



The City of Edinburgh Council

Instructions to Tenderers (ITT)

FOR USE OF THE MEADOWS

FOR THE EDINBURGH FESTIVAL PERIOD OF 2015

**WITH AN OPTION TO EXTEND FOR THE EDINBURGH
FESTIVAL PERIOD 2016**

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0 Documents Issued

Title	Purpose
Instructions to Tenderers (ITT)	For information
Tenderer's Submission	To be completed and returned by tenderers
Specification	For information
Terms and Conditions of Contract	For information
Pricing Schedule	To be completed and returned by tenderers

1 Glossary

Unless the context otherwise requires, the following words and expressions used within this Invitation to Tender shall have the following meanings:

TERM	MEANING
Council	Means The City of Edinburgh Council.
Conditions of Tender	Means the terms and conditions set out in this ITT relating to the submission of a Tender.
Due Diligence Information	Means the background and supporting documents and information provided by the Council for the purpose of better informing the Tenderers' responses to this Invitation to Tender.
Contract	Means the Contract or Framework Agreement or (as set out in this ITT) to be entered into by the Council and the Contractor(s) following any award under the procurement exercise.
Invitation to Tender or ITT	Means this invitation to Tender documentation and all related documents published by the Council and made available to Tenderers and includes the Due Diligence Information.
Provider	Means the organisation(s) admitted to the Contract or Framework Agreement.
Tender	Means the Tenderers formal offer in response to this Invitation to Tender.
Tenderers	Means the organisations (including consortium) being invited to respond to this Invitation to Tender.
KPI	Means Key Performance Indicator(s) that may be applied by the Council to measure Contractor(s) delivery of the Contract or Framework Agreement.
The Site	Means the Meadows
The Event	Means the event provided to the public for the Period of Use of the Site.
The Concessionaire	Means the person or persons, bodies unincorporated or incorporated, partnership or otherwise who are awarded this Contract by the Council and includes any persons employed by the Concessionaire and the Concessionaire's agents, guests, invitees in so far as such persons (if any) are engaged or invited onto the Site by the Concessionaire in relation to this Contract.
Period of Use of Site	Means the timeframe in which the Edinburgh Festival runs and the supplier can run events and must have exited the Site leaving in the same condition as found.

2 Disclaimer

- 2.1 This Invitation to Tender is provided for information only. No representation, warranty or undertaking, express or implied, is or will be made and the Council shall have no responsibility or liability as to or in relation to the accuracy or completeness of this ITT or any other written or oral information made available to any party responding to this ITT (Tenderers) or their advisers. No information contained in this ITT will form the basis of any warranty or representation made by or on behalf of the Council to any Tenderer.
- 2.2 No response made by or on behalf of the Council to any response to this ITT shall constitute an agreement or Contract between the Council and any Tenderer unless expressly stated to that effect by the Council.
- 2.3 Whilst the information in this ITT, Due Diligence Information and supporting documents have been prepared in good faith, it does not purport to be comprehensive nor has it been independently verified.
- 2.4 Neither the Council, nor their advisors, nor their respective directors, officers, members, partners, employees, other staff or agents:
- i. makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the ITT; or
 - ii. accepts any responsibility for the information contained in the ITT or for their fairness, accuracy or completeness of that information nor shall any of them be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication.
- 2.5 Any persons considering making a decision to enter into contractual relationships with the Council following receipt of the ITT should make their own investigations and their own independent assessment of the Council and its requirements for the services and should seek their own professional financial and legal advice. For the avoidance of doubt the provision of clarification or further information in relation to the ITT or any other associated documents (including the Schedules) is only authorised to be provided following a query made in accordance with paragraph 7 of this ITT.

3 General

- 3.1 These instructions are designed to ensure that all Tenderers are given equal and fair consideration. It is important therefore that you provide all the information asked for in the format and order specified.
- 3.2 Tenderers should read these instructions carefully before completing the Tender documentation. Failure to comply with these requirements for completion and submission of the Tender may result in the rejection of the Tender. Tenderers are advised therefore to acquaint themselves fully with the extent and nature of the services and contractual obligations. These instructions constitute the Conditions of Tender. Participation in the tender process automatically signals that the Tenderer accepts these Conditions of Participation.
- 3.3 All material issued in connection with this ITT shall remain the property of the Council and shall be used only for the purpose of this procurement exercise. All Due Diligence Information shall be either returned to the Council or securely destroyed by the Tenderer (at the Council's option) at the conclusion of the procurement exercise.
- 3.4 The Tenderer shall ensure that each and every sub-contractor, consortium member and adviser abides by the terms of these instructions and the Conditions of Tender.

