

1. INTERPRETATION

1.1 In these Tender Conditions, unless the context otherwise requires:

- a) **Company** is the East of England Energy Group (EEEGR);
- b) **Company Supplied Information** means information (whether written, oral, electronic or in any other form) provided or made available by or on behalf of the Company to any Tenderer in relation to the Tender Documents or any matters contemplated by those documents;
- c) **Contract** means the contract to be entered into between the Company and the successful Tenderer as a consequence of the Tender process;
- d) **Contract Obligations** means the obligations that the successful Tenderer (if any) is required to carry out under and in respect of the Contract;
- e) **Data Protection Legislation** means:
 - i. the EC Personal Data Protection Directive 95/46/EC;
 - ii. the EC Directive 2002/58/EC; and
 - iii. all other applicable laws and regulations in any jurisdiction relating to or impacting on the processing of personal data including, on and from 25 May 2018, the GDPR, together with all legally binding guidance and codes of practice issued or adopted by a regulator (or group of regulators) with jurisdiction over the data processing arrangements contemplated in the contract, all as may be amended, supplemented or replaced from time to time.
- f) **GDPR** means the European General Data Protection Regulation, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC.
- g) **Invitation to Tender** means the document designated as such which has been issued to the Tenderer manually or electronically in conjunction with the other Tender Documents;
- h) **Non-Conforming Tender** means a Tender that does not comply with all or part of the terms of the Tender Documents.
- i) **Supplier** means the tendering entity selected to undertake the work.
- j) **Tender** means the Tender that the Tenderer submits to the Company in response to the Invitation to Tender and which is comprised of the documents specified in the Invitation to Tender;

- k) **Tenderer** is the company which has been invited to submit a tender;
- l) **Tender Documents** means these Tender Conditions, the Invitation to Tender and each of the documents named as Tender Documents in the Invitation to Tender;
- m) **Tender Submission Date** means the date referred to as such in the Invitation to Tender.

2. CONTENTS AND REQUIREMENTS FOR SUBMISSION OF A TENDER

2.1 The Tenderer must:

- a) Prepare and submit the Tender strictly in accordance with the requirements set out in the Invitation to Tender and the Tender Documents;
- b) Complete and include as part of its Tender all the schedules, annexure, appendices and other information required by the Tender Documents;
- c) Inform the Company in writing manually or electronically by the date specified in the Invitation to Tender whether it intends to submit a Tender; and
- d) Submit the Tender by the date and time specified in the Invitation to Tender.

2.2 The Tenderer must supply a list of all subcontractors proposed to be engaged in respect of the Contract for approval by the Company. However, the Company reserves the right refuse approval of any proposed subcontractors.

2.3 By submitting a Tender to the Company, the Tenderer agrees to the terms of the Tender Documents (including these Tender Conditions).

3. CONFIDENTIAL INFORMATION AND PUBLICITY

- 3.1 The fact that the Company is seeking proposals for the supply of the goods and/or services, together with the Company Supplied Information and all information (whether written, oral or in electronic form) contained in the Tender Documents or disclosed to the Tenderer in connection with the Tender process, including drawings, specifications and technical and other information as supplied, is confidential. Except with the prior written approval of the Company, the Tenderer shall not disclose such information to any third party, or permit it to be used, copied, reproduced or distributed in whole or part for any purpose other than for the preparation of the Tender.
- 3.2 The Tenderer must not advertise or issue any information, publication, document or article (including photographs or film) for publication or media release or other publicity in relation to the Tender. Where the Tenderer receives an enquiry relating to the Tender from the media, the Tenderer must refer the person making the enquiry to the Company and must immediately notify the Company of the fact that the enquiry was made. The Tenderer must not make any other comment in response to such enquiry.
- 3.3 The Company may require the Tenderer to execute a confidentiality agreement at any time during the Tender process. The Company may exclude from consideration any Tenderer that fails to sign such an agreement.
- 3.4 Without limiting the Tenderer's obligations under clause 3.1 above, the Tenderer shall ensure that all employees, agents, contractors and subcontractors of the Tender and any other person whom it discloses any of the information contemplated by clause 3.1 will in each case comply with the provision of this clause 3 to the same extent as if such person had been named in this clause in the place of the Tenderer.
- 3.5 By submitting a Tender, the Tenderer agrees that the Company may, for the purpose of carrying out the Tender evaluation copy, use and disclose any documentation or information (whether in written, oral or electronic form) provided by the Tenderer.

