

**INVITATION TO TENDER**

FOR PROFESSIONAL SERVICES FOR

‘KING’S LYNN CREATIVE HUB FEASIBILITY STUDY’

**SECTION 1 – Information & Instructions to Participants**

**Introduction**

The Borough Council of King’s Lynn and West Norfolk (the Council) invites tenders from a suitably qualified multi–disciplinary professional team to undertake a study to assess the feasibility of setting up a Creative Hub in King’s Lynn.

A Creative Hub is a place, which brings creative people together, providing space and support for networking, business development and community engagement within the creative, cultural and technological sectors.

Creative Hubs are a new way of organising creative economy innovation and development and can produce a wide range of impacts including start-up ventures, jobs, new products and services, future investment (public and commercial), talent development, regional talent retention, informal education and engagement, training, urban regeneration, research and development, new networks, innovative models of organisation, quality of life enhancements and resilience (British Council, The Creative Hubs Report, 2016).

There is comprehensive evidence (British Council, The Creative Hubs Report, 2016 and National Endowment for Science, Technology and the Arts (NESTA), The Geography of UK’s creative and high-tech economies and Creative England Live 2015) demonstrating that successful Creative Hubs are embedded in local cultural and economic ecosystems and this is why the feasibility study is critical in building a successful model for a Creative Hub in King’s Lynn.

In summary, the feasibility study will:

* assess the gaps, needs and market demand for a Creative Hub provision in relevant sectors including creative, cultural, technology, social enterprise, games, graphic design and web design
* undertake a site options appraisal to identify the right location / premises for a Creative Hub in King’s Lynn
* recommend the relevant structure e.g. for profit / private, non-profit, social venture or charitable
* identify the hub’s specific ‘offers’ / ‘services’ relevant to existing and latent demand e.g. hot desking, studio space, training / workshops / events, mobile working, access to equipment / skills / resources / networks, incubation / business support / mentoring / financing, retail opportunities and research & development
* develop a high-level financial model for the hub and identify potential funding sources

**Contract Timescale**

Tender Submission deadline 11th June 2018

Interviews 26th June 2018

Notification of preferred bidder Week commencing 2nd July 2018

Inception meeting Week commencing 16th July 2018

Interim Report November 2018

Final Report December 2018

The Council reserves the right to amend this timetable at its absolute discretion at any time during the tendering process

**Standard Selection Questionnaire**

Included in the tender pack is a Standard Selection Questionnaire (SSQ). The questionnaire must be fully and accurately completed and returned with your tender. If your SSQ responses do not meet the minimum selection standard your tender will not be considered.

To meet the minimum standard you must: -

1. complete the form fully,
2. not have been involved with any of the offences that give rise to Mandatory Exclusion (section 2),
3. not have been involved with any of the offences that give grounds for Discretionary Exclusion unless you are able to provide sufficient evidence of “self-cleaning” (section 3),
4. be able to provide information that demonstrates that your organisation is of good financial standing (section 4),
5. provide at least one reference for the supply of the service that we require for which your client is able to confirm satisfactory quality and delivery (section 6.1), and be able to answer “Yes” to the contract specific question(s) at 6.4.
6. if answering yes to question 7.1, be able to answer yes to question 7.2 or be able to provide an acceptable explanation.
7. be able to answer “Yes” to the question in the additional section 8.1.

*After evaluation of the tenders the successful bidder will be required to supply evidence to support the declarations made in their response to the SSQ, prior to our acceptance of their tender.*

**Queries**

Any queries regarding the tender process, the proposed Contract, or the Specification should be addressed to: -

Tony Hague, Procurement Officer

E-mail: [procurementtenders@west-norfolk.gov.uk](mailto:procurementtenders@west-norfolk.gov.uk)

Any queries that may have a material effect on the costing of the tender will be circulated to all applicants along with the Council’s response. Queries received less than seven days before the closing date may not be answered. If a query gives rise to the need for an amendment to the original tender documents, an extension to the closing date may be made, in which case all parties will be notified simultaneously.