- 3.5 The Tenderer shall not make contact with any other employee, agent or consultant of the Council who are in any way connected with this procurement exercise during the period of this procurement exercise, unless instructed otherwise by the Council.
- 3.6 The Council shall not be committed to any course of action as a result of:
- issuing this ITT or any invitation to participate in this procurement exercise;
 - an invitation to submit any Tender in respect of this procurement exercise;
 - communicating with a Tenderer that they have been selected as preferred bidder;
 - communicating with a Tenderer or a Tenderer's representatives or agents in respect of this procurement exercise; or
 - any other communication between the Council (whether directly or by its agents or representatives) and any other party.
- 3.7 Tenderers shall accept and acknowledge that by issuing this ITT the Council shall not be bound to accept any tender and reserves the right not to conclude a Contract for some or all of the services for which Tenders are invited.
- 3.8 The Council reserves the right to amend, add to or withdraw all or any part of this ITT at any time during the procurement exercise.

4 Commencement/Duration

- 4.1 It is the intention of the Council that any Contract resulting from this ITT will commence on 4th August 2015 to 30th August 2015 for the Edinburgh Festival Period with the site being cleared by 2nd September 2015 with an option to extend for the Edinburgh Festival Period of 2016.

5 Preparation of Tender

- 5.1 Tenderers must obtain for themselves at their own responsibility and expense all information necessary for the preparation of Tenders. Tenderers are solely responsible for the costs and expenses incurred in connection with the preparation and submission of their Tender and all other stages of the selection and evaluation process. Under no circumstances will the Council, or any of their advisers, be liable for any costs or expenses borne by Tenderers, sub-contractors, suppliers or advisers in this process.
- 5.2 Tenderers are required to complete and provide all information required by the Council by completing the Tenderer's Submission and Pricing Schedule. Failure to properly complete these documents may lead the Council to reject a Tender.
- 5.3 The Council relies on Tenderers' own analysis and review of information provided. Consequently, Tenderers are solely responsible for obtaining the information which they consider is necessary in order to make decisions regarding the content of their Tenders and to undertake any investigations they consider necessary in order to verify any information provided to them during the procurement process.
- 5.4 Tenderers must form their own opinions, making such investigations and taking such advice (including professional advice) as is appropriate, regarding the services and their Tenders, without reliance upon any opinion or other information provided by the Council or their advisers and representatives. Tenderers should notify the Council promptly of any perceived ambiguity, inconsistency or omission in this ITT, any of its associated documents and/or any other information issued to them during the procurement process.

6 Timetable

6.1 The Council intends to follow the timetable below in performing the evaluation and award process. The timetable below identifies the indicative dates:

Activity	Indicative Timescales
Tenders Issued	16 th December 2014
Tender Return Date	15 th January 2015
Contract Award Date	10 th February 2015
Contract Live Date	01 st August 2015

6.2 The timetable above is subject to change at the Council's discretion.

6.3 The Council will notify Tenderers in writing whether or not they have been successful. Post tender clarification/negotiation meetings may be required.

6.4 In order to allow appropriate time for analysis, selection, implementation, and communication of the selected Tenderers, we request the co-operation of Tenderers in meeting all of the deadlines specified above. It is our intention to respond to all reasonable requests for clarification.

7 Queries Relating to Tender

7.1 All requests for clarification about the requirements or the process of this procurement exercise shall be made in accordance with 7.3 of these instructions.

7.2 The Council will endeavour to answer all questions as quickly as possible, but cannot guarantee a minimum response time. The Council will respond to any request for clarification before the deadline for receipt of Tenders. In order to satisfy this requirement, the Council has designated a specific window of time to deal with clarification requests from Tenderers.

7.3 Requests for clarification raised relating to any aspect of this tender exercise must be sent via the Public Contracts Scotland portal at <http://www.publiccontractsscotland.gov.uk>

7.4 Request for clarification received through any other channel will not be answered.

7.5 The closing date for request for clarification is 12th January 2015. No further requests for clarifications will be accepted after this date.

7.6 In order to ensure equality of treatment of Tenderers, the Council intends to publish the clarification questions raised by Tenderers together with the Council's responses (but not the source of the questions) to all participants on the Public Contracts Scotland portal.

7.7 Tenderers should indicate if a query is of a commercially sensitive nature – where disclosure of such query and the answer would or would be likely to prejudice its commercial interests. However, if the Council at its sole discretion does not either; consider the query to be of a commercially confidential nature or one which all Tenderers would potentially benefit from seeing both the query and Council's response, the Council will:

- i. invite the Tenderer submitting the query to either declassify the query and allow the query along with the Council's response to be circulated to all Tenderers; or
- ii. request the Tenderer, if it still considers the query to be of a commercially confidential nature, to withdraw the query.