4. INTELLECTUAL PROPERTY

- 4.1 All rights of intellectual property, including copyright in the Tender Documents, drawings, data and technical and other pictorial and written information supplied to the Tenderer by the Company and or anybody for or on behalf of the Company, shall be and at all times remain the property of the Company.
- 4.2 The Company may, in its sole discretion and at any stage before or after completion of the Tender process, require that all written information (whether confidential or otherwise and without regard to the type of media on which such information was provided to any Tenderer including all copies of such information) be:
- a) Returned to the Company, in which case the Tenderer must promptly return all such information to the address identified by the Company; or
 - b) Destroyed by the Tenderer, in which case the Tenderer must promptly destroy all such information.
- 4.3 Without affecting any intellectual property rights which may exist in a Tender, all Tenders submitted in relation to the Invitation to Tender shall be the property of the Company.

5. PRIVACY

- 5.1 The Tenderer agrees to be bound by applicable privacy and Data Protection Legislation with respect to any act done or practice engaged in by the Tenderer for the purpose of this Tender in the same way and to the same extent as the Company would have been bound in respect of that act or practice had it been directly done or engage in by the Company.

6. CONFLICT OF INTEREST

- 6.1 The Tenderer must disclose to the Company any circumstances, arrangements or relationships which constitute an actual or potential conflict of interest with the Tenderer's obligations under the Tender Documents or under any Contract that might be entered into. The Tenderer shall make this disclosure to the Company as soon as becoming aware of it and, in any event, prior to submitting any Tender.

7. TENDERER TO INFORM ITSELF FULLY**7.1 By Submitting its Tender, the Tenderer represents and warrants to the Company that it has:**

- a) prepared the Tender and would enter into the Contract with the Company based on its own investigations, interpretations, deductions, information and determinations and has not relied and will not rely upon any Company supplied information for any purpose (including but not limited to, determining whether or not to lodge a Tender, preparing its Tender, entering into the Contract, or performing its obligations under the Contract);
- b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Tender and which is obtainable by the making of reasonable enquiries including (without limitation), the material contained in the Tender Documents, any relevant technical advice made available by the Company and any applicable statutory requirements;
- c) not relied on information provided, or represented to be provided, by or on behalf of the Company (other than information contained within the Tender Documents) without independently verifying that information and independently satisfying itself of the adequacy, accuracy and correctness of the information;
- d) calculated its Tender price, including all taxes, duties, charges, licences and other costs, in addition to taking into account all other obligations under the Contract (and other specific matters referred to it in the Tender Documents), on the basis of the Tenderer assuming the risk position allocated under the Contract;
- e) satisfied itself as to the accuracy, correctness and sufficiency of the Tender for the Contract Obligations and that the Tender price covers the cost of complying with all of the Contract Obligations under the contract;
- f) where appropriate, examined the site together with its surroundings, conditions and characteristics and made an appropriate allowance in the Tender for any effect thereon;
- g) assessed and understood all applicable statutory requirements relevant to the Contract Obligations and that it is able to fully perform the Contract without breaching those statutory requirements.

7.2 The Tenderer acknowledges and agrees that it has been provided with the information (including information contained in the Tender Documents) by the Company only for the Tenderers convenience and accordingly;

- a) The Company does not assume any responsibility or duty of care in respect of, give any warranty or make any representations in respect of any such information (including as to its accuracy or adequacy) and;
- b) The Tenderer agrees that it shall have no claim against the Company or any employee, agent or contractor of the Company (whether in contract, tort (including negligence), equity, under ~~statute or otherwise~~) in connection with any such information.

7.3 Discussions with any employees or others

The Tenderer must not communicate with any employee, agent, consultant or supplier of the Company in relation to the Tender or the proposed Contract Obligations without the prior written approval of the Company. If such approval is given then;

- a) The Tenderer may only engage in any oral discussion with the relevant employee, agent consultant or supplier in the presence of the Company; and
- b) Any written communication (whether by letter, email or otherwise) from the Tenderer must first be sent to the Company before being sent to the relevant employee, agent, consultant or supplier.

8. AMENDMENT OF TENDER DOCUMENTS

- 8.1 The Company may at any time or times prior to the Tender Submission Date, issue to the Tenderer any amendment annexure or addendum to the Tender Documents. No amendment, annexure or addendum will form part of the Tender Documents unless it is in writing and expressly states that it shall form part of the Tender Documents.

9. REQUEST FOR FURTHER INFORMATION

- 9.1 The Tenderer may request further information from the Company in relation to the Tender process or the goods or services that are the subject of the Tender. Any such request shall be addressed to the Company contact listed in the Invitation to Tender and must be received by the Company at least seven days before the Tender Submission Date.
- 9.2 At any time after the submission of the Tenders, the Company shall be entitled to request such further information as the Company may require from the Tenderer or to obtain clarification of any details included in the Tender. The Tenderer shall promptly comply with such requests.

