

# **Invitation to Tender**

**for**

## **Emergency Lighting & Fire Alarm Testing for a Selection of Swale Borough Council Buildings**

**Ref PSSC003**

Issue Date: 6<sup>th</sup> February 2012  
Return Date: 27<sup>th</sup> February 2012

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## 1. INTRODUCTION

### 1.1. GENERAL REQUIREMENTS

The purpose of this Tender is to give qualified companies the opportunity to be considered to enter into 3 year contract with Swale Borough Council to provide a comprehensive inspection, testing and maintenance service of the emergency lighting and fire alarm system for a selection of council owned buildings of which details are provided in the schedule of assets.

### 1.2. BACKGROUND

Swale Borough Council (SBC) is situated on the North Kent Coast between the Medway Towns and Canterbury and comprises the areas of Sittingbourne, Faversham and the Isle of Sheppey.

This contract will be managed by the Property Services Team within SBC, which is responsible for the asset management and maintenance of the corporate buildings that fall under SBC's remit. The current asset list relating to this contract is in Appendix B of this document, but this is subject to change, with notice.

### 1.3. SUBMISSION OF TENDER

Any queries should be directed to Eva Harris, Business Support Officer, by telephone on 01795 417065 or email: [evaharris@swale.gov.uk](mailto:evaharris@swale.gov.uk)

This document should be returned with the Questionnaire (Section 4), Pricing Schedule (Section 5) and Form of Tender (Section 6) completed to

Democratic and Electoral Services Manager  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne, Kent  
ME10 3HT

by no later than 27<sup>th</sup> February 2012 12pm. The envelope or package should bear the details as illustrated:

**Tender Title:** Fire Alarm & Emergency Lighting Testing  
**Return Date:** No later than 12pm 27/02/2012

Democratic and Electoral Services Manager  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne  
Kent  
ME10 3HT

When returning the tender please ensure that:

- the envelope **does not** bear any name or mark indicating the identity of the sender (this includes for example, franked mail, Post Office labels detailing the sender, courier service labels or a signature across the seal of the envelope).
- the envelope is not accompanied by other documentation which identifies the Tenderer.
- all documentation is properly completed and enclosed with your tender.
- The date and time by which the tender must be returned is noted
- if returning tenders by post, that the chosen method will guarantee delivery before the specified deadline

Tenders returned other than in the normal course of post will only be accepted during normal office hours i.e. Monday – Thursday 8.30am – 5.00pm and Friday 8.30am – 4.30pm (excluding bank holidays)

**IMPORTANT NOTE: Failure to comply with the above may invalidate your tender submission.**

The timetable for this tender is anticipated as below, but subject to change:

Tenders submitted:	27 <sup>th</sup> February 2012
Decision made:	5 <sup>th</sup> March 2012
Tenderers informed of decision:	15 <sup>th</sup> March 2012
Contract start date:	1 <sup>st</sup> April 2012

#### **1.4. INFORMATION, COSTS AND EXPENSES**

The Tenderer is responsible for obtaining all information necessary for the preparation of its Tender and all costs expenses and liabilities incurred by the Tenderer in connection with the preparation and submission of the Tender shall be borne by the Tenderer.

#### **1.5. REJECTION OF TENDER**

The Council shall reject any Tender submitted where the Tenderer undertakes activities contrary to undertakings given within the anti Collusive Tendering Certificate. Such non-acceptance or rejection shall be without prejudice to any other civil remedies available to the Council or any criminal liability which such conduct by a Tenderer may attract.

#### **1.6. ACCEPTANCE, EVALUATION OF TENDERS & VARIANT BIDS**

An initial examination will be made to establish the completeness of submitted tenders. The Council reserves the right to disqualify any tender submission which is incomplete.

Tenderers should satisfy themselves of the accuracy of all fees, rates and prices quoted. In the event of genuine errors being discovered after the submission of

Tenders, Tenderers will be asked to either Standby or correct their tender for the genuine errors.

The Council will accept the Tender which it considers to be the most economically advantageous in accordance with the evaluation and award criteria outlined within this document. Where considered to be in the best interest of the Council variant bids may be accepted.

Tenders will be based 60% on the basis of lowest price and 40% on the basis of highest quality, which will be scored based on interviews and references as well as responses in the Quality Questionnaire.

### **1.7. TENDERERS WARRANTIES**

The Tenderer warrants it has made its own investigations and research, and has satisfied itself in respect of all matters relating to the Tender, the Specification and the Conditions of Contract and that it has not submitted the Tender and will not have entered into the Contract in reliance upon any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council.

The Tenderer warrants it has full power and authority to enter into the Contract and will if requested produce evidence of such to the Council.

### **1.8. FREEDOM OF INFORMATION**

Information in relation to this tender may be made available on demand in accordance with the requirements of the Freedom of Information Act 2000.

Tenderers should state if any of the information supplied by them is confidential or commercially sensitive or should not be disclosed in response to a request for information under the Act. Tenderers should state why they consider the information to be confidential or commercially sensitive.