7.8 The Council reserves the right not to respond to a request for clarification or to circulate such a request where it considers that the answer to that request would or would be likely to prejudice its commercial interests.

- 7.9 Tenderers shall treat the ITT documents as confidential and restrict their circulation on a "need to know" basis.
- 7.10 Any contact made directly with any other employee, official or member of the Council regarding this ITT is a violation of the terms of the Tender and may be cause for disqualifying a Tenderer at the sole discretion of the Council.

8 Amendments to Tender Documents

- 8.1 At any time prior to the deadline for the receipt of Tenders, the Council may modify the ITT by amendment. Any such amendment will be numbered and dated and issued by the Council to all prospective Tenderers. In order to give prospective Tenderers reasonable time in which to take any prospective amendments into account in preparing their Tenders, the Council may, at its discretion, extend the deadline for receipt of Tenders.

9 Completion of Tender Documents

**The closing time/date for Tender submissions is:
12noon on 15th January 2015.
Late submissions will not be accepted.**

- 9.1 Tender submissions must be submitted electronically via the Public Contracts Scotland portal at www.publiccontractsscotland.gov.uk.
- 9.2 Tenderers must allow sufficient time before the closing time/date to upload the tender documents (**Tenderer's Submission** and **Pricing Schedule**). When returning tender documents, tenderers should note that the Council has no discretion to allow further access to upload documentation once the tender closing time/date has elapsed. If a tenderer is having problems uploading to the portal, then the Council must be informed well in advance and depending upon the merit of the case, the Council may arrange for the tender to remain open on the Public Contracts Scotland portal for a short period after the deadline time stated.
- 9.3 Tenderers should note that when asked to complete a tender document, the document must be submitted in the file type in which it was issued (Word, Excel etc.). Files of any alternative type may only be used where documents are for attachment, rather than completion.
- 9.4 Should users of Public Contracts Scotland portal have any problems with the website they should contact the website's Support Desk. Contact details can be found by following the 'Contact Us' option on the top right hand menu at the web address noted within 9.1.
- 9.5 Tenderers are responsible for ensuring that they have completed the Tender documents fully and accurately and that prices quoted are arithmetically correct. Failure to do so may eliminate Tenders from further consideration. Any genuine errors or required corrections or amendments by the Tenderer should be advised in writing to the Council as soon as possible.
- 9.6 The Tender's Submission and Pricing Schedule format, as set by the Council should not be altered by the Tenderer.
- 9.7 The Council may require clarification of the answers Tenderers have provided or ask for additional information.
- 9.8 Tenderers are advised that their Tender may be reproduced and that no further indication or request prior to publication will be made. Only information provided as a direct response to the ITT will be evaluated. Information and detail which forms part of general company literature or promotional brochures etc. will not form part of the evaluation process. Marketing material

should not be included. Should you wish relevant information which has been provided in another section to be taken into account, you must make a clear reference to it.

- 9.9 Supplementary documentation may be attached to the Tender submission only where Tenderers have been directed to do so. Such material must be clearly marked with the name of the organisation and the question to which it relates. Supplementary documents which are not explicitly requested will not be considered and should not be provided as part of your Tender submission.
- 9.10 The Tender should be submitted by an individual of the organisation, company or partnership who has authority to answer on behalf of that organisation, company or partnership. Should the response be found to be erroneous or in any other way incorrect, the Council reserves the right to require the Tenderer to return the Tender documents which will be deemed void. In the case where the error or misrepresentation is not discovered until after a Contract is awarded the Council reserves the right to determine the Contract and all costs incurred by the Council as a result of the determination and to recover those costs from the Contractor(s).
- 9.11 The Council will not be responsible for any expenses incurred by the Tenderer in the preparation of Tenders, in attending any meetings, site visits or negotiations. No reimbursement shall be made by the Council whether or not an award of Contract is made.

10 Documentation To Be Submitted

- 10.1 Tenderers should ensure they include the following documents as part of their Tender, completed and signed as required:
- Tenderer's Submission
 - Pricing Schedule

The Council does not seek alternative tenders (i.e. Tenders not wholly compliant with the Council requirements as set out in these documents).