10. SUBMISSION OF TENDERS

- 10.1 The Tenderer may seek an extension of the Tender Submission Date only by submitting a written request for extension to the Company. Any such request should set out the reasons for the extension and must be received by the Company at least two business days before the Tender Submission Date. The Company may, in its absolute discretion grant or refuse any request for the extension of the Tender Submission Date.
- 10.2 It is the Tenderers sole responsibility to ensure that the Company receives the Tender on or before the Tender Submission Date. The Company may, in its absolute discretion consider, or refuse to consider, any late Tender and negotiate or execute a contract with a Tenderer that has submitted a late Tender.
- 10.3 Should the Tenderer discover any discrepancy, error or omission in its Tender, the Tenderer shall immediately inform the Company in writing of the nature of the discrepancy, error or omission.

11. TENDERS SUBMITTED BY JOINT VENTURES OR CONSORTIA

11.1 Where a Tender is comprised of more than one entity:

- a) Any Tender submitted must include all details relevant to each entity and the structure of the joint venture or consortium submitting the tender, and the Tender must be executed by each such entity;
- b) The liability of all such entities shall be joint and several in accordance with the provisions of the Contract; and
- c) The Company may require a copy of any joint venture agreement or other contractual arrangement relating to the Tenderer's composition to be provided to the Company before considering any such Tender.

12. WITHDRAWAL OF TENDER

12.1 The Tenderer may, without prejudice, withdraw its Tender at any time before the Tender Submission Date.

13. TENDER VALIDITY

- 13.1 Tenders shall remain valid for acceptance by the Company for the time period specified in the Invitation to Tender. In the event that the Invitation to Tender does not specify a period then the Tenders shall remain valid for acceptance by the Company for a period of ninety (90) days commencing on the Tender Submission Date.
- 13.2 By submitting its Tender and in the consideration of the Company agreeing to evaluate that Tender, the Tenderer agrees not to amend or withdraw its Tender before the expiry of the period contemplated by clause 13.1 except with the prior written consent of the Company.

14. ACCEPTANCE OF TENDER

- 14.1 A Tender will not be deemed to have been accepted and no contract will arise between the Company and the Tenderer in respect of the Tendered goods and/or services until such a time as a formal written Contract is executed by the successful Tenderer and the Company.
- 14.2 Should a Tender be successful, the Tenderer acknowledges and agrees that the Company may incorporate all or any part of the Tender into the Contract.
- 14.3 The Company may use its absolute discretion in prioritising the Tenders and in selecting the successful Tenderer. The Company will not necessarily accept the lowest price, or any Tender as the successful Tender.

15. UNSUCCESSFUL TENDERERS

- 15.1 At the completion of the Tender process, the unsuccessful Tenderers will be advised in writing that their Tender has been unsuccessful. The Company is not obliged to disclose reasons for the acceptance or non-acceptance of any Tender and no further correspondence in connection with the Tender Documents or the Tenders will be entered into.

16. LIMITATION OF LIABILITY

- 16.1 The Company makes no representation or warranty whatsoever (whether express or implied, written or oral) to the Tenderer and makes no understanding to the Tenderer other than to invite the Tenderer to submit a Tender in the manner contemplated by the Initiation to Tender.
- 16.2 The Tender Documents constitute an invitation to potential suppliers to make an offer to the Company for the provision of goods and/or services to the Company. The Tender Documents should not be construed or relied upon as an offer capable of acceptance.
- 16.3 The Tenderer participates in the Tender process contemplated by the Tender Documents at its own risk and expense. The Tenderer is not entitled to be reimbursed or compensated for any expense or loss incurred in the connection with preparing or submitting the Tender or otherwise in connection with the Tender Documents.
- 16.4 To the maximum extent permitted by law, the Company, its affiliates, directors, employees, officer and agents shall have no liability or responsibility whatsoever to the Tenderer (whether based in contract, promissory estoppel, restitution, quantum meruit, quasi-contract, tort, statute or otherwise) in connection with or in relation to the Tender Documents, or the Tenderer's participation in the Tender process. Without limiting the foregoing, the Company will not be liable or responsible to the Tenderer in circumstances where:
- a) The Company elects not to acquire (in whole or in part) the goods and/or services that are the subject of the Tender Documents;
 - b) The Company conducts negotiations with any third party in parallel with any negotiations it conducts with the Tenderer;
 - c) The Company terminates the Tender process or negotiations with the Tenderer;
 - d) The Tenderer is not selected to supply the goods and/or services that are the subject of the Tender Documents;
 - e) The Company selects a Non-Conforming Tender as the successful Tender;
 - f) The Company waives any non-compliance with the Tender Documents in respect of any Tender submitted as part of the Tender process;
 - g) Any information or data forming part of the Tender is lost, corrupted or not received; or
 - h) The Company exercises any of its rights or discretions under or in connection with the Tender Documents.