**Submission of Tender**

Tenders may only be submitted on the Tender Response Form (Section 4 of this document) and they should be accompanied by the Non-Collusion Certificate on page 27. **One hard copy of the tender is required, together with an electronic copy on CD or DVD** (not memory stick)**.** They must be delivered in a plain envelope bearing nothing, such as franking marks, to indicate the identity of the sender. Please remember that some Royal Mail services, such as Special Delivery, require the senders name on the envelope which is not acceptable. Electronic submission is not acceptable.

The address label “TENDER DOCUMENTS”, in Section 5 of this document, should be attached to the envelope. **The tender must arrive by 12.00 noon on 11th June 2018.**

The Council may, after the opening of the tenders, enter discussions or post-tender negotiations with any participant.

**Tender Evaluation**

The successful Consultant will be the bidder that offers the most economically advantageous tender. This will be assessed on the following criteria: -

**1. PRICE 35%**

a. Total fixed cost 30%

b. Total of the 3 hourly rates and the 3 daily rates

requested in the tender form 5%

**2. QUALITY 65%**

a. Understanding of the brief – proposed approach/methodology for the project 25%

b. Proposed project team – covering the key disciplines required to complete the project and the skills and time allocation that the team members will bring. 25%

c. Proposed project programme 15%

**Evaluation Methodology**

The price criteria will be scored by awarding the full percentage available to the bidder offering the lowest price.  Other offers will be scored by dividing the lowest price by each bidder’s price and multiplying by the available percentage. The following figures show worked examples of this scoring:

* Bidder A          £40,000 score = 30%
* Bidder B          £50,000      40 / 50 = 0.8 x 30 = 24%
* Bidder C          £60,000      40 / 60 = 0.667 x 30 = 20%

The quality criteria will be evaluated against the following scoring system, with the scores adjusted for the weighting of each criterion:

|  |  |  |
| --- | --- | --- |
| **Performance** | **Judgement** | **Score** |
| Meets the standard and exceeds the standard in some or all aspects | Excellent | 9-10 |
| Meets the standard in all aspects but does not exceed it | Good | 7-8 |
| Meets the standard in majority of aspects but fails in some | Satisfactory | 5-6 |
| Fails to meet the standards in the majority of aspects but meets in some | Unsatisfactory | 3-4 |
| Significantly fails to meet the standard | Poor | 1-2 |
| Completely fails to meet the standard | Failed | 0 |

After the initial evaluation some of the leading candidates may be invited to interview. The initial scoring of the criteria may then be revised based on additional information gained during the interviews. Interviews may also be used to obtain evidence that the minimum qualification standard is met by the bidder. The interviews, if necessary, will take place in King’s Lynn on 26th June 2018, so please keep this date free.

**Variants**

No variants will be accepted.

Tenderers must submit a fully compliant tender. Tenders submitted for part of the brief will not be considered.

**Contract Award**

The Council does not undertake to accept any tender. However, assuming that the process is successful, the Council will notify all participants simultaneously about the intended award.

**Freedom of Information Act 2000**

The Freedom of Information Act (FOIA) came into force on 1st January 2005 and established a general right of access to all types of 'recorded' information, including public contracts and procurement activity held by the Council, subject to certain conditions and exemptions. Accordingly, all information submitted may need to be disclosed in response to a request under the Act.

This means that the Council is obliged under the Act to release certain information about its suppliers into the public domain within certain limits and according to relevant exemptions. The main exemption relevant to procurement is commercial interests, which means trade secrets and information likely to prejudice the commercial interests of any person (including the Council) holding it.

If you consider that any of the information in your tender is commercially sensitive, please explain (in broad terms) what harm may result from disclosure if a request is received, and the time period applicable to that sensitivity. You should also be aware that, even where you have indicated that information is commercially sensitive, the Council may be required to disclose it under the Act if a request is received. Please also note that the receipt of any material marked "confidential" or equivalent by the Council should not be taken to mean that we accept any duty of confidence by virtue of the marking.

If a request is received, the Council may also be required to disclose details of unsuccessful tenders.

**Government Transparency Policy**

The policy of central government is that all local authorities should be completely transparent about what they spend taxpayers’ money on and who that money is spent with. Therefore, you should be aware that if you are successful in obtaining this contract, or any other business, with the Council details of all payments over £500 will be published on the Council’s website.

