Crown Commercial Service

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CONSTRUCTION PROFESSIONAL services framework schedule 5

call off agreement (INCORPORATING THE nec4 professional services contract JUNE 2017 (including amendments issued january 2019 and october 2020) & contract data

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**DATE**

**Between**

**The Ministry of Defence (MOD) – The Defence Infrastructure Organisation (DIO)**

**And**

**TetraTech Ltd**

**For the provision of**

**Technical Service Provider (TSP) for the RMEC Package 3**

**DIO Contract Number:**

**CCS RM6165 Framework Lot 5**

**ACUA Reference: CPS1-32608-2024**

**THIS AGREEMENT is made the [..................] day of [.......................]**

**PARTIES:**

1. **THE SECRETARY OF STATE FOR DEFENCE** acting as part of the Crown (the "***Client***"); and

2. **TetraTech Ltd** which is a company incorporated in and in accordance with the laws of **England & Wales** (Company No. 01959704 whose registered office address is at 3 Sovereign Street Leeds West Yorkshire LS1 4ER (the "***Consultant***").

**BACKGROUND**

1. The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for construction professional services for the benefit of public sector bodies.
2. The *Consultant* was appointed to the framework and executed the framework agreement (with reference number CCS RM6165) which is dated 3 November 2021 (the “**Framework Agreement**”). In the Framework Agreement, the Consultant is identified as the “**Supplier**”.
3. On the 6th March 2024 the *Client*, acting as part of the Crown, [and in the Framework Agreement is identified as a “**Contracting Authority**” invited the *Consultant* along with other framework suppliers to tender for the *Client’s* construction professional team services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).1
4. On the *1st May 2024* the *Consultant* submitted a tender response and was subsequently selected by the *Client* to provide the *service*.[[1]](#footnote-2)
5. The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

The *Client* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.

The *Consultant* will Provide the Service in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.

This contract incorporates the conditions of contract in the form of the NEC4 Professional Services Contract June 2017 Edition incorporating amendments January 2019 and October 2020 and incorporating the following Options:

**Main option E: Cost reimbursable contract.**

**Resolving and Avoiding Disputes option W2.**

**Secondary Option Clauses** **X2, X10, X18, X20 and Y(UK)2**

which together with the *additional conditions of contract* specified in Option Z, and the amendments specified in Option Z, form this contract together with the documents referred to in it. References in the NEC4 Professional Services Contract June 2017 Edition incorporating amendments January 2019 and October 2020 to "the contract" are references to this contract.

This contract and the Framework Agreement is the entire agreement between the parties in relation to the *service* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.

Neither party has been given, nor entered into this contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.

Nothing in clauses 4 or 5 shall exclude liability in respect of misrepresentations made fraudulently.

**Executed under hand**

Signed by **DIO Commercial Manager** for and on behalf of **THE SECRETARY OF STATE FOR DEFENCE**

..................................................................

**DIO Commercial Manager**

[Signed by [NAME OF DIRECTOR] for and on behalf of [Tetra Tech Limited]

..................................................................

