

Publishing NEC Contract

Contract Title: **Range Capability Enhancements RIBA 3 & 4**

Supplier: **Ridge and Partners LLP**

Contract Start Date: **09 October 2023**

Contract End Date: **March 2024**

Contract Value: **£138,000 (exVAT)**

This contract was awarded under the Terms and Conditions of NEC 4 Professional Services Contract, Option A (version Jun 17 with January 19 and October 20 Amendments), and utilised the copyrighted NEC Forms of Contract.

Additional Z Clauses added to the contract were as follows:

1 Identified and Defined Terms

11.2(14) Insert a new definition:

“Cladding Claims shall mean any claim in respect of:

The combustibility of any Aluminium Composite Panels (and associated core/filler and insulation) which failed the BRE testing programme undertaken on behalf of The Department for Communities and Local Government in July & August 2017 or fails any BS8414 test set out in the current Building Regulations guidance”

11.2 (28) Insert new definition:

“Information” means information of any nature, including information in the form of data, databases, software (excluding third party software), designs, models, interventions, drawings, details, plans, reports, records, calculations, schedules, specifications, bills of quantities, levels and setting out details and other documents (whether or not in hard or electronic format).

11.2(29) Insert new definition:

“Documents” means all Information of any nature whatsoever provided by or used by or on behalf of the Consultant in the course of performing its obligations under this contract”.

11.2 (30) Insert new definition:

“Foreground Information” means all Information in Documents which is generated in the performance of the services under this contract.

11.2 (31) Insert new definition:

“Background Information” means all Information in Documents which is not Foreground Information.

11.2 (32) Insert a new defined term as follows:

“Transparency Information” shall mean the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Client to the Consultant under the Contract

11.2(33) Insert a new definition:

“Client’s IT Systems” means the computer hardware and software and networks used by the Client in the course of its business

11.2(34) Insert a new definition:

“Client’s Security Procedures” shall mean any security procedure specific to any Client premises or data.

11.2(35) Insert a new definition:

“Change of Control” means where that person who "controls" the Consultant ceases to do so or where another person(s) acquires "control" of the Consultant, where "control" means the power to ensure that the affairs of the Consultant are conducted in accordance with the wishes of that person by virtue of the holding of shares, or the possession of voting powers in, or in relation to, the Consultant, or by virtue of any power or Client conferred by the constitutional corporate, or any other documents, regulating the Consultant.

11.2(36) Insert a new definition:

“Party” means either the Client or the Consultant.

11.2(37) Insert a new definition:

“Prohibited Materials” means materials not in conformity with the law of the contract, European and/or British standards, and codes of practice or which at the date of use are deleterious to the health and safety and/or to the durability of buildings and/or in the particular circumstances in which those materials are to be used.

11.2(38) Insert a new definition:

“Working Days” means Mondays to Fridays 0830 hours to 1700 hours excluding public bank holidays.

11.2(39) Insert the following further definitions:

11.2(40) “Data Protection Legislation” means:

- (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;”*

11.2(41) “Data Subject” has the meaning given to it in the Data Protection Legislation.”; and

11.2(42) “Personal Data” has the meaning given to it in the Data Protection Legislation,”

Interpretation and the Law

12.5 Insert a new clause 12.5:

“A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment of it.”

Communications

13.10 Insert a new clause 13.9:

“The following communications shall be deemed to have no effect if made by electronic mail transmission:

- any notification of a wish to terminate this contract or the employment of the Consultant under it;*
- any notification by the Consultant of his intention to suspend performance of his obligations under this contract;*
- any invoking by either party of the procedures applicable under this contract to the resolution of disputes or differences;*
- any agreement between the parties amending the provisions of this contract”.*

2 The Consultants Main Responsibilities

Insert new clauses;

20.4 “The Consultant warrants to the Client that the Consultant has complied and will comply with the requirements of the Construction (Design and Management) Regulations 2015 (the ‘CDM Regulations’) in so far as they relate to the performance of the Consultant’s duties under this contract.”

22.4 *"The Consultant shall carry out the services and, to the extent reasonably practical considering their nature, the services so as to cause minimum disruption to the Client's activities on their premises and elsewhere. If the Consultant anticipates any such disruption, the Consultant will issue an early warning notice to enable the Client to plan in advance, if necessary, for such disruption."*

22.5 *"The Consultant shall co-operate with the requirements of all Client boards of inquiry and shall use all reasonable endeavours to procure the attendance of such of its employees, agents or Subconsultants who may be invited by the Client to attend as witnesses at boards of inquiry or similar proceedings. This obligation shall survive the expiry or early termination of the services. The Client shall reimburse the Consultant their reasonable external costs of such attendance."*

22.6 *"The Consultant acknowledges that it will not have exclusive rights to occupy any accommodation provide by the Client or the Client and that any such accommodation will only be used for the purpose of the services."*

22.7 *"All fossils, antiquities, and other objects having antiquarian, artistic, historic, archaeological or monetary value, which may be found on, or at the Client premises shall remain the property of the Client."*

23.4 *"Each Subconsultant contract shall contain equivalent contractual obligations as are imposed on the Consultant pursuant relating to fraud, Client's Security Procedures, use of Client's IT Systems, intellectual property rights confidentiality, publicity and law of the contract."*

7 The Parties use of material

Rights to Material

70 Delete and replace with:

70.1 All Foreground Information and intellectual property rights therein shall vest in and be the property of the Client on their creation.