The Council will also publish, on a quarterly basis, details of all contracts awarded and purchase orders issued over £5,000 in value.

**SECTION 2: SPECIFCIATION**

1. **Background**

West Norfolk has a strong sense of place, a long and proud heritage, and a rich and varied history. The Borough’s culture and heritage define what is so special and unique about West Norfolk and this is why the Council and its partners, especially Historic England and the Heritage Lottery Fund, have invested over £10m in local heritage and cultural assets over the past five years.

Furthermore, last year, King’s Lynn was designated a Heritage Action Zone (HAZ), one of the first in the country. The HAZ is a five-year programme designed to use King’s Lynn’s heritage as a catalyst for delivering local economic growth. The HAZ programme is being delivered by the Council in partnership with Historic England.

Initial desktop research undertaken by the Council’s Economic Development Team in August 2017 identified 30-50 creative businesses (digital marketing, graphic design, web design & development, search engine optimisation, brand identity and software development) actively operating within a ten-mile radius of King’s Lynn. At the moment, the creative and cultural sector in King’s Lynn is fragmented with businesses operating individually and no evidence of collaboration.

A creative hub will offer these creative businesses the chance to congregate with others in order to access crucial resources such as tools, specialist services, or inspiration to help develop projects and businesses. It will also enable them to tap into a growing economy – recent evidence (NESTA, The Geography of UK’s creative and high-tech economies, 2015) shows that the creative economy in the East of England has been growing rapidly since 2011, at a faster rate than London’s.

The need for a feasibility study that assesses the local market and cultural context and underpins the successful creation and operation of a Creative Hub is well evidenced by British Council research (The Creative Hubs Report 2016). The research shows that ‘not all Creative Hubs are the same and they are often embedded in particular cultural contexts, local cultural and economic ecosystems – understanding the unique proposition of a hub, and its relation to the local creative community, underpins a successful outcome.’

It is envisaged that the feasibility study, subject to its results and recommendations, will lead to the creation of a physical Creative Hub.

1. **Lead Professional’s Brief**

The purpose of this commission is to assess the feasibility of setting up a Creative Hub in King’s Lynn. The brief follows British Council’s guidance, which was based on research of over 200 Creative Hubs from 22 countries and recognised nationally (and internationally) as best practice in terms of building successful and sustainable hubs. The feasibility study must include the following elements:

**Task 1 - Assessing the market** - identifying the gaps, needs and demand:

* What challenges currently face creatives locally? How would a physical / virtual hub support the community?
* Do certain creative sectors need improved or different types of support? Will it be beneficial to support only one sector, or would they benefit from engaging with broader creatives and/or industries?
* Is there an established creative community already who will benefit from a new hub, or will the community have to be developed from scratch?
* Are there any other organisations providing similar hub provisions, and if so how will this hub add value? Are there any opportunities to work in partnership to develop shared provision?

**Deliverables:**

* D 1.1 Market research and assessment – technology sector
* D 1.2 Market research and assessment – arts & culture sector

**Task 2 - Defining the vision** – articulating potential short term goals and long term aspirations and selecting the business model

The business model and funding structure will depend on the hub’s agreed purpose and objectives and could be a for-profit company, charity, social venture, community interest company (CIC) or co-operative.

Creative Hubs come in all different shapes and sizes and can be described in many different ways – collectives, cooperatives, labs or incubators and can be static, mobile or online. The feasibility study will identify the most appropriate / relevant features that a potential Creative Hub in King’s Lynn could offer from the following:

* studio: small collective of individuals and / or small businesses in a co-working space
* centre: large scale building which may have other assets such as a café, bar, cinema, maker space, shop or exhibition
* network: dispersed group of individuals and / or businesses – tends to be sector or place specific
* cluster: co-located creatives, individuals and businesses, in a geographic area
* online platform: uses only online methods – website, social media to engage with a dispersed audience
* alternative: focused on experimentation with new communities, sectors and financial models

**Deliverables:**

* D 2.1 recommended legal structure i.e. profit, non-profit, collective or social venture
* D 2.2 recommended business model i.e. studio, centre, network, cluster etc.