This will not guarantee that the information will not be disclosed but will be examined in the light of the exemptions provided in the Act.

### **1.9. CONFIDENTIALITY**

The Form of Tender, the Conditions of Contract and the Specification and all other documentation or information issued by the Council relating to the Tender shall be treated by the Tenderer as private and confidential for use only in connection with the Tender and any resulting contract and shall not be disclosed in whole or in part to any third party without the prior written consent of the Council.

## **2. CONDITIONS of CONTRACT**

### **2.1. CONTRACT TERM**

The contract term will be three years, with a possible extension for up to two years. It is anticipated that the contract start date will be 1<sup>st</sup> April 2012

The Tenderer will be required, upon the acceptance of the tender, to enter into a Contract through the issue of a Council order. The conditions of contract will be as detailed within **Appendix A**.

### **2.2. MATERIALS**

All materials are to be of a good quality, appropriate and fit for purpose and meet the requirements of the Specification. Where a British Standard is current and appropriate, goods and materials shall, where appropriate, be in accordance with that specification. All materials shall be obtained from approved suppliers and manufacturers and used strictly in accordance with the manufacturer's instructions unless otherwise specified.

### **2.3. WORKMANSHIP**

Workmanship and labour shall be of a good standard. The whole of the works are to be carried out in accordance with specification and relevant Codes of Practice and other guidance.

### **2.4. DESIGN**

The Service Provider shall accept responsibility for ensuring that the works are adequately designed to meet the performance specification requirements.

The Service Provider shall in respect to any inadequacy in the design have the like liability to the Council whether under statute or otherwise as would an appropriate professional designer holding themselves out as a competent person to take on work for such design.

### **3. SPECIFICATION**

#### **3.1. OBJECTIVES AND SCOPE**

The contractor will be responsible for ensuring the relevant equipment within the schedule of Buildings listed in Appendix B are tested and maintained to British Standards in a safe and effective way with minimum disruption. You would be expected to provide four quarterly service visits each year, invoicing after each visit. In addition to this the company must provide a 24 hour emergency call out service.

The schedule of Buildings will be split into two Purchase Orders. Swale House – is a three story building of which compiles 210 smoke detectors and 240 emergency light units amongst other forms of equipment. The other segment - the remaining smaller locations which have a range of equipment from site to site. Appendix B will also give an address and approximate size of each building.

The contractor will be expected to advise on the condition of the equipment and provide details of the maintenance / remedial works for each site with a breakdown of the associated cost within two weeks of inspection to ensure SBC achieves maximum value from the assets and the contract. The contractor will also be expected to update or create 'Fire Plans' when changes occur or in the event of a plan not existing.

#### **3.2. MONITORING ARRANGEMENTS**

Orders will be issued with an expected timescale, according to urgency. The timescales are:

- Critical Call Out - to be made safe within 4 hours;
- Emergency - to be completed within 24 hours;

The contractor's performance will be monitored against feedback from staff and users of the facilities. Regular reviews of the timescales and values of orders completed will also take place.

#### **3.3. PAYMENT TERMS**

Payment will be by invoice with 28 days payment terms. The contractor should supply an electronic invoice, along with copies of worksheets. Payment will be made on the basis of hours worked on site plus the cost of materials, as per the completed pricing schedule.

#### **3.4. ANNUAL ADJUSTMENTS**

The contract value will be adjusted each April in line with the Building Maintenance Index for daywork rates in the March of the same year.

#### **3.5. HEALTH AND SAFETY REQUIREMENTS**

##### **3.5.1. Risk assessments and method statements**

The successful Tenderer will be required to submit general risk assessments and method statements for likely tasks that will be carried out during the contract. In addition job specific risk assessments and method statements may be required for work outside of the typical conditions prior to work starting.

### **3.5.2. Accident reporting**

Any accidents that take place on SBC property or during work carried out on SBC's behalf must be reported to the Contract Manager.

### **3.5.3. CDM**

The contractor will comply with the Construction (Design and Management) Regulations currently in force, where applicable.

### **3.5.4. Asbestos**

The contractor will be supplied with a copy of the Asbestos Register, which must be consulted prior to carrying out any works likely to disturb asbestos and all appropriate precautions adopted.



## 4. QUALITY QUESTIONNAIRE

Tenderers should complete all questions in this section as fully as possible to enable your technical and professional capability to carry out the works to be assessed.

### 4.1. Organisation information

4.1.1. Please complete your company details below and attach a company structure chart if available

Organisation name	
Type (Legal status)	
Registration number & Year of registration (as applicable)	
Address / Registered address	
Contact name	
Telephone	
Email	
Website	

Structure chart attached? **Yes/No**

4.1.2 Please provide details of any holding or parent company of the tendering organisation

### 4.2. Technical Capability

4.2.1. Please describe any relevant qualifications and accreditations for personnel / and or the company to confirm competence in carrying out the inspection and maintenance work.

