensure that any servants, employees or agents of the Contractor and any sub-Contractors, their servants or agents, employed in

the execution of the Contract are entitled to obtain employment in the United Kingdom and are not claiming Unemployment Benefit or any other Benefit payable to persons registered as unemployed.

TERMINATION

58. Without prejudice to any other rights or remedies of LCC under this Contract LCC shall have the right to terminate this Contract forthwith by written notice to the Contractor or their trustee in bankruptcy or receiver or (if a company) liquidator or administrator and may complete the services, or have them completed by a third party, using for that purpose (making a fair and proper allowance in any payment subsequently made to the Contractor) all materials, plant and equipment on the premises belonging to the Contractor, and LCC shall not be liable to make any further payment to the Contractor until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Contractor the costs therefore incurred by LCC including LCC's own costs:
- a. where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor, or the Contractor makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors or if an administrator is appointed to manage its affairs; or
 - b. where the Contractor is not an individual but is a firm or a number of persons acting together in any capacity, if any event in any Clause of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented to, the Contractor to be wound up as an unregistered company; or
 - c. where the Contractor is a company, if the company passes a resolution for winding-up or dissolution (other than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or
 - d. where the Contractor shall have committed a material breach of this Contract and, if such breach is capable of remedy, shall have failed to remedy such breach within thirty days of being required by LCC to do so; or
 - e. where the Contractor is an individual and shall die or be adjudged incapable of managing their affairs within the meaning of Part V11 of the Mental Health Act 1983.
59. Where the total costs to LCC of completing the Contract itself or having it completed by a third party exceed the amount (if any) due to the original Contractor, the difference shall be recoverable by LCC from the Contractor.
60. In addition to its rights of termination under Clauses 51 and 52 LCC shall be entitled to terminate this Contract by giving to the Contractor not less than thirty days notice to that effect.
61. Termination under Clauses 51 to 53 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to LCC and shall not affect the continued operation of Clauses 42 to 44 and 47 of this Contract.

RECOVERY OF SUMS DUE

62. Wherever under this Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other agreement or Contract with LCC.

ASSIGNMENT AND SUB-CONTRACTING

63. The Contractor shall not assign the benefit or burden of the Contract or any part thereof without the written permission of LCC.
64. No sub-contracting by the Contractor shall in any way relieve the Contractor of any of their responsibilities under the Contract.
65. Where LCC has consented to the placing of sub-contracts, copies of each sub-contract shall be sent to LCC by the Contractor immediately it is issued.

PROMPT PAYMENT TO SUB-CONTRACTORS

66. Where the Contractor enters into a sub-contract with another person for the purpose of performing the Contract, he shall include a term in the sub-contract which requires payment to be made to that sub-contracted person within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

WAIVER

67. The failure of either party to enforce any provision of the Contract at any time shall not affect any future right to require complete performance by the other party, nor shall the waiver of any individual breach of any provision be taken or held to be a waiver of any subsequent breach of that or any other provision.

CURRENT REMEDIES

68. The rights of remedy available to either party shall include both the rights or remedies contained in these Conditions and those available under English Law. These rights of remedy may be enforced concurrently.

NOTICES

69. Any notice given in connection with the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telemessage, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form. When it is sent or transmitted to the address of the party shown in the Purchase Order or Contract, or to any other address agreed between the parties, it shall be deemed effectively to be given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

GOVERNING LAW

- 70 These Conditions shall be governed by and construed in accordance with English law and the Contractor hereby irrevocably submits to the jurisdiction of the English courts. The submission to such jurisdiction shall not, and shall not be construed so as to limit the right of LCC to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

RE-LETTING

71. In case the contract shall be so determined as aforesaid the Council may relet the contract or any part thereof under the same or such other conditions as the Council may think fit, or may enter into a new contract with other Contractors for provision of the services mentioned or referred to in the contract or in the schedule hereto. Provided always that the Contractor shall be liable for and shall pay and make good to the Council and all other persons or parties, legally entitled thereto all losses, damages, costs, charges and expenses they or any of them may incur or be put to or liable to by reason or in consequence of such re-letting as aforesaid for and during the period mentioned in the Form of Tender and shall indemnify and save harmless the Council and any such person or parties as aforesaid from and against all actions, suits, claims and demands whatsoever by reason or on account thereof of the Council may deduct, and retain or pay over to such other persons or parties entitled as aforesaid the amount of such losses, damages, costs, charges or expenses out of any amounts in the hands of the Council due to accruing due to the Contractor, but in the event of there being no sum due from the Council to the Contractor then such losses, damages, costs, charges and expenses shall be recoverable by the Council from the Contractor as liquidated damages.