**Task 3 - Designing the opportunity** – this element of the study will explore critical aspects of a creative hub to inform the business model:

* What is needed to make the hub a reality? E.g. types of resources, finance, equipment and staff
* What skills and capabilities are already in place? E.g. business skills, event management, stakeholder engagement and management
* What activities / services / products will the hub provide? E.g. studio rental, events and business support
* What benefits will the hub create for those involved? E.g. for tenants, collaborators and suppliers
* What broader impacts could the hub potentially generate? E.g. for city, stakeholders and the creative / cultural economy

**Deliverables:**

* D 3.1 Site / premises options appraisal
* D 3.2 Three-five years business plan

**Task 4 - Financial modelling**

A key feature of the feasibility study is to undertake initial financial modelling and cost estimation to enable the Council to weigh up different cost scenarios and approaches to identifying potential income sources. This may include questionnaires, surveys and workshops with potential customers (individuals and companies) to test how much they may be willing to pay for various services as well as benchmarking expenditure against other hubs.

**Deliverables:**

* D 4.1 Three-five year budget: income & expenditure
* D 4.2 Three-five year cashflow projection

**Task 5 - Final report**

**Deliverables:**

* **D 5.1 – Draft report**
* **D 5.2 – Final report**

1. **Contract Requirements**

* The Regeneration, Heritage and Economic Development Manager will be the main contact point for the duration of the contract.
* The appointed consultant will be expected to provide 4 hard copies of the draft and final Study Report, and 2 CD versions in Microsoft Word and Adobe Acrobat (the copyright of these documents should be vested in the Council but the research shall be attributed to the successful bidder).
* Payments will be made in stages upon completion of deliverables, as stated above (D1.1. to D5.2)

1. **Management & Reporting Arrangements**

* The project will be led by the Regeneration and Economic Development Department.
* The appointed team will be expected to attend meetings as necessary with key stakeholders, including; Local Authority (relevant services), Norfolk County Council (relevant services) and New Anglia Cultural Board

**SECTION 3 – Draft Appointment Agreement and Conditions of Contract**

Unless specifically and clearly qualified by the consultant concerned, it will be assumed when tenders are evaluated that the consultants find these Conditions of Contract acceptable and will provide the services, if appointed, strictly in accordance with them.

This Appointment Agreement is made the day of 2018 between The Borough Council of Kings Lynn and West Norfolk of Kings Court, Chapel Street, Kings Lynn, Norfolk PE30 1EX (hereinafter called “the Council”) of the one part and ……………………… whose address is (hereinafter called “the Consultant”) of the other part

WHEREAS:

1 The Council has invited Tenders for Consultants to provide a King’s Lynn Creative Hub Feasibility Study, “the Services”, more particularly defined in the Specification contained in the Invitation to Tender

2 The Consultant has submitted a Tender dated 2018 to provide the Services and the Council has accepted the Tender and wishes to appoint the Consultant to provide the Services on the terms and conditions contained therein

3 The following documents which have been signed on behalf of the parties hereto form part of this Agreement:

3.1 Invitation to Tender, including the Specification

3.2 Form of Tender (Consultants Document)

3.3 Correspondence between the Council and the Consultant but not exclusively; Letters / e-mails dated:

* 1. The acceptance of tender

3.5 Consultants Insurance Documentation

together called “the Contract Documents”

**4 Definitions**

4.1 ‘The Project Officer’ shall mean the Council’s Regeneration, Heritage and Economic Development Manager

NOW THIS DEED WITNESSETH as follows:

**1. Consultants obligation**

1.1 The Consultant will provide the Services in accordance with the Contract Documents and shall exercise reasonable skill and care in the performance of the Services.

1.2 Where the provision of the Services involves the supervision of a Contract on behalf of the Council the Consultant shall in addition:

1.2.1 comply with the Council’s Standing Orders Relating to Contracts as though he were a duly appointed Officer of the Council

* + 1. at any time during the carrying out of the Contract, produce to the appropriate Chief Officer or the External or Internal Auditor of the Council on request, all the records maintained by him in relation to the Contract
    2. on completion of the Contract, transmit all such records to the appropriate Executive Director of the Council as required to be returned by the Executive Director.