4.2.2. Please provide a copy of an Inspection and Test Certificate that you have already completed.

Example documentation attached? **Yes / No**

**4.2.3.** Please provide details of previous experience of relevant contracts, together with names and addresses of Councils / referees (preferably from the Public Sector). Please also include a testimonial from each referee regarding this work.

<b>Council Organisation name and address</b>	<b>Reference contact name, telephone number and email address</b>	<b>Approx value &amp; date work undertaken</b>	<b>Brief description of works / services</b>	<b>Testimonial attached?</b>
1.				
2.				
3.				

### **4.3. Financial information**

**4.3.1.** Please provide a copy of the Tenderer’s most recent accounts that cover the last three years of trading, or for the period that is available if trading for less than two years.

Where the tendering organisation is planning to support its submission through an undertaking from its parent company or ultimate holding company, then this should be stated and the information requested in this section must be supplied both for the Tendering Organisation and for the relevant parent company or ultimate holding company.

Accounts attached? **Yes/No**

**4.3.2.** Please provide details of existing insurance cover and policies:

<b>Insurance policy</b>	<b>Indemnity limit</b>	<b>Insurer</b>
Public Liability		
Employers Liability		
Professional Indemnity		

### **4.4. Sustainability**

**4.4.1.** Does your company have an Environmental or Sustainability Policy?

Yes/No

**4.4.2.** Please provide details of how the tenderer can contribute to Swale Borough Council's commitment to reduce Environmental Impact.

## **4.5. Equalities**

**4.5.1.** Does your company have an Equalities Policy?

Yes/No

**4.5.2.** In the last three years, has any finding of unlawful discrimination been made against your organisation by any court or industrial tribunal?

Yes / No

## **4.6. Added value**

Please explain below if you are able to add any additional value or community benefit if successful in this contract.

## 5. PRICING SCHEDULE

The costs should be broken down into components with a full description of each component and its associated costs.

Component	Component description	Costs (£)
Critical / Emergency Hourly Rate (out of hours (8am-6pm Mon- Fri))	All inclusive cost to respond to a critical / emergency call out to investigate / action as appropriate per hour and subsequent hours	
Hourly Rate (8am-6pm Mon- Fri)	All inclusive cost to respond to investigate / action as appropriate per hour and subsequent hours	
Percentage to be applied to materials used	Percentage that will be applied and charged in addition to cost of materials used during remedial works	
<b>Annual Price per Building (Quarterly inspection)</b>	All inclusive <b>annual</b> cost to carry out an inspection service and issue certification in line with manufacturers' recommendations per building every three months (individually list below)	
Swale House, East Street, Sittingbourne, ME10 3HT		
Kemsley Hall, Kemsley, ME10 2SL		
Rose Street Heritage Centre, Sheerness, ME12 1AJ		
Guildhall & 44 High Street, Queenborough, ME11 5AA		
King George Pavilion, Sittingbourne, ME10 1QX		
Sheerness Council office, Trinity Road, Sheerness, ME12 2PF	Please note this property is due to be disposed of in due course	
Borough Hall Queenborough, ME11 5DJ	Please note this property is due to be disposed of in due course	

**6. FORM OF TENDER AND DECLARATIONS**

**TENDER FOR THE PROVISION OF: Inspection, Testing and Maintenance of the Emergency Lighting and Fire Alarm to a selection of council owned buildings**

TO: THE SWALE BOROUGH COUNCIL

I/We [.....INSERT NAME OF BIDDNG ORGANISATION], Company registration number [.....] whose registered address is [.....], having examined the Invitation To Tender (ITT) and other documents made available to us hereby tender to provide all the Services described in the tendering documents including appendices and confirm our submission of a compliant Bid.

I/We hereby offer to supply the Service subject to the terms and conditions set out in such Conditions of quotation, Conditions of Contract Specification and other documents (if any) at the prices and rates contained in the Pricing Schedule.

I/We undertake in consideration of having been supplied with the particulars and permitted to tender, that this quotation shall not be withdrawn or modified for 30 days from the date of its delivery but shall remain binding upon me/us during that period.

I/We understand you are not bound to accept the lowest or any tender you may receive and you will not pay any expenses incurred by us in connection with the preparation and submission of this tender.

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.

**Anti Collusive Tendering Certificate**

I/We declare that:

- 1. This is a bona fide tender, intended to be competitive, and that I/we have not fixed or adjusted the amount of the tender by or in accordance with any agreement or arrangement with any other person.
- 2. I/We have not done and I/we undertake that I/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 those tenders the amount or approximate amount of the proposed tender except where disclosure, in confidence, of the approximate amount of the tender was necessary to obtain premium quotations required for the preparation of the tender.
  - b entering into any agreement or arrangement with any other persons that they 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 work any act or thing of the sort described above. We acknowledge that if we, or anyone who acts on our behalf behaves improperly or commits an offence under the Prevention of Corruption Acts 1889-1916, the Council may cancel the contract and recover all costs and losses.

In this certificate, the word 'person' includes any persons or any body or associated, corporate or unincorporated, and 'any agreement or arrangement' includes any such transaction, formal or informal, and whether legally binding or not.