70.2 To the extent that any intellectual property rights in any of the Foreground Information does not automatically vest in the Client, the Consultant shall with full title guarantee, assign or procure the assignment to the Client of all intellectual property rights in such Foreground Information free from lien, charge or encumbrance.

70.3 The Client hereby grants to the Consultant for the contract period and free of charge a non-exclusive royalty free licence, together with a sub-licence to Subconsultants, to use such of the Foreground Information as the Consultant reasonably requires for the purposes of performing the services.

70.4 The Consultant hereby grants to the Client, subject to the rights of third parties, a perpetual, irrevocable and royalty free licence to use the Background Information and any intellectual property rights therein as required to use the Foreground Information and/or the Documents for any purpose.

70.5 The Consultant shall highlight to the Client any third party intellectual property rights which appear to be relevant to the Clients use of the Foreground Information and/or the Documents, and following consultation with the Client and insofar as reasonably practicable the Consultant shall secure a licence on behalf of the Client to use the third party intellectual property rights.

70.6 The Consultant shall, following consultation with the Client and insofar as reasonably practicable, secure a licence on behalf of the Client to use any third party software (except for commonly used and commercially available software) used by the Consultant and its Subconsultants in performing the services,

70.7 All licences shall be purchased in consultation with the Client so that licence terms appropriate to the intended use of such intellectual property rights or software are obtained.

70.8 The Consultant shall indemnify the Client and keep the Client fully indemnified against all losses which the Client may sustain or incur that arise out of allegations that the Client has infringed the intellectual property rights of any third party in using the Documents in accordance with this Clause.

70.9 The Consultant shall mark any copyright works comprising Foreground Information with the legend © Crown Copyright (insert year of generation of the works)

8 Indemnity insurance liability

83.3 Amend the insurance table:

In respect of the first entry in the left hand column that starting “Liability of the Consultant...” amend so that it reads:

“Liability of the Consultant for claims made against him arising out of his failure to use the skill and care required by this contract.”

83.4 Insert a new clause 81.4

83.4.1 “The Consultant shall maintain professional indemnity insurance covering (inter alia) its potential liability under this contract upon market norm 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 **£2,000,000.00 (two million pounds)** (or such higher amount as is stated in the Contract Data) in respect of each and every claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, save that there may be lower and/or annual aggregate limits of cover in respect of asbestos, fire safety, pollution and contamination related claims and similar where such limited cover is the norm for a period beginning now and ending 12 years after the date of Completion or termination of the Contract if earlier, provided always that such insurance is generally available the norm for a period beginning now and ending 12 years after the date of Completion or termination of the Contract if earlier, provided always that such insurance is generally available in the market at commercially affordable rates and on terms such that prudent building consultants who undertake similar work to the Consultant generally carry such insurance (**‘Reasonable Rates and Terms’**).

83.4.2 Any increased or additional premium required by insurers by reason of the Consultant’s own claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within Reasonable Rates and Terms.

83.4.3 The Consultant shall immediately inform the Client if such insurance ceases to be available upon Reasonable Rates and Terms in order that the Consultant and the Client can discuss means of best protecting their respective positions in respect of this contract and the service in the absence of such insurance.

83.4.4 The Consultant shall co-operate fully with any measures reasonably required by the Client including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Reasonable Rates and Terms if the Client undertakes in writing to reimburse the Consultant in respect of the net cost of such insurance to the Consultant above Reasonable Rates and Terms.

83.4.5 When reasonably requested to do so by the Client the Consultant shall produce promptly for inspection and or provide a copy of satisfactory documentary evidence (and a copy of an insurance broker's letter or similar certificate shall be satisfactory) that the required professional indemnity insurance is being maintained.

83.4.6 The Consultant shall notify the Client in writing from time to time of any change in its professional indemnity insurance arrangements which take it outside the requirements of this contract and within seven days of the Client's request at any time the Consultant will produce for inspection documentary evidence as to compliance with this Clause.

83.4.7 If the Consultant fails to comply with its obligations under this Clause the Client may take out insurance to cover some or all of the loss or damage which could result from a breach of the Consultant's obligations under this contract and may recover the costs and expenses of