17. COMPANY'S DISCRETION

17.1 The Company may in its absolute discretion (but shall be under no obligation to):

- b) Cancel the Tender process at any time (either in whole or in part and whether before or after the Tender Submission Date);
- c) Provide to all Tenderers any further information or addenda that has been provided to a particular Tenderer;
- d) Change the Tender Submission Date;
- e) Refuse to consider any Tenders which:
 - i. Is lodged by any means other than in accordance with the Tender documents;
 - ii. Is lodged after the Tender Submission date;
 - iii. Has been lodged by a Tenderer who has not complied with the requirements of the Tender Documents;
 - iv. Are ambiguous, erroneous or incomplete.
- f) Request further information from the relevant Tenderer if the Company considers any Tender to be ambiguous, erroneous or incomplete;
- g) Request the relevant Tenderer amend its Tender as the Company sees fit if the Company considers any Tender to be ambiguous, erroneous or incomplete;
- h) In its evaluation and assessment of Tenders apply such criteria as the Company sees fit and give such weighting to that selection criteria as may be determined by the Company (in its absolute discretion);
- i) Decide to:
 - i. Accept the Tenderer's Tender for;
 - ii. Not proceed with;
 - iii. Itself carry out;
 - iv. Have any other person or persons (whether or not a Tenderer who has submitted a Tender) carry out,

all or any part of the Contract Obligations;

- j) Negotiate with one or more Tenderers in relation to the terms of their Tenders;

- k) Appoint a preferred Tenderer, but continue discussions with other Tenderers and suppliers;
- l) Select a Non-Conforming Tender as the successful Tender;
- m) At any time
 - i. Retender the Contract Obligations after the Tender Submission Date with all or any of the Tenderers who have submitted a Tender, or any other person (whether or not they initially submitted Tenders); or
 - ii. Invite any other person to participate as a Tenderer in the Tender process;
- n) At any time pre-qualify, shortlist or enter into direct negotiations with any one or more persons (whether or not any such person submitted a Tender);
- o) Divide the Contract Obligations into two or more sections and award contracts for those sections to different Tenderers; or
- p) Require changes to the Contract Obligations, any technical specifications or otherwise engage any Tenderer in connection with the Contract Obligations.

18. LAW

18.1 The construction, performance and validity of the Contract shall in all respects be governed by the laws of England and Wales.

19. TERMS OF PAYMENT

19.1 The Supplier shall be entitled to invoice the Company at the times and in the manner specified in the Tender Documents. Provided that the Supplier was entitled to submit an invoice under the terms of the Contract, the Company shall pay the Supplier within the period of days specified in the Tender Documents, from the date of receipt and agreement of the invoice subject to any right of deduction which the Company may have by way of setoff or abatement. If the Company does make any such deduction then he shall notify the Supplier accordingly in writing with reasons.

20. ANTI CORRUPTION

- 20.1 The Supplier hereby undertakes that, at the date of the entering into force of the Contract, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.
- 20.2 The Supplier agrees that, at all times in connection with and throughout the course of the Contract and thereafter, they will comply with and that they will take reasonable measures to ensure that their subcontractors, agents or other third parties, subject to their control or determining influence, will comply with the following:
- a) Bribery
 - b) Extortion or Solicitation
 - c) Trading in Influence
- 20.3 With respect to third parties, subject to the control or determining influence of the Supplier, including but not limited to agents, business development consultants, sales representatives, customs agents, general consultants, resellers, subcontractors, franchisees, lawyers, accountants or similar intermediaries, acting on the Supplier's behalf in connection with marketing or sales, the negotiation of contracts, the obtaining of licenses, permits or other authorizations, or any actions that benefit the Supplier or as subcontractors in the supply chain, the Supplier should instruct them neither to engage nor to tolerate that they engage in any act of corruption; not use them as a conduit for any corrupt practice; hire them only to the extent appropriate for the regular conduct of the Supplier's business; and not pay them more than an appropriate remuneration for their legitimate services.
- 20.4 If a Supplier, as a result of the exercise of a contractually-provided audit right, if any, of the accounting books and financial records, or otherwise, brings evidence that the latter Supplier has been engaging in material or several repeated breaches of Paragraphs 20.1 - 20.3 above, it will notify the Supplier accordingly and require the Supplier to take the necessary remedial action in a reasonable time and to inform it about such action. If no remedial action is taken or, as the case may be, the defence is not effectively invoked, the Company may, at its discretion, either suspend or terminate the Contract, it being understood that all amounts contractually due at the time of suspension or termination of the Contract will remain payable, as far as permitted by applicable law.