Dated this .....day of .....20.....

Signature .....

For and on behalf of .....  
(Name of firm or Company)

Status of signatory.....  
(eg Partner or Director)

**APPENDIX A: DRAFT CONDITIONS OF CONTRACT**

THIS AGREEMENT dated *(date)* is made by and between:

- 1 *(name of company)* a company incorporated in England and Wales under company number *(number)*, and whose registered office is at *(address)* (the 'Service Provider'); and
- 2 *(Swale Borough Council)* a company incorporated in England and Wales under company number *(number)*, and whose registered office is at *(Swale House, East Street, Sittingbourne, ME10 3HT)* (the 'Council').

**RECITALS**

- A The Council wishes to receive (indicate generally the type of services that the Council wishes to receive).
- B The Service Provider has the skills, background and experience in providing maintenance and repair of fire alarm systems and emergency lighting.
- C The Service Provider is willing to provide the Services (as defined below) and the Council is willing to appoint the Service Provider to provide the Services, all in accordance with the provisions of this Agreement.

NOW IT IS AGREED as follows:

**3 Definitions**

In this Agreement, the following words shall have the following meanings:

'Commencement Date'	date on which the Service Provider is to start performing the services;	
'Completion Date'	date on which the Service Provider is to complete the services	
'Confidential Information'	(a)	in respect of Information provided in documentary form or by way of a model or in other tangible form, Information which at the time of provision is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence,
	(b)	in respect of Information that is imparted orally, any information that the Council or its

		representatives informed the Service Provider at the time of disclosure was imparted in confidence,
	(c)	in respect of Information imparted orally, any note or record of the disclosure,
	(d)	any copy of any of the foregoing, and
' Services'		the services as set out in the specification
'Fee(s)'		(specify amount);
'Information'		information whether of a technical, commercial or any other nature whatsoever provided directly or indirectly by the Council to the Service Provider in oral, electronic or documentary form or by way of models, biological or chemical materials or other tangible form or by demonstrations and whether before, on or after the date of this Agreement;
'Inspection'		the meaning given in clause 11.1;
'Reports'		The meaning given in clause 20.2;
'Named Service Provider '		(specify the name and where appropriate job title or level of qualification or responsibility);
'Outcomes'		those targets (or) results set out in the Specification ;
'Parties'		the Service Provider and the Council, and 'Party' shall mean either one of them;
'Purpose'		the meaning given in the Specification; and
'Specification'		the specific Services to be provided by the Service Provider under this Agreement when such Services will be provided, the length of time they will take to perform and the human and other resources and facilities which are to be supplied by the Service Provider.

### 3. Services

- 3.1. The Service Provider shall provide the Services according to the Specification to the Council in consideration for the Council paying the Fee to the Service Provider, subject to the provisions of this Agreement.
- 3.2. The Council and the Service Provider shall agree the time and place for the performance of the Services.
- 3.3. The Service Provider shall start providing the Services on the date agreed between the Service Provider and the Council. The Services shall be provided by the dates specified in the Specification.
- 3.4. The Service Provider shall expend such time and effort as may be necessary to complete the Services including the provision of data, materials or reports, by the dates agreed by the Parties.
- 3.5. The Services shall only be performed by the Named Service Provider or by the persons agreed from time to time by the Parties.
- 3.6. If the Service Provider wishes persons other than the Named Service Provider or persons agreed by the Parties to perform the Services, the Service Provider shall only do so after obtaining the prior written approval of the Council which shall not be unreasonably refused. Where the Service Provider wishes to make such a change, at the same time as notifying the Council of such a proposed change, the Service Provider shall also supply sufficient details concerning the proposed details.
- 3.7. If the Named Service Provider is unavailable, to provide the Services, and in the reasonable opinion of the Council, any suggested replacement is not satisfactory to the Council, then the

Council may terminate or the Council may specify that the Service Provider obtains the services of a sub-contractor (at the Service Provider's expense) to perform the Services that remain to be performed).

**3.8.** Without prejudice to clause 3.5, at any time while there are any Services to be performed, the Council may, at its sole discretion, require that any person or sub-contractor agreed by the Parties who is to provide or is providing some or all of the Services shall no longer do so. Such a requirement by the Council will take effect from the date specified in the notice that the Council shall give to the Service Provider. The Service Provider shall supply a replacement which is acceptable to the Council.

**3.9.** The Service Provider shall ensure, and instruct its employees and agents accordingly, that the Service Provider's employees and agents shall take all reasonable steps to safeguard their safety and the safety of other persons who may be affected by their actions or omissions. The Service Provider agrees to indemnify and keep indemnified the Council from all and any liabilities, obligations, costs and expenses whatsoever arising from any loss, damage or injury caused to the Council or any third party by the Council's employees and agents in this regard.