11 Tender Evaluation

- 11.1 The Council may, without liability or obligation to any Tenderer:
- i. accept or reject any Tender;
 - ii. accept only such part or parts of any Tender it shall deem to be appropriate;
 - iii. enter into one or several Contract(s);
 - iv. cancel the ITT process and reject all or any Tender(s) at any time prior to the formation of a Contract.
- 11.2 A Tender may be deemed unacceptable if the Tenderer (a) does not acknowledge that the Terms and Conditions of Contract included with the ITT have been taken into account with the Tender; and (b) does not offer alternatives where it considers the Terms and Conditions of Contract included with the ITT to be unacceptable.
- 11.3 The Tender Evaluation Panel will consist of suitably qualified Council Officers. Tenderers will be notified of the outcome of their Tender submission once the evaluation of all Tenders has been completed and all clarifications and commercial discussions have been concluded.
- 11.4 Tender submissions will be evaluated in an objective manner.

- 11.5 The Council may seek independent financial and/or market advice and/or utilise its information sharing protocol with Police Scotland to validate information declared or to assist in the evaluation.
- 11.6 The Contract will be awarded on the basis of the Most Economically Advantageous Tender with 60% of the overall evaluation score given to quality and 40% of the overall evaluation score given to price.

SELECTION & AWARD CRITERIA

- 11.7 The Council will apply a two stage evaluation process to all tenders received.
- 11.8 **STAGE 1 (Selection Criteria)** - The aim of the stage one evaluation is to allow the Council to identify suitably qualified and experienced tenderers in terms of compliance with Regulation 23 of the Public Contracts (Scotland) Regulations 2012, financial stability and compliance with mandatory criteria. The Council will disqualify any Tenderer who does not demonstrate suitability in those terms and only tenderers who demonstrate suitability will be taken forward and evaluated in accordance with stage two. The assessment will be based on the answers provided in response to the Selection Criteria questions (as detailed in Tenderer's Submission, Part A).
- 11.9 Tenderers should note that financial stability, trading history, and turnover will be considered as part of the evaluation process. Tenderers with limited trading history and/or no published accounts will, as part of the evaluation process, be requested to provide specific financial evidence to the Council of the capability of the Tenderer to finance and undertake the Contract. Failure to provide such evidence may result in the elimination of the Tender.
- 11.10 An information sharing protocol exists between City of Edinburgh Council and Police Scotland and answers provided in tender responses relating to Regulation 23 of the Public Contracts (Scotland) Regulations 2012 may be checked under the provisions thereof.
- 11.11 **STAGE 2 (Award criteria)** - The aim of the stage two evaluation is to select the tender(s) which represent the best overall value for money. This evaluation will include an emphasis on quality as well as price.
- 11.12 The quality analysis will be based on the answers provided in response to the weighted Award Criteria Questions (as detailed in Tenderer's Submission, Part B). Responses to these questions will be scored (as per the scoring matrix at Appendix 1 of this Schedule 1). Tenderers must score a minimum of 50 marks of the maximum quality score (100%) in order to qualify for consideration, failing which the tenderers bid shall be excluded from further consideration.
- 11.13 Following completion of the quality analysis, tenders will be subject to a cost analysis. The highest priced offer will be allocated the 100% weighting. All other bids will be scored on a prorated basis against the highest bid (e.g. highest bid price divided by the tenderer's price multiplied by the 40% weighting). Scores from the quality analysis will then be combined with the scores for the cost analysis using the cost quality ratio as detailed at paragraph 11.6 above to reach at a combined score for each Tender.
- 11.14 The highest combined score qualifying company will be deemed 'best value' and awarded the Contract.
- 11.15 Tenders will be evaluated individually by each member of the Evaluation Panel. On completion of the individual qualitative evaluation, a moderation meeting will be held, and attended by the members of the Evaluation Panel. Individual scores will be reviewed and debated and a consensus score will be reached for each Tender. The consensus score and justification for the decision will be recorded.
- 11.16 The Contract shall be subject to The City of Edinburgh Council's Terms and Conditions of Contract.

12 Shortlisting, Clarifications and Commercial Discussions

- 12.1 The Council may, as appropriate, enter into tender clarifications and commercial discussions with any Tenderer.

13 Acceptance

- 13.1 The Council is not bound to accept the Most Economically Advantageous Tender. The Council shall take into account all factors of the tender evaluation process, including budgetary constraints, affordability of the Tenders submitted and financial capability of the Tenderer in deciding on the award of the Contract.

14 Concession Contract Award Methodology

- 14.1 The Council intend to award a 'Services' Concession Contract to a single Contractor (hereinafter referred to as the concessionaire).
- 14.2 The following methodology will be used by the Council in awarding business for the duration of the Concession Contract:
- 14.3 The Council will allocate business to the highest ranked qualifying Concessionaire (**Contractor** established at award considering cost and quality) subject to production of the required documentation (as described within the Specification, Schedule A, paragraphs 9.1). The successful Contractor will be advised of their proposed appointment by email/Public Contracts Scotland, followed up with an award letter. If the Contractor declines the business the next highest scoring Contractor will be awarded the business.