**2 Indemnity/Insurance**

2. 1 The Consultant 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 arising out of or in the course of or caused by the provision of the Services except to the extent that the same are due to any act or neglect of the Council or any person for whom the Council is responsible.

2.2 Without prejudice to his liability to indemnify the Council the Consultant shall take out and maintain insurance which shall comply with the Employer’s Liability (Compulsory Insurance) Act 1969 and shall take out and maintain insurance in respect of Public Liability for injury or damage to any property real or personal in sum of not less than £1,000,000 for any one occurrence or series of occurrences arising out of one event.

2.3 The Consultant shall maintain Professional Indemnity insurance covering (without limitation) all its liabilities hereunder whether for breach of contract, negligence or otherwise in respect of defects or insufficiency in design upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom in an amount of not less than £1,000,000 for any one occurrence or series occurrences arising out of any one event.

2.4 The Consultant shall produce such evidence as the Council may reasonably require that the insurances referred to in clauses 2.2 and 2.3 above have been taken out and are in force at all material times.

**3 Payment**

3.1 The Council will pay to the Consultant such sums as are due in accordance with the Contract Documents. This will be within thirty (30) days on receipt of a valid invoice.

**4 Contract Period**

4.1 The contract period shall commence on 2018 and shall be completed by 2018.

**5 Termination**

5.1 The Council may by notice in writing forthwith determine all or part of the Contract:

5.1.1 If the Consultant without reasonable cause makes default by failing to proceed diligently with the provision of the Services the Council may by notice in writing to the Consultant determine the employment of the Consultant under this Contract.

5.1.2 If the Council shall reasonably decide that the Consultant is suffering from financial difficulties which affect or threaten to affect the performance by the Consultant of his obligations hereunder.

5.1.3 If the Consultant makes a composition or arrangement with his creditors or becomes bankrupt or being a Company makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement or has a provisional liquidator appointed or has a winding up order made or passes a resolution for voluntary winding up (except for the purposes of amalgamation or reconstruction) or has an administrator or an administrative receiver appointed.

5.2 Upon determination of the employment of the Consultant under clause 5.1 above the Council may recover from the Consultant the additional cost to him of completing the Services any expenses properly incurred by the Council as a result of and any direct loss and/or damage caused to the Council by the determination.

**6. Specification**

6.1 The Consultant shall be deemed to have satisfied himself as to the accuracy, nature and extent of the Services required by the Specification before the execution of the Contract.

* 1. The Consultant shall be deemed to have satisfied himself before submitting his Tender as to the correctness and sufficiency of his Tender which shall (except insofar as it is otherwise provided in the Contract) cover all his obligations under the Contract.

6.3 If the Consultant finds a discrepancy, error, omission or misstatement in the documents he shall immediately refer the same in writing to the Project Officer.

6.4 Any such discrepancy, error, omission or misstatement shall not vitiate the agreement nor shall it release the Consultant from the completion of the whole or any part of the Services required by the Contract. The Project Officer shall in all such instances issue instructions as to such discrepancies, errors, omissions and misstatements.

6.5 The Specification describes as far as practicable the whole of the Services to be provided but the Consultant is responsible for ensuring that all these and incidental Services are completed in the proper manner as generally accepted for his particular profession and in particular in accordance with the appropriate Standards and/ or Codes of Practice

**7 Alterations to Contract Documents**

7.1 No omission from, addition to or variation to the Tender Documentation and/ or the Contract shall be valid or of any effect unless it is agreed in writing and signed by the Project Officer and by a duly authorised representative of the Consultant.

7.2 Save for an omission, addition or variation agreed pursuant to Clause 8.1 hereof any provision inconsistent with the Contract contained in any other document or in any oral agreement is agreed to be void and of no effect.