#### **4. The Supervising Officer**

**4.1.** The Council shall nominate a representative for the purposes of the contract and shall have power (such power to be delegated to any Officer of the Council as the Council Representative decides) to issue instructions to the Service Provider in accordance with the provisions contained in the Conditions of Contract and the Schedule for the satisfactory completion of the Services.

#### **5. Specification**

**5.1.** From the Commencement Date the Parties shall discuss and agree the particular Services to be carried out by the Service Provider, what has been agreed by the Parties, the time estimates for the provision of the particular Services

**5.2.** The Specification may be varied or added to as agreed by the Parties from time to time, in writing. Any variation or addition to the Specification shall be clearly indicated.

#### **6. Insurance**

**6.1.** The Service Provider shall maintain at its own cost a comprehensive policy of insurance in relation to public liability insurance five million pounds (£5,000,000.00) employer's liability insurance ten million pounds (£10,000,000.00) and professional indemnity insurance of two million pounds (£2,000,000.00). Conditions to cover the liability of the Contractor in respect of any act or default for which it may become liable to indemnify the Council under the terms of this Agreement and to provide a copy of the same if so required by the Council and for its inspection and approval.

**6.2.** have in place one or more insurance policies to cover the liabilities that may arise from the Service Provider and the Service Provider's employees or sub-contractors performing the Services and the insurance policies shall remain in force during the period this Agreement is in force.

**6.3.** At the request of the Council, the Service Provider shall supply a copy of the insurance policies to the Council and ensure that the Council shall be entitled to the benefit of such insurance.

#### **7. Payment**

**7.1.** In consideration of the Services to be provided by the Service Provider under this Agreement the Council agrees to make the Payment in accordance with the terms set out in this



Agreement. The whole fee of [ ] plus VAT at 20% will be paid on completion of the actions and outputs.

**7.2.** Payments shall be made within 28 days of the receipt of the VAT invoice

## **8. VAT**

**8.1.** All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties or taxes

**8.2.** Any VAT or other duties or taxes payable in respect of such sum shall be payable in addition to such sums upon the Contractor satisfying the Council that it is a properly registered individual for levying VAT

## **9. Dates**

**9.1.** The dates set out in this Agreement whereby the Service Provider shall start, carry out and complete the Services shall be of the essence.

**9.2.** For the avoidance of doubt, the Service Provider agrees that any failure (however minor) to meet any date shall entitle the Council to terminate the Agreement without notice.

## **10. Auditing**

**10.1.** During the term of this Agreement the Council shall be entitled to, during normal business hours and on reasonable notice and at the expense of the Service Provider, to inspect all the systems and facilities for the purpose of ascertaining and investigating whether the Service Provider is providing the Services in accordance with the provisions of this Agreement ('Inspection').

**10.2.** Such Inspection may include whether the Service Provider's facilities and systems are in compliance with:

10.2.1. Standards BS5839 Fire detection and alarm systems for buildings and BS5266 Code of practice for Emergency Lighting;

10.2.2. the Council's policies and standards as to the performance by the Service Provider under this Agreement (which the Council has notified or will notify to the Service Provider from time to time);

10.2.3. the Council's policies and standards as to the Outcomes.

**10.3.** The Service Provider will co-operate with any Inspection and make its employees, agents and representatives available.

**10.4.** An Inspection may include the inspection (and making copies of) all financial and other business records of the Service Provider concerning the provision of the Services.

**10.5.** Upon the request of the Council, the Service Provider will provide a signed statement indicating that it has the right to use all third party material, information, data, software etc included or used in any Services Materials or Outcomes or in connection with the provision of the Services.

## **11. Regulatory inspections**

**11.1.** If any government or regulatory body:

11.1.1. contacts the Service Provider;

11.1.2. wishes to carry out an inspection of the Service Provider, its facilities, systems or staff;

11.1.3. takes any action against in regard to the practices of the Service Provider;

whether or not in regard to the provision of the Services, the Service Provider shall inform the Council as soon as it is contacted by or receives notice from the government or regulatory body, and no later than two working days after such contact or notice.

**11.2.** If any inspection is to be made by a governmental or regulatory body of the facilities, system or staff of the Council, and such inspection is concerning or affects the provision of the Services, the Service Provider shall allow the Council to be present (and participate in) such an inspection.

**11.3.** Any documentation or material provided by or to a government or regulatory body for the purpose of this clause 11 shall also be copied to the Council.

## **12. Location**

**12.1.** The Service Provider shall provide the Services in such places and locations as set out in the Specification or as agreed by the Parties from time to time.

**12.2.** The Service Provider shall comply with all health and safety policies, and security measures in order to gain access to the premises or perform the Services at the Council's premises.

## **13. Acceptance**

**13.1.** Where any stage of performing the Services requires the approval or acceptance of the Council, the following shall apply:

**13.2.** where the Service Provider has completed performing the Services, the Council will be deemed to have accepted or approved them within 14 days of the Service Provider:

13.2.1. notifying the Council that the Services had been completed;

13.2.2. supplying any final report to the Council; or

13.2.3. sending a final invoice to the Council.