**Director**

**Professional Services Contract**

**Contract Data**

|  |  |  |  |
| --- | --- | --- | --- |
| Part one – Data provided by the *Client* | | | |
| 1 General | The *conditions of contract* are the core clauses and the clauses for the following main option, the option for resolving and avoiding disputes and the and secondary Options of the NEC4 Professional Services Contract June 2017 incorporating amendments January 2019 and October 2020.  Main Option **E**  Option for resolving and avoiding disputes **W2**  Secondary Options **X2, X10, X18, X20, Y(UK)2 and Z**. | | |
|  | The *service* is **to provide support to the Client’s RMEC team to Deliver the Sub-Programme Management Integration Service and Deliverables for RIBA2020 Stage Two and Outline Business Case**  The *Client* is **The Secretary of State for Defence**   * Address for communications**……….**   Address for electronic communications  **………** | | |
|  | The *Service Manager* is ………  Address for communications**……….**   * Address for electronic communications**,,,,,,** | | |
|  | * The Scope is in the documents entitled**: ……...** | | |
|  | The *language of the contract* is **English**.  *The* *law of the contract* is the law of **England and Wales** and the Courts of the country selected above, shall have exclusive jurisdiction with regard to any dispute in connection with this Agreement and the Parties irrevocably agree to submit to the jurisdiction of those courts.  Where legislation is expressly mentioned in this Call Off Contract the legislation of the country selected here, shall have the effect of substituting the equivalent country’s legislation.  The *period for reply* is **two weeks**  The *period for retention* is **6** years following Completion or earlier termination. | | |
|  | The following matters will be included in the Early Warning Register  **Nil matters.** | | |
|  | Early warning meetings are held at intervals no longer than **Two (2) weeks.** | | |
| 2 The *Consultant’s* main responsibilities |  | | |
| ~~If the Client has identified work which is set to meet a stated~~ *~~condition~~* ~~by a~~ *~~key date~~* | ~~The~~ *~~key dates~~* ~~and~~ *~~conditions~~* ~~to be met are:~~ | | |
| If Option E is used: | The *Consultant* prepares forecasts of the total Defined Cost plus Fee and *expenses* at intervals no longer than **once per calendar month** | | |
|  |  | | |
| 3 Time | *The starting date* is **Contract Award.** | | |
|  | The *Client* provides access to the following persons, places and things  access to *access date*   * **HMNB Devonport Contract Award** * **HMNB Portsmouth Contract Award** | | |
|  | The *Consultant* submits revised programmes at intervals no longer than **once per calendar month.** | | |
| If the *Client* has decided the *completion date* for the whole of the *service* | The *completion date* for the whole of the *service* is **15th January 2026**   |  |  |  | | --- | --- | --- | | **Ser** | **Milestone** | **Target Date** | | (a) | (b) | (d) | |  | RMEC Package 3 Mobilisation | Agreed Upon Contract Award | |  | Package 3 – Deliverable Drop 1 (Draft Sub-Programme Plan) | 28 Feb 25 | |  | Package 3 – Deliverable Drop 2 ( Draft Stakeholder Management & Communications Plan, draft update of ‘Do Minimum’ Option’ and draft Benefits Management Plan (incl Realisation Plan, Map and Profiles) | 25 Apr 25 | |  | Package 3 – Deliverable Drop 3 (Draft Quality Management Plan, draft Change Management Plan, draft Engineering and Technology Plan and draft Sustainability Plan) | 31 Jul 25 | |  | AS Part 4 - Final Report Presentation | 29 Sep 25 | |  | Package 3 – Deliverable Drop 4 (Final version of all deliverables and Sub-Programme Evaluation Plan (including LFE) | 14 Nov 25 | |  | Gateway Review 2 Boards | 23 Oct 25 | |  | Submit OBC to DEOP FMC | 25 Nov 25 | | | |
| If no programme is identified in part two of the Contract Data | The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is **two (2) weeks.** | | |
| 4 Quality Management |  | | |
|  | The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is **two (2) weeks.**  The period between Completion of the whole of the *service* and the *d*e*fects date* is **52 Weeks.** | | |
| 5 Payment |  | | |
|  | The *currency of the contract* is the **pound sterling (£).** | | |
|  | The *assessment interval* is **last working day of each calendar month.** | | |
| **If the *Client* states any *expenses*** | The *expenses* stated by the *Client* are **N/A (refer to Contract Data Part Two)** | | |
|  | The *interest rate* is, 3% per annum above the Bank of England base rate in force from time to time for each complete week of delay. | | |
| If the period in which payments are made is not three weeks and Y(UK)2 is not used | The period within which payments are made is **twenty-eight (28) days.** | | |
| If Option E is used and the *Client* states any locations | The locations for which the *Consultant* provides a charge for the cost of support people and office overhead are **Not used refer to Contract Data Part Two** | | |