15 Payment Process

- 15.1 In return for the Council allowing the Concessionaire the use of the site the Concessionaire shall pay to the Council the agreed Concession Charge as detailed in Schedule C - Pricing Schedule and any Additional Expenditures (inclusive of VAT) detailed in Schedule A - Specification in terms of the following clauses.

16 Transfer of Undertakings (Protection of Employment) (TUPE)

- 16.1 The Transfer of Undertakings (Protection of Employment) Regulations 2006 gives effect to the EC Acquired Rights Directive 2001. The Council is not the employer and therefore is unable to comment on whether or not TUPE applies in relation to any of the particular contracts within this. Each Tenderer must ensure that they comply in full with their responsibilities under TUPE.
- 16.2 Tenderers should note that TUPE may or may not apply to some or all of the personnel currently assigned to undertakings that are currently performing part or all of the duties described in the Service Specifications. Tenderers should, prior to submitting their Tender, take their own specific legal advice to ascertain whether TUPE could be held to apply to such undertakings and, if so, how that would impact on their Tender.

- 16.3 Tenderers must clearly state in Schedule 2 Part B7, whether they have bid on the basis of TUPE applying. Failure to do so may result in the rejection of the Tender. The Tenderer shall ensure that their decision on whether or not TUPE will apply will be the basis on which any subsequent contract award decision will be based on and the agreed price of the services.
- 16.4 The Council reserves the right to reject any Tender which, in its opinion, does not comply with the Service Specification and the requirements of Schedule 2.
- 16.5 In the event that Tenderers consider TUPE does apply, Tenderers should contact the incumbent contractor/supplier to obtain the required specific and necessary information about the personnel currently employed in providing the services that are the subject of this tendering exercise.
- 16.6 The Council cannot verify the accuracy of any information supplied to Tenderers in respect of personnel currently employed by the incumbent contractor, and therefore the Council has no liability in respect of such information. It is for each Tenderer to ensure that they have sufficient TUPE information to submit a compliant Tender. The Council accepts no liability for any costs incurred as a result of TUPE either during the Tender process or post Contract award.

17 Freedom of Information

- 17.1 The Freedom of Information (Scotland) Act 2002, which came into force on 1 January 2005, designates the Council as a Scottish public authority and therefore subject to the provisions and obligations in that Act. This means that any person who makes a valid request for recorded information held by the Council will be entitled to receive it, unless all or part of that information can be withheld as a result of the exemptions in that Act.
- 17.2 As part of its responsibility under the Act, the Council may be required to disclose any information held relating to Tenderer's responses to anyone who makes a request under that Act. Such information may only be withheld if it meets one or more of the exemptions or conditions in that Act. Information held cannot simply be classified as "confidential" or "commercial in confidence" to enable it to be protected from disclosure.
- 17.3 Under the Freedom of Information (Scotland) Act, 2002, the Council must reject any Tender which includes a blanket claim for confidentiality.
- 17.4 Information may also be requested under the Data Protection Act 1998 and the Environmental Information (Scotland) Regulations 2004.

18 Tender Validity

- 18.1 Tenders must be open for acceptance for a period of 120 days, from the date for last receipt of Tenders. In exceptional circumstances, the Council's point of contact may request that the Tenderer extend the validity period for a specified additional period.

19 Prices

- 19.1 Tenderers are required to complete Schedule C – Pricing Schedule.
- 19.2 All tendered offers must be exclusive of any VAT and be returned in the format requested.
- 19.3 The tendered offers must include all associated costs applicable to this Contract and must be the full inclusive value for the required to fulfil the service together with all general risks, liabilities and obligations set forth in or implied as necessary to comply with the contract documents.

- 19.4 The tendered offers will be used in the tender evaluation. During the Contract period any proposed deviation from the offer quoted in the Pricing Schedule must be communicated to the Council's Contract Manager immediately and acceptance will be dependent on the Council's agreement.

20 Unsuccessful Tenders

- 20.1 Within the constraints of commercial confidentiality and in terms of compliance with the Public Contracts (Scotland) Regulations 2012, unsuccessful Tenderers will be provided with feedback on their Tender submission relative to the successful Tenderer(s).

21 Right to Reject/Disqualify

- 21.1 The Council reserves the right to reject or disqualify a Tenderer where:
- i. the Tenderer fails to comply fully with the requirements of this ITT or is guilty of a serious misrepresentation in supplying any information required in this document and/or
 - ii. the Tenderer is guilty of serious misrepresentation in relation to its Tender; expression of interest and/or the Tender process; and/or
 - iii. the Tenderer has been involved in lobbying or any other activity which has an effect of subverting, influencing or altering the tender process; and/or
 - iv. there is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the Tenderer.