## **14. Fee rates based on time spent**

**14.1.** Where the Fees are calculated on the amount of time spent by the Service Provider the following applies: where the Fees are based on an hourly rate, any time spent which is less than an hour is charged on a pro-rated basis.

## **15. Fees and payment of Fees**

**15.1.** The payment of the Fees shall be made by the Council to the Service Provider within 28 days of the date of the Service Provider's invoice in respect of the Services.

**15.2.** The Fees are calculated on the amount of time spent by the Service Provider in performing the Services at the rates specified in the tender. The Service Provider shall not be entitled to vary the rates during the existence of this Agreement. The Service Provider may only implement new rates with the prior written agreement of the Council.

**15.3.** The Service Provider shall not charge, and the Council shall not be liable, for any expenses, charges, costs, fees except the Fees as set out in the Specification or as expressly agreed in writing by the Parties.

**15.4.** If any of the Services have not been performed:

15.4.1. by the dates specified agreed by the Parties;

15.4.2. in accordance with the standards specified in the Specification or standards agreed by the Parties,

the Council shall be entitled not to make any outstanding payments until the Services have been performed (or re-performed) in accordance with the standards specified in the Specification or standards agreed by the Parties. For the avoidance of doubt, where the Council withholds payment under this clause 15.4, the Service Provider shall not be relieved from the obligation to carry out any unperformed Services.

**15.5.** All amounts stated are exclusive of VAT, which will be charged in addition at the rate in force at the time the Council is required to make payment.

**15.6.** When making a payment the Council shall quote relevant reference numbers and the invoice number.

## **16. Council's obligations**

**16.1.** During the performance of the Services the Council will:

16.1.1. co-operate with the Service Provider as the Service Provider reasonably requires;

16.1.2. provide the Information and documentation that the Service Provider reasonably requires;

16.1.3. ensure that the Council's staff and agents co-operate with and assist the Service Provider.

## **17. Delay to the Services**

**17.1.** The Service Provider shall give notice in writing to the Council's Representative of any matter beyond his control which is likely to cause or is causing delay in the completion of the services beyond the date stated provided however that the Service Provider shall constantly use their best endeavours to carry out the work by the date stated for completion. Should the Supervising Officer be satisfied that the Service Provider has complied with the foregoing he may in writing grant such extension of time as may be reasonable.

## **18. Record keeping**

**18.1.** The Service Provider shall keep records of all its activities in connection with the provision of the Services as set out in the Specification or set out on the Council's policies and standards documentation.

**18.2.** The Service Provider shall provide, at its expense, upon reasonable notice from the Council:

18.2.1. access to the Council to such information, including computer systems or other methods of recording that information; and/or

18.2.2. copies of any such information.

## **19. Provision and ownership of reports**

- 19.1.** The Service Provider will provide reports at the times and in the format specified in the Specification.
- 19.2.** Unless otherwise specified in the Specification the copyright and database right (and all other intellectual property rights) in the reports (or any other material, documentation or data) developed, written, created or prepared by or for the Service Provider in performing the Services ('Reports') (whether or not provided to the Council), shall belong to the Council.
- 19.3.** The Reports created under this Agreement shall be original works created by the Service Provider and shall:
- 19.3.1. not include intellectual property owned by or licensed to a third party except for intellectual property which the Service Provider has the right to use (including the right to use the intellectual property for the purposes of this Agreement);
- 19.3.2. not subject the Council to any claim for the infringement of any intellectual property rights of a third party.
- 19.4.** The Service Provider agrees at any time and from time to time on the written request of the Council to execute and deliver promptly to the Council any documents or instrument which the Council considers desirable, or which are required by law for obtaining the full benefits of the assignment in clause 28 and of the rights and powers granted by it.

## **20. Confidentiality**

- 20.1.** The Service Provider shall keep the Confidential Information of the Council confidential and secret, whether disclosed to or received by the Service Provider. The Service Provider shall only use the Confidential Information of the Council for the Purpose and for performing the Service Provider's obligations under the Agreement. The Service Provider shall inform its officers, employees and agents of the Service Provider's obligations under the provisions of this clause 20.1 and ensure that the Service Provider's officers, employees and agents meet the obligations.
- 20.2.** The obligations of clause 20.1 shall not apply to any information which:
- 20.2.1. was known or in the possession of the Service Provider before the Council provided it to the Service Provider;
- 20.2.2. is, or becomes, publicly available through no fault of the Service Provider;
- 20.2.3. is provided to the Service Provider without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
- 20.2.4. was developed by the Service Provider (or on its behalf) who had no direct access to, or use or knowledge of the Confidential Information supplied by the Council; or
- 20.2.5. is required to be disclosed by order of a court of competent jurisdiction.
- 20.3.** This clause 20 shall survive termination of this Agreement for a period of three years.

## **21. Use of sub-contractors**

- 21.1.** The Service Provider is permitted to use other persons to provide some or all of the Services but only with the express prior written permission of the Council.