**8 Whole agreement**

8.1 Each party acknowledges that this Contract contains the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

**9 Supersedes prior agreement**

9.1 This Agreement supersedes any prior Agreement between the parties whether written or oral.

**10 Interpretation**

10.1 In the Contract, unless the contrary appears:

10.1.1 A reference to an Act of Parliament or any Order, Rule, Regulation, Statutory Instrument, Directive or the like (including those of the European Community) shall include a reference to any amendment or re-enactment of the same made prior to and during the Contract Period and will automatically include any such Act, Order, Rule Regulation, Statutory Instrument, Directive or the like enacted during the Contract Period which impinges upon the Works and/ or the Contract Standard.

10.1.2 Words importing the masculine include the feminine, words in the singular include the plural, and words in the plural include the singular.

**11 Notices**

11.1 No Notice to be served upon the Consultant shall be valid and effective unless it is delivered by hand, facsimile transmission or sent by Recorded, Registered or Special Delivery Post to the Consultants principal place of business which unless notified to the Council in writing otherwise shall be assumed to be the address the Consultant detailed in the Contract.

11.2 No Notice to be served upon the Council shall be valid or effective unless it is delivered by hand, facsimile transmission or sent by Recorded, Registered or Special Delivery Post to the Legal Services Manager.

11.3 Any Notice to be served shall be deemed to be given on the date that it is delivered by hand or sent by facsimile transmission or is sent by Recorded, Registered or Special Delivery Post on the date when it would be delivered in the ordinary course of Post.

**12 Recovery of sums due**

12.1 Wherever under this Contract any sum of money shall be properly recoverable from or payable by the Consultant, the same may be deducted from any sum then due, or which at any time thereafter may become due to the Consultant under this Contract or under any other Contract with the Council.

**13 Waiver**

13.1 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

**14 No assignment or sub-contracting**

14.1 The Consultant shall not assign or sub-contract any of its rights or duties under this Agreement without the consent in writing of the Council.

14.2 The Consultant may not substitute any goods or materials specified within the Contract Documents for any others without the consent in writing of the Council.

14.3 If the Consultant has without the previous consent in writing of the Council sub-let any part of the Services the Council may determine this Contract notwithstanding that the Consultant may have subsequently ceased to employ the sub-contractor.

14.4 It shall be a condition of any consent to sub-let any part of the contract that:

14.4.1 the employment of the sub-Contractor shall cease immediately upon the determination (for whatever reason) of the Consultant’s employment under this contract

14.4.2 in the event that the Consultant, in accordance with the terms of this Agreement, enters into a supply contract or a sub-contract in connection with this Agreement, the Consultant shall ensure that a term is included in the supply contract or sub-contract which requires the Consultant to pay all sums due thereunder to the sub-contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or sub-contract (as appropriate).

14.4.3 in the case of a local supply contract or sub-contract entered into in connection with this Agreement – where the local consultant or sub-contractor is deemed to be a business with headquarters within the Council’s borough boundary, the Consultant will use their best endeavours to ensure that payment to such a consultant or sub-contractor shall be within a period not to exceed ten (10) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or sub-contract (as appropriate).

**15 Prevention of Corruption**

15.1 The Council may be entitled to cancel this Contract and to recover from the Consultant the amount of any loss resulting from such cancellation if:

* + 1. the Consultant shall, in the opinion of the Council, have offered or given or agreed to give to any person gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to this Contract or any other contract, whether with the Council or anyone else; or

15.1.2 the like acts shall have been done by any person employed by the Consultant or acting on his behalf whether with or without the knowledge of the Consultant; or

* + 1. in relation to any contract with the Council or anyone else, the Consultant or any person employed by him or acting on his behalf and whether with or without his knowledge, shall have committed any offence under the Bribery Act 2010 or given any fee or reward or solicited or accepted any form of money or taken any reward collection or charge for providing the Services other than bona fide charges previously approved in writing by the Council, the receipt of which is an offence under sub-section 2 of section 117 of the Local Government Act 1972.

1. **Duty of Care**

16.1 The Consultant shall exercise reasonable skill and care in the performance of the Services.

**17 Observance of Statutory Requirements**

17.1The Consultant shall comply with all statutes, orders, regulations or bye-laws applicable to the performance of the Contract and indemnify the Council against any losses claims liabilities costs expenses proceedings or otherwise as a result of the Consultants non-compliance with the same.