22 Right to Cancel, Clarify or Vary the Process

- 22.1 The Council reserves the right to:
- i. amend the Conditions of Tender of the ITT process; and/or
 - ii. cancel the evaluation process at any stage; and/or
 - iii. require the Tenderer to clarify its Tender in writing and/or provide additional information. (Failure to respond adequately may result in the Tenderer not being selected),

23 Conditions of Tender

Terms and Conditions

- 23.1 The Conditions of Tender relate to any Tender submitted by a Tenderer for the provision of services procured by the Council.
- 23.2 Every Tender received shall be deemed to have been made subject to these Conditions of Tender and the Terms and Conditions of Contract unless previously agreed in writing to the contrary. Any alternative Terms and Conditions of Contract offered on behalf of a Tenderer shall, if inconsistent with these Conditions of Tender, be deemed to have been rejected unless expressly accepted by the Council in writing.

Collusion

23.3 Any Tenderer who:-

- i. fixes or adjusts the amount of their Tender by or in accordance with any agreement or arrangements with any other person; or
- ii. communicates to any person other than the Council the amount or approximate amount of their proposed Tender (except where such disclosure is made in confidence in order to obtain insurance quotations necessary for the preparation of the Tender); or
- iii. enters into any agreement or arrangement with any other person that they shall refrain from tendering or as to the amount of any Tender to be submitted; or
- iv. offers or agrees to pay or give or does pay or give any sums of money, inducement causing or having caused to be done in relation to any other Tender or proposed Tender for the provision of the services commissioned by the Council

shall without prejudice to any other civil remedies available to the Council (and without prejudice to any criminal liability which such conduct by a Tenderer may attract) be disqualified.

Canvassing

23.4 Any Tenderer who directly or indirectly canvasses any officer, member, official or employee of the Council concerning the award of the Contract or who directly or indirectly obtains or attempts to obtain information from any officer, official, member or employee concerning this or any other Tender or proposed Tender will be disqualified.

Confidentiality

23.5 This ITT and the information it contains are confidential and may be used only for the purposes of preparing and submitting a response to this document. Any unauthorised use by any Tenderer of the information contained in this Invitation to Tender may lead to disqualification of that Tenderer.

23.6 This ITT and its accompanying documents are and shall remain the property of the Council and any party receiving a copy of the same will return them upon demand.

23.7 Anyone has a right to receive information held by the Council under the Freedom of Information (Scotland) Act 2002. As part of the Council's duties under the Act, the Council must disclose information which forms part of a tender or contract to anyone who requests it unless an exemption applies. Before releasing any information relevant to a Tenderer or their Tender the Council will endeavour to consult such Tenderer and have regard to its comments or objections but the ultimate decision as to whether information falls within one of the exemptions or not rests with the Council as the holder of the information.

Agreement Implementation

23.8 The successful Tenderer will be required to enter into a formal Contract with the Council based on the Terms and Conditions of Contract of this ITT. All Tenderers must include in their Tender a schedule of any proposed amendments to these Terms and Conditions of Contract which they wish the Council to consider. It is expressly stated that the Council shall not be bound to accept any such amendments.

23.9 Until the execution of such Contract the successful Tender, on the basis of the Terms and Conditions of Contract and the Conditions of Tender contained in the ITT will be binding on the Tender and will not be subject to change unless expressly agreed in writing by the Council. This will form the basis on which the Council may enter into a formal Contract with the

Tenderer. No amendments will be permitted by the Tenderer. Until a formal Contract is signed between the two parties, no Contract will exist implied in fact, implied in law, or otherwise.

23.10 For the avoidance of doubt, the Terms and Conditions of Contract are provided on a “without prejudice” basis and the Council shall specify additional requirements or agree detailed Terms and Conditions of Contract as appropriate to the specific requirement with selected Tenderer(s), as the case may be, at any time during the commercial discussions prior to formal Contract award. Similarly, the final scope and content of the Contract will be agreed prior to Contract formation. The Council reserves the right to enter into other forms of Contract(s) for the supply of similar services to those covered by this ITT.

Period of Contract

23.11 This contract shall commence on the last date of execution hereof. The building period for the event will be from 04th to 06th August 2015, the event will be open to the public from 07th August 2015 until 30th August 2015, and the strike period will take place from 31st August 2015 to 2nd September 2015, unless earlier terminated in accordance with the further provisions hereof or otherwise agreed between parties. All dates are inclusive.