- 21.2.** The Service Provider shall be responsible for the work of a sub-contractor whose work shall be undertaken to the same standard as stated in this Agreement and the Specification.
- 21.3.** The Service Provider acknowledges and agrees that a Council shall be entitled to:
- 21.3.1. specify that some or all of the Services are to be provided by a sub-contractor; and
- 21.3.2. require the Service Provider to use Council specified sub-contractors.
- 21.4.** Where the costs of using a Council specified sub-contractor by the Service Provider is greater than the amounts agreed by the Parties, the Parties shall negotiate in good faith an appropriate amount to be paid by the Council.

**22. Warranties, liability and indemnities**

- 22.1.** The Service Provider warrants, represents and undertakes that:
- 22.1.1. it will indemnify and keep indemnified the Council from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Council resulting from a breach of this Agreement by the Service Provider including:
- 22.1.1.1. any act neglect or default of the Service Provider to employees or agents
- 22.1.1.2. any breaches in respect of any matter arising from the supply of the Services resulting in any successful claim by any third party
- 22.1.2. it will carry out the work by the dates agreed by the Parties to this Agreement;
- 22.1.3. it will carry out the Services with all due skill and diligence and in a good and workmanlike manner, and in accordance with the best practice within the industry of the Service Provider;
- 22.1.4. it will use its best endeavours to achieve the Outcomes and that the Outcomes will be in accordance with those specified in the Specification;
- 22.1.5. the Service Provider's employees and agents will have the necessary skills, professional qualifications and experience to perform the Services in accordance with the Specification and Best Practice;
- 22.1.6. it has full capacity and authority to enter into this Agreement;
- 22.1.7. it has obtained all necessary and required licences, consents and permits to perform the Services; and
- 22.1.8. the Service Provider shall be responsible for all costs, fees, expenses and charges for training necessary or required for the Service Provider's employee and agents to perform the Services.
- 22.2.** The Service Provider acknowledges that the Council will be:
- 22.2.1. relying on the Service Provider's skills, expertise and experience concerning the provision of the Services;
- 22.2.2. relying on the accuracy of all the Outcomes and all the information and materials included in the Services Materials;

- 22.2.3. using the reports, the Outcomes and any other advice and assistance provided under this Agreement in order to (specify a commercial outcome).
- 22.3.** Without prejudice to the other remedies and rights available to the Council, if the Service Provider performs the Services (or any part of the Services) negligently or materially in breach of this Agreement ('Defective Services'), then the Council, and at the option of the Council, will:
- 22.3.1. require the Service Provider to re-perform the Defective Services. The Council's request must be made within 6 months of the Completion Date or termination of this Agreement; or
- 22.3.2. carry out an assessment of the value of the Defective Services and deduct the value of the Defective Services from any amounts that the Council is required to pay to the Service Provider; or
- 22.3.3. obtain the services of another service provider to carry out the Defective Services, and the Service Provider will be required to pay all amounts payable by the Council in obtaining the Defective Services from another service provider.
- 22.4.** Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes liability for fraud.
- 23. Termination**
- 23.1.** If the Named Service Provider becomes unavailable and the Parties cannot agree on a suitable replacement to perform the Services, either Party may terminate this Agreement by written notice to the other Party.
- 23.2.** Without prejudice to clause 20.3, the Council may terminate this Agreement at any time by giving the Service Provider 14 days prior written notice. The Council shall only pay for any time actually spent by the Service Provider up to the date of termination (if the Fees of the Service Provider payable are calculated on time spent) or the reasonable costs and expenses incurred by the Service Provider up to the date of termination (if the Fees of the Service Provider are calculated by some other method).
- 23.3.** Without prejudice to the other remedies or rights a Party may have, either Party may terminate this Agreement, at any time, on written notice to the other Party ('Other Party'). The notice will take effect as specified in the notice:
- 23.3.1. if the Other Party is in material breach of its obligations under this Agreement and where the breach is capable of remedy within 14 days, the Other Party has not remedied the breach within 14 days of receiving written notice which specifies the breach and requires the breach to be remedied; or
- 23.3.2. if the Other Party becomes insolvent or if an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or re-construction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Other Party's assets or business, or if the Other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.
- 23.4.** Upon termination of this Agreement for any reason, the Service Provider shall deliver, and require that its employees, agents and sub-contractors deliver, to the Council all Materials and any other property of the Council which are in the possession or control of the Service

Provider or the Council's employees, agents or sub-contractors at the date of termination and shall not retain any copies of the Material.

**24. Non-solicitation**

**24.1.** During the existence of this Agreement and for the period of 12 months after termination of this Agreement, the Service Provider shall not solicit (whether directly or indirectly) any employee of the Council who was involved in the performance or receipt of the Services.

**25. General**

**25.1. Force majeure**

**25.2.** Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this Agreement by written notice to the other Party.

**26. Amendments**

**26.1.** This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

**27. Assignment**

**27.1.** Subject to the following sentence, neither Party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party. A Party may, however, assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement.