**18 Project Officer**

18.1 The Project Officer or his authorised deputy shall in accordance with the Contract but not further or otherwise have power and authority to issue reasonable instructions and directions on any matter in connection with the proper performance of the Services but subject to the terms of the Contract and the Consultant shall carry out and be bound by the same. The Project Officer shall not exercise any functions; rights or powers beyond those conferred by the Contract.

**19 Confidentiality**

19.1 Save for information already in the public domain or the Consultant’s knowledge the Consultant and the Consultant’s staff shall treat as confidential and shall not disclose to any person other than a person authorised by the Council, any written and confidential information acquired by the Consultant or the Consultant’s staffing or in connection with the provision of the Services concerning the Council’s Premises, the Council, its staff or its procedures.

**20 Freedom of Information**

20.1 The Consultant acknowledges that the Council has legal responsibilities to make information available under the Freedom ofInformation Act 2000 (“the Act”).

20.2 The Consultant shall give reasonable assistance to the Council to comply with the Act.

20.3 In particular, the Consultant shall supply all such information and records to the Council (together with reasonable assistance to locate the same) which are needed by the Council to comply with its obligations under the Act.

20.4 The Council shall have the discretion to disclose any information which is the subject of Agreement to any person who makes a request under the Act and which, in the opinion of the Council, it has to disclose to discharge its responsibilities under the Act.

20.5 When exercising its right under sub clause 4 above, the Council shall consult the Consultant (and may take account of any reasonable suggestions made by it).

20.6 The Consultant shall not raise any additional charge to the Council in relation to complying with this clause.

**21 Contracts (Rights of Third Parties) Act 1999**

21.1 For the avoidance of doubt, nothing in this Contract confers or is intended to confer on any third party and benefit or the right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999

**22 Late Payment**

22.1 The Late Payments of Commercial Debts (Interest) Act 1998 and the Regulations thereunder shall apply to the Contract unless excluded under the provision therefore or by alternative provisions in the Tender Documents.

**24 Data Protection**

* 1. (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation (*(EU) 2016/679*) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
  2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause [NUMBER] is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
  3. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the data controller and the Contractor is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation.
  4. Without prejudice to the generality of clause 1.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to the Contractor for the duration and purposes of this agreement.
  5. Without prejudice to the generality of clause 1.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:
     + 1. process that Personal Data only on the written instructions of the Council unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process Personal Data (Applicable Laws). Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Council;
       2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that the availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
       3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
       4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
       5. the Council or the Contractor has provided appropriate safeguards in relation

to the transfer;

* + - 1. the data subject has enforceable rights and effective legal remedies;
      2. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
      3. the Contractor complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
      4. assist the Council, at the Council’s cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultation with supervisory authorities or regulators;
    1. notify the Council without undue delay on becoming aware of a Personal Data Breach;
       1. at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the agreement unless required by Applicable Law to store the Personal Data; and
       2. maintain complete and accurate records and information to demonstrate its compliance with this clause [NUMBER].

24.6 The Council does not consent to the Contractor appointing any third party processor of Personal Data under this agreement.

**25 Force Majeure**

25.1 Neither party shall be held to be in breach of Contract in respect of any failure to fulfil his obligations pursuant to the Contract resulting from force majeure. Each party will as soon as reasonably practicable notify the other in writing of the occurrence of such force majeure as they become known.

25.2 Force Majeure is acknowledged by the parties to be any circumstances beyond the reasonable control of either party including without prejudice to the generality of the foregoing fire, flood, Act of God, riot civil disturbance, industrial disputes where neither party is a direct participant, war or sabotage the coming in force of any statutory instrument regulation or by-law of the Government or any competent authority rendering the continued performance of the Contract illegal or impossible

**26 Arbitration**

26.1 All disputes between the parties arising out of or connected with this Contract or the performance of the Services by the Consultant may if the parties agree be referred to an Arbitrator to be agreed upon by the parties or in default of such agreement to be nominated by the President of the Institute of Arbitrators or a person appointed by him.