| If Option C or E is used | The *exchange rates* are those published in the **Financial Times** on the *assessment date* when payment in another currency is included in the Price for Services Provided to Date. | | |
| 6 Compensation events |  | | |
| If there are additional compensation events | These are additional compensation events  **N/A** | | |
|  |  | | |
| 8 Liability and insurance |  | | |
| If there are additional *Client* liabilities | These are additional *Client* liabilities **None** | | |
|  | The amounts of insurance and the periods for which the *Consultant* maintains insurance are | | |
|  | **event** | **cover** | **Period** |
| The *Consultant’s* failure to use the skill and care normally used by professionals providing services similar to the *service* | **£6,500,000** in respect of each event, without limit to the number of events except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one period of insurance and except for claims arising out of asbestos fire safety/cladding claims where a lower level may apply in the aggregate | from the *starting date* until **6** years following completion of the whole of the *service* or earlier termination |
|  | loss of or damage to property or death of or bodily injury to a person (not an employee of the *Consultant*) arising from or in connection with the *Consultant* Providing the Service | **As required under Framework Agreement,** in respect of each event, without limit to the number of claims. | from the *starting date* until all notified Defects have been corrected or earlier termination |
|  | death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract | **As required under Framework Agreement,** in respect of each event, without limit to the number of claims. | from the *starting date* until all notified Defects have been corrected or earlier termination |
| *If the Client provides insurances from the Insurance table* | The *Client* provides these insurances from the insurance table **Not used** | | |
| *If additional insurances are provided* | The *Client* provides these additional insurances **Not used** | | |
|  | *The* *Consultant*'s total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters, is limited to **£6,500,000 in the aggregate**. | | |
| Resolving and avoiding disputes |  | | |
|  | The *tribunal* is **arbitration** | | |
| **If the *tribunal* is arbitration** | The *arbitration procedure* is the **London Court of International Arbitration Rules**;  The place where arbitration is to be held is **London**  The person or organisation who will choose the arbitrator if the parties cannot agree a choice or if the arbitration *procedure* does not state who selects and arbitrator is: **Technology and Construction Solicitors Association (TeCSA)** | | |
|  |  | | |
|  |  | | |
|  | The *Senior Representatives* of the *Client* are:   * **……**   Address for communications: …….  *Address for electronic communications:* …….  **……**   * *Address for communications:* ……..   *Address for electronic communications:* ……. | | |
|  | The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicator*s published by the **Technology and Construction Solicitors Association (TeCSA)**  *Address for communications: 160 Aldergate Street, Barbican, London EC1A 4HT*  *Address for electronic communications:* | | |
|  | The *Adjudicator nominating body* is the **Technology and Construction Solicitors Association (TeCSA)** | | |
|  |  | | |
|  |  | | |
| Option X2 Changes in the law | **If Option X2 is used**  *The* *law of the project* is the law of **England and Wales.** | | |
| Option X10 Information modelling | **If Option X10 is not in use** | | |
| If no *information execution plan* is identified in part two of the Contract Data | The period after the Contract Date within which the *Consultant* is to submit a first Information Execution Plan for acceptance is **six (6) weeks.** | | |
| Option X18 Limitation of liability | **If Option X18 is used** | | |
|  | The *Consultant’s* liability to the *Client* for indirect or consequential loss is limited to **zero pounds (£0)**  The *Consultant’s* liability to the *Client* for Defects that are not found until after the *defects date* is limited to **£6,500,000 in the aggregate**  The *end of liability* date is **6** years after Completion of the whole of the *service*. | | |
| Option X20 Key performance indicators *(not for use with Option X12)* | **X20 will be agreed within 4 weeks of the Contract Award** | | |
|  | *The* *incentive schedule* for Key Performance Indicators is in **DEFFORM 539B**  A report of performance against each Key Performance Indicator is provided at intervals of **three (3) months**.  Where X20 is used, the amount due under clause 50 is adjusted to account for the application of the *incentive schedule.* | | |
| Option Y(UK)2 The Housing Grants, Construction and Regeneration Act | **If Y(UK)2 is used** | | |
| If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due | The period for payment is **twenty-eight (28)** days after the date on which a payment becomes due | | |
| Option Z | The *additional conditions of contract* are: | | |