THE CONCESSIONAIRE'S GENERAL OBLIGATIONS

23.12 The Concessionaire hereby undertakes that:

- i. it shall use the site solely for the purposes detailed within Specification and for no other purpose whatsoever, and it shall not use the site in any manner or for any purposes which are or which may be prejudicial to the Council; and
- ii. it shall manage and conduct the Event for which the site is being used in such manner that nothing shall be done to injure the reputation of the Council or offend against any regulations of the Council in any way and shall not do or permit or suffer to be done any act or thing which may in any way imperil any Licence granted or any insurance effected

23.13 Concessionaire warrants to the Council that in entering into this Contract:

- i. the Concessionaire has complied in all respects with the Instructions to Tenderers which comprised part of the Tender Documents;
- ii. all information, representations and other matters of fact communicated to the Council by the Concessionaire or his employees or agents in documents or other communications which the Concessionaire has submitted to the Council are true, complete and accurate in all material respects;
- iii. the Concessionaire is of sound financial standing to enable it to commence and complete the performances of the Contract throughout the duration of the Contract Period;

23.14 The Concessionaire shall make available to the Council any financial records as are reasonably requested by the Council's Director of Corporate Governance.

24 COMPLIANCE WITH STATUTORY & OTHER REQUIREMENTS

24.1 The Concessionaire shall observe and fully comply with the requirements of all Acts of Parliament, Statutory Instruments, Bylaws, Regulations and others already or hereafter to be passed which may in any way relate to the Concessionaire) obligations under the Contract or to the Concessionaire's use of the site or the performance of this Contract.

24.2 The Concessionaire shall, where applicable, obtain, observe and fully comply in all respects with the following, including any conditions attaching thereto:

- i. The Safety Certificate(s) issued or to be issued by the Council in respect of the Event;
- ii. The Public Entertainment Agreement or licence issued or to be issued by the Council in terms of the Civic Government (Scotland) Act 1982 in respect of the Event;
- iii. Planning Permission issued or to be issued by the Council in respect of the Event;
- iv. any other Certificate or Agreement issued or to be issued by any competent authority in respect of or applicable to the Event including any Market Operator's Licence and Trader's Licence;
- v. The Health and Safety at Work Act 1974;
- vi. The Copyright, Designs and Patent Act 1988.

The Concessionaire shall, where applicable, exhibit to the Council the said Safety Certificate(s) and Public entertainment Agreement not less than fourteen days prior to the commencement of the Period of Use. Any variations to Licences must be agreed in writing prior to application being made.

- 24.3 The Concessionaire shall fully comply with the Equality Act 2010. The Concessionaire shall ensure that nothing is done during the Period of Use which would give serious offence to sections of the community by discriminating, denigrating or caricaturing them on the grounds of religion, sex, race or other.

Miscellaneous

- 24.4 The Concessionaire shall not, without the prior written consent of the Council, film, videotape, televise, record or publish the whole or any part of the Event. In so far as it is competent for it to do so, the Council may grant any such consent for its interests in the Council's sole discretion and make such consent subject to the payment of a facility fee.
- 24.5 This Contract shall be personal to the Concessionaire and the Concessionaire shall not assign, sub-licence, share, part with, dispose of, pledge, grant in security or otherwise in any way deal with the whole or any part of its interest hereunder.

End of Schedule 1

Appendix 1

Evaluation Criteria Scoring Definitions

Assessment	Score	Interpretation
Exceptional	10	Exceptional level of relevant information which exceeds expectations. Answer to question is completely robust and provides total confidence that stated outcomes will be delivered. Overall answer exceeds expectations.
Excellent	9	Excellent level of relevant information with no information missing. Excellent level of confidence in the robustness of the answer to the question with no reservations. Excellent prospect of delivering on stated outcomes with no reservations. Overall excellent answer which gives no cause for concern.
	8	Excellent level of relevant information with very little information missing. Excellent level of confidence in the robustness of the answer to the question with very few reservations. Excellent chance of delivering stated outputs with very little reservations. Overall excellent response which gives very little cause for concern
Good	7	Very good level of relevant information provided with little information missing. Very good level of confidence in the robustness of the answer to the question with few reservations. Very good chance of delivering the outputs stated with few reservations. Overall a very good response which gives little cause for concern.
	6	Good level of relevant information provided. Good level of confidence in the robustness of the answer to the question. Answer should deliver the outputs stated but some reservations. Overall a good response but which still raises some concerns.
Satisfactory	5	Reasonable level of relevant information provided. Reasonable level of confidence in the robustness of the answer to the question. Answer may deliver the outputs stated but some reservations. Overall a reasonable response but which raises some concerns.
Poor	4	Some relevant information provided but below level expected. Some confidence in the robustness of the answer to the question. Answer has a chance of delivering the outputs stated. Overall a poor response which raises some concerns.
	3	Little relevant information provided. Little confidence in the robustness of the answer to the question. Answer has little prospect of delivering the outputs stated. Overall a very poor response which raises concerns.
Unsatisfactory	2	Very little relevant information provided. Very little confidence in the robustness of the answer to the question. Answer has very little prospect of delivering the outputs stated. Overall an unsatisfactory response which causes significant degree of concern.
	1	Almost no relevant information provided. Almost no confidence in the robustness of the answer to the question. Answer has almost no prospect of delivering the outputs stated. Overall a highly unsatisfactory response which causes very significant degree of concern.
Unacceptable	0	No relevant information provided. No confidence in the robustness of the answer to the question. Answer will not deliver the outputs stated. Overall unacceptable answer which causes unacceptable degree of concern.