* 1. The Arbitrator shall be entitled to make such decision or award as he thinks just and equitable having regard to the circumstances then existing, the cost of such arbitration to follow the event or in the event of neither party succeeding to be apportioned between the parties by the Arbitrator in such proportions as he in his absolute discretion thinks fit.
  2. Any award or decision of such Arbitrator shall be final and binding on the parties hereto.

**27 Law**

27.1 This Contract shall be governed by the laws of England and Wales, and the parties agree to submit to the non-exclusive jurisdiction of the English Courts

**28. Copyright**

28.1 Upon completion of the Services the copyright of all documents and reports provided by the Consultant in connection with the Services shall be passed to the Council.

In witness whereof the parties have executed this Deed in the presence of the attesting witnesses the day and year first before written

EXECUTED as a DEED by )

)

acting by: - )

Director

Director/Company Secretary

THE COMMON SEAL of )

THE BOROUGH COUNCIL OF )

KINGS LYNN AND WEST NORFOLK )

was hereunto affixed in the )

presence of: - )

Authorised Signatory

SECTION 4 - TENDER RESPONSE FORM

CONSULTANT’S NAME………………………………………………………………………………

CONSULTANT’S ADDRESS…………………………………………………………………………

……………………………………………………………………………………………………………

CONTACT NAME………………………………………………………………………………..........

PHONE No ………………………. EMAIL ADDRESS ……………………………………………..

### **Fixed price fees for undertaking the services detailed in Section 2. Including any disbursements, but excluding VAT**.

total cost £………………………………

Additional Rates:

|  |  |  |
| --- | --- | --- |
| **Staff** | **Hourly rate £** | **Day rate £** |
| Senior/Director/Partner |  |  |
| Professional |  |  |
| Assistant grade/technician |  |  |

Proposed outline of your initial proposals to demonstrate your

understanding of the brief, the local context and your approach

to meet the requirements and objectives of the brief attached? YES / NO

Proposed project team details attached? YES / NO

Proposed project programme attached? YES / NO

Electronic copy of tender on CD or DVD attached? YES / NO

Signed ……………………………………….… Position …………………………

Print Name …………………………………… Date ……………………………

**CERTIFICATE OF NON-COLLUSION/ PREVENTION OF CORRUPTION**

I/ We certify that:

a) The prices, specifications and all matters relating to the enclosed Tender have been arrived at independently, without consultation, communication, agreement or understanding for the purpose of restricting competition, as to any matter relating to such prices, specifications and all other matters, with any other person or Organisation;

b) Unless otherwise required by law, the prices and other information which have been submitted in the Tender have not knowingly been disclosed, directly or indirectly, to any other person or Organisation, nor will they be so disclosed;

c) No attempt has been made or will be made to induce any other person or firm to submit or not to submit a Tender nor to withdraw or amend a Tender which as either already been or is intended to be submitted for the purpose of restricting competition;

d) No attempt has been made directly or indirectly to canvass any Councillor or employee of the Borough Council of King’s Lynn and West Norfolk or anyone acting on its behalf concerning the award of the contract which is the subject of this Invitation to Tender.

In addition, no person acting on behalf of or representing the Company has:

a) offered, given or agreed to give to anyone any inducement, gift or reward in respect of this or any other Council contract (even if I/ we do not know what has been done);

b) committed an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or given any fee or reward, or solicited or accepted any form of money, or taken any reward, collection or charge for performing the Works, other than bona fide charges previously approved in writing by the Council;

c) committed any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees. I/ we accept that any clause limiting my/ our liability shall not apply to this clause.

I understand that the Council may cancel the contract with me/ the Company if there is evidence of any failure on my/ our part to comply with any of the above and, if necessary, take legal action against me.

**Signed:**

**Name:**

**Date:**

**Position:**

SECTION 5 – Return Address Label

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**TENDER DOCUMENTS**

King’s Lynn Creative Hub Feasibility Study

**contract:**

**to be received no Later than**

11 JUNE 2018

**12 noon on**

**AT THE ADDRESS SHOWN BELOW:**

**OSTAP PAPAREGA**

**REGENERATION AND ECONOMIC DEVELOPMENT MANAGER**

**KING’S COURT,**

**CHAPEL STREET,**

**KING’S LYNN,**

**NORFOLK**

**PE30** **1EX**

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