|  |  |
| --- | --- |
| Contract Data relating to Z clauses |  |
| Option Z2 | **Identified and defined terms**  applies |
| Option Z4 | **Admittance to Client’s Premises**  applies |
| Option Z5 | **Prevention of fraud and bribery**  applies |
| Option Z6 | **Equality and diversity**  applies |
| Option Z7 | **Legislation and Official Secrets**  applies |
| Option Z8 | **Conflict of interest**  applies |
| Option Z9 | **Publicity and Branding**  applies |
| Option Z10 | **Freedom of information**  applies |
| Option Z13 | **Confidentiality and Information Sharing**  applies |
| Option Z14 | **Security Requirements**  applies |
| Option Z16 | **Tax Compliance**  applies |
| Option Z22 | **Fair payment** |
|  | applies |
| Option Z42 | **The Housing Grants, Construction and Regeneration Act 1996**  applies |
| Option Z44 | **Intellectual Property Rights**  does not apply |
| Option Z45 | **HMRC Requirements**  applies |
| Option Z46 | **MoD DEFCON Requirements**  applies  Insert a new clause 18B  This clause is to incorporate MoD special terms and conditions in the form of DEFCONs and DEFORMs as detailed at https://www.gov.uk/guidance/knowledge-in-defence-kid  **MOD Additional Conditions of Contract (DEFCONS) are:**  **1.** DEFCON 5J (Edn 18/11/16) - Unique Identifiers  **2.** DEFCON 76 (Edn 06/21) - Contractor's Personnel at Government Establishments  **3.** DEFCON 129J (Edn 18/11/16) - Use of Electronic Business Delivery Form  **4.** DEFCON 501 (Edn 10/21) - Definitions & Interpretations  **5.** DEFCON 503 (Edn 07/21) - Formal Amendments to Contract  **6.** DEFCON 507 (Edn 07/21) – Delivery  **7.** DEFCON 513 (Edn 07/21) - Value Added Tax  **8.** DEFCON 514 (Edn 08/15) - Material Breach  **9.** DEFCON 515 (Edn 06/21) - Bankruptcy and Insolvency  **10.** DEFCON 516 (Edn 04/12) - Equality  **11.** DEFCON 518 (Edn 02/17) - Transfer  **12.** DEFCON 520 (Edn 08/21) - Corrupt Gifts and Payments of Commission  **13.** DEFCON 522 (Edn 11/21) - Payment and Recovery of Sums Dues  **14.** DEFCON 526 (Edn 08/02) – Notices  **15.** DEFCON 527 (Edn 09/97) - Waiver  **16.** DEFCON 529 (Edn 09/97) - Law (English)  **17.** DEFCON 531 (Edn 09/21) - Disclosure of Information  **18.** DEFCON 532B (Edn 09/21) - Protection of Personal Data  **19.** DEFCON 534 (Edn 06/21) - Sub Contracting and Prompt Payment  **20.** DEFCON 537 (Edn 12/21) - Rights of Third Parties  **21.** DEFCON 538 (Edn 06/02) - Severability  **22.** DEFCON 539 (Edn 01/22) – Transparency  **23.** DEFCON 550 (Edn 02/14) - Child Labour and Employment Law  **24.** DEFCON 566 (Edn 10/20) - Change of Control of Contractor  **25.** DEFCON 602B (Edn 12/06) - Quality Assurance (without Deliverable Quality Plan  **26.** DEFCON 604 (Edn 06/14) - Progress Reports  **27.** DEFCON 605 (Edn 06/14) - Financial Reports  **28.** DEFCON 609 (Edn 07/21) - Contractor’s Records  **29.** DEFCON 620 (Edn 08/21) - Contract Change Control Procedure  **30.** DEFCON 632 (Edn 11/21) - Third Party Intellectual Property – Rights & Restrictions  **31.** DEFCON 642 (Edn 07/21) - Progress Meetings  **32.** DEFCON 658 (Edn 09/21) – Cyber  **33.** DEFCON 656A (Edn 08/16) - Termination for Convenience – Under £5M  **34.** DEFCON 660 (Edn 12/15) - Official-Sensitive Security Requirements  **35.** DEFCON 670 (Edn 02/17) - Tax Compliance  **36.** DEFCON 694 (Edn 07/21) - Accounting For Property of the Authority  **37.** DEFCON 703 (Edn 06/21) - Intellectual Property Rights – Vesting in the Authority  In the event of a conflict between the NEC4 Core Clauses, Z Clauses and the above DEFCONs, the DEFCONs shall take precedence.  The following DEFFORMs shall be used:  1. DEFFORM 94 – Bidders Confidentiality Agreement  2. DEFFORM 539A - Tenderers Commercially Sensitive Information Form |
| Option Z47 | **Small and Medium Sized Enterprises (SMEs)**  applies |
| Option Z48 | **Apprenticeships**  does not apply |
| Option Z49 | **Change of Control**  applies |
| Option Z50 | **Financial Standing**  applies |
| Option Z51 | **Financial Distress**  does not apply |
| Option Z52 | **Records, audit access and open book data**  applies |
| Option Z100 | **Data Protection**  applies |
| Option Z101 | **Cyber Essentials**  applies |
| Other *Additional conditions of contract* |  |
| Option Z102 | Schedule of Cost Components  Delete the contents of People 1 and replace with “The components of the cost of each person who is directly employed by the Consultant are the *people rates* stated in Contract Data Part Two.”  Delete People 11 and 12 |
| Option Z103 | The Framework Prices may vary in accordance with Schedule 11 of the “Crown Commercial Service (CCS) Construction Professional Services Framework Alliance Contract”.  If the Framework Prices change after the *starting date* each *people rate* is adjusted by the same proportion as the change in the corresponding Framework Price.  The *Consultant* raises an early warning immediately the Framework Prices change.  A change in *people rates* is a compensation event under clause 60.1.(16).1 listed on the Contract Data Part One. |