End of Appendix 1

Appendix 2

Financial Probity Assessment

This document outlines the process and scoring methodology for the financial assessment of bidding organisations. The aim of the evaluation is to ensure bidders who proceed have sufficient resources to successfully deliver the contract, with a risk of failure that is commensurate with the value and nature of goods and services being procured. The assessment will consist of the assessment of accounts and other financial and organisational data that the prospective bidder makes available to the Council. The Council may also use other publicly available information as well as references from 3rd Party credit agencies.

Bidder responses will be assessed on the basis of organisational stability, financial stability and financial capacity. Table 1 sets out the assessment criteria and related actions for organisational stability, financial stability and financial capacity. If the assessment of any element produces a RAG rating of red, the organisation will be eliminated from the procurement. If an organisation achieves an amber rating, additional information or protection will be required to ensure that the Council is adequately protected from the risk of supplier failure.

For avoidance of doubt, where the bidding entity is a consortium, all organisations within the consortium must meet the minimum financial threshold.

Table 1: Elimination and Progression Criteria

Measure	Criteria	RAG Rating	Action
Organisational Stability	Negative Balance Sheet	Amber	Tentative progression only if satisfactory explanation received
	The organisation is insolvent (actually or technically) or is in the process of being declared insolvent	Red	Elimination from the Process
	The organisation has been wound up or is in the process of being wound up	Red	Elimination from the Process
	The organisation is in administration or in the process of administration	Red	Elimination from the Process
	Concerns re: non payment of taxes, VAT, employees or subcontractors	Amber	Tentative progression only if satisfactory explanation

			received
	Concerns re: HMRC investigations and court actions	Amber	Tentative progression only if satisfactory explanation received
	Accounts are qualified by external auditor	Amber	Tentative progression only if satisfactory explanation received
	Concerns re contingent liabilities contained in accounts	Amber	Tentative progression only if satisfactory explanation received
	Concerns re publicly available information published in the last two years	Amber	Tentative progression only if satisfactory explanation received
Financial Stability	Financial Stability Score of 3 or less, calculated in accordance with Table 2: Financial Stability Scoring	Amber	Tentative progression depending on the willingness/ability to provide satisfactory mitigating explanation and/or additional protection – e.g. performance bond or bank or parent company guarantee.
	Financial Stability Score of 4 or more, calculated in accordance with Table 2: Financial Stability Scoring	Green	Progression

Table 2: Financial Stability Scoring

Criteria	Calculation	Result	Score
Bureau Van Dijk (FAME database) Risk of Business Failure	Qui Score taken from FAME report for organisation as at date of PQQ or tender return	0-24	-1
		25-49	0
		50-74	1
		75 or higher	2
		Report unavailable	1
Current Ratio – most recent set of accounts	= Current Assets divided by Current Liabilities Obtained from most recent Balance Sheet	value < 0.6	-1
		0.6 ≤ value ≤ 1.2	0
		1.2 ≤ value ≤ 1.8	1
		value > 1.8	2
Current Ratio – prior year accounts	= Current Assets divided by Current Liabilities Obtained from prior year Balance Sheet	value < 0.6	-1
		0.6 ≤ value ≤ 1.2	0
		1.2 ≤ value ≤ 1.8	1
		value > 1.8	2
		No prior year accounts - new organisation	1
Net Worth – most recent set of accounts	= Total Assets minus Total Liabilities Obtained from most recent Balance Sheet	value < 35,000	-1
		35,000 ≤ value ≤ 50,000	0
		50,000 ≤ value ≤ 350,000	1
		Value > 350,000	2
Net worth – prior year accounts	= Total Assets minus Total Liabilities Obtained from prior year Balance Sheet	value < 35,000	-1
		35,000 ≤ value ≤ 50,000	0
		50,000 ≤ value ≤ 350,000	1
		Value > 350,000	2
		No prior year accounts - new organisation	1

End of Appendix 2