**28. Entire agreement**

**28.1.** This Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

**29. Joint and Several**

**29.1.** All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this Agreement shall include all genders and the plural and the successor in title to the parties

**30. Survival of terms**

**30.1.** No term shall survive expiry or termination of this Agreement unless expressly provided

**31. Costs**

**31.1.** Each of the parties shall pay their own costs and expenses incurred in connection with the preparation of this Agreement

**32. Copyright**

- 32.1.** Copyright in all documents prepared by the Service Provider for the Council during this Agreement shall vest in the Council provided that the Council shall have paid all outstanding payments owing to the Service Provider under this Agreement

**33. Delivery up of Documents on Termination**

- 33.1.** The Service Provider shall upon the termination of their engagement immediately deliver up to the Council all correspondence documents specifications papers and property belonging to the Council which may be in their possession or under their control

**34. Waiver**

- 34.1.** No failure or delay by the Service Provider in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

**35. Agency, partnership etc**

- 35.1.** This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

**36. Further assurance**

- 36.1.** Each Party to this Agreement shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.

**37. Severance**

- 37.1.** If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

**38. Data Protection**

- 38.1.** The Service Provider shall comply with the Data Protection Act 1998 and any subsequent re-enactments or amendments at any time.

**39. Freedom of Information**

- 39.1.** The Service Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 and shall assist and co-operate with the Council to enable the Council to comply with such Information Disclosure Requirements

**40. Announcements**

- 40.1.** No Party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes all the Parties with a copy of such announcement or information and obtains the approval of such



persons to its terms. However, no Party shall be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

#### **41. Interpretation**

**41.1.** In this Agreement unless the context otherwise requires:

- 41.1.1. words importing any gender include every gender;
- 41.1.2. words importing the singular number include the plural number and vice versa;
- 41.1.3. words importing persons include firms, companies and corporations and vice versa;
- 41.1.4. references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
- 41.1.5. reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- 41.1.6. any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 41.1.7. the headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation;
- 41.1.8. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 41.1.9. where the word 'including' is used in this Agreement, it shall be understood as meaning 'including without limitation'.

#### **41.2. Notices**

41.2.1. Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail or e-mail (confirmed by first class mail), to the address of the relevant Party set out at the head of this Agreement, or such other address as that Party may from time to time notify to the other Party in accordance with this clause. The relevant contact information for the Parties is as follows:

Council : (e-mail address);

Service Provider : (e-mail address).

41.2.2. Notices sent as above shall be deemed to have been received 3 working days after the day of posting (in the case of inland first class mail), or next working day after sending (in the case of e-mail).

41.2.3. In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.

**42. Law and jurisdiction**

**42.1.** The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

**43. Third parties**

**43.1.** For the purposes of the Contracts (Rights of Third Parties) Act 1999, and notwithstanding any other provision of this Agreement, this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

**44. Equality and Diversity**

**44.1.** To comply with the Equalities Act 2010 and any other relevant laws and acts relating to equality and diversity.

**45. Inducements and rewards**

**45.1.** If the Providers, their employees or agents with or without the knowledge of the Providers

45.1.1. does anything improper to influence the Council either to give it the Agreement or to take action or to refrain from taking action in relation to the Agreement or

45.1.2. offers any fee or reward the acceptance of which would constitute an offence under the Bribery Prevention of Corruption Act 2010/1889 to 1916 or Section 117(2) of the Local Government Act 1972

**The Council may cancel this Agreement and recover from the Providers any of its losses resulting from such cancellation**

**46. Settlement of Disputes**

**46.1.** If any dispute or difference concerning the Agreement shall arise between the Council or the Council Representative and the Service Provider, such dispute or difference shall be referred to arbitration. The selection of the Arbitrator shall be by mutual consent. Failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator acting as an expert, a person will be appointed on the request of either party by the appropriate governing body.

**47. Whistle Blowing**

**47.1.** The Service Provider shall comply with the Council's whistle blowing procedure which ensures that employees of the Service Provider are able to bring to the attention of the relevant authority malpractice, fraud and breach of laws on the part of the Service Provider or any sub-contractor without fear of disciplinary and other retribution or discriminatory action.

AS WITNESS etc

## APPENDIX B: SCHEDULE OF ASSETS

	Property	Property use	Size of Building (M <sup>2</sup> )	Date of last Inspection Test
1	Swale House, Sittingbourne, ME10 3HT	Office	7063	December 2011
2	Kemsley Hall, Kemsley, ME10 2SL	Nursery, public hire	817	August 2011
3	Rose Street Heritage Centre, Sheerness, ME12 1AJ	Museum	53	Newly Instated
4	Guildhall & 44 High Street, Queenborough, ME11 5AA	Town Council & tenanted offices	238	August 2012
	King George Pavilion, Sittingbourne, ME10 1QX	Sports use, nursery, public hire	663	August 2012
5	Sheerness Council office, Trinity Road, Sheerness, ME12 2PF	Vacated office	643	November 2012
6	Borough Hall Queenborough, ME11 5DJ	Public hire	453	August 2012