|  |  |
| --- | --- |
| Part two – Data provided by the *Consultant* | |
| 1 Statements given in all contracts | The *Consultant* is Tetra Tech Limited  *Address for communications:*  *………*  *Address for electronic communications: …….*  The fee percentage for Non Core Additional Services is …..%  The forecast Prices (including Fee) for the whole of the service is:  **£394,445.59 (inclusive of Travel and Subsistence)** |
|  | The *key persons* are  Name [……]  Job ……]  Responsibilities […….]  Experience ……   * Name …..]   Job …..]  Responsibilities […..]  Experience [ …….] |
|  | The following matters will be included in the Early Warning Register  [ **NA** ]. |
| 2 The *Consultant’s* main responsibilities |  |
| If the Consultant is to provide the Scope | The Scope provided by the *Consultant* is in [ **NA** ] |
| 3 Time |  |
| If a programme is to be identified in the Contract Data | The programme identified in the Contract Data is [ **Accepted Programme following Contract Award** ] |
| If the *Consultant*  is to decide the *completion date* for the whole of the *service* | The *completion date* for the whole of the *service* is [**15 January 2026** ] |
| 5 Payment |  |
| **If the *Consultant* states any *expenses*** | The *expenses* stated by the *Consultant* are   |  |  | | --- | --- | | * **item** | * **amount** | | * [ Vehicle Mileage * Trains/Flights * Accommodation * Incidental & Subsistence ] | * [ HMRC Approved rates * Reasonable direct booking costs * Reasonable local hotel rates per company guidance * Cost plus management fee ] | |
|  |  |
| **If Option E is used** | The *activity schedule* is [ **……..** ]   1. The tendered total of the Prices is £ [ **394,445.59** ] 2. The tendered cost for the optional year services is £ [ **NA** ] |
| **Resolving and avoiding disputes** | The *Representatives* of the *Consultant* are  *[…..]*   * *Address for communications ……*   *Address for electronic communications*  *….*  *[……]*   * *Address for communications* * …..   *Address for electronic communications*  *….* |
|  | The *Senior Representatives* of the *Consultant* are  *[…….]*   * *Address for communications ……*   *Address for electronic communications*  *…….* |
| If an *information execution plan* is to be identified in the Contract Data | The Information Execution Plan identified in the Contract Data is [ **N/A** ] |
|  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Data for the**  **Schedule of Cost**  **Components (used with Option Z102)** |  |  |  |
|  | The *people rates* are: |  |  |
|  | Category of person | Unit | Hourly rate |
|  | Project Manager - Senior Director | [……] | …. |
|  | Project Manager - Director | [……] | … |
|  | Project Manager - Principal / Associate  Director | [……] | … |
|  | Project Manager – Technician/Graduate | [……] | … |
|  | Project Manager – Senior Professional | [……] | … |
|  | Project Manager - Senior Technician | [……] | … |
|  | Cost Consultant - Director | [……] | … |
|  | Cost Consultant - Senior Technician | [……] | … |
|  | Engineering & Technology SME – Senior Director | [……] | … |
|  | Sustainability SME – Senior Director | [……] | … |
|  | Risk Manager – Principle / Associate Director | [ ] | …. |
|  |  |  |  |

Changes to people rates are made in accordance with Z103.

Assumptions/Exclusions/Risk/Opportunities

Please provides as required for this project (this information can be embedded within Contract Data or as an Annex).

Provided in the Annex 2.

1. Delete paragraphs (C) and (D) if appointment is made by direct award under the Call Off Procedure [↑](#footnote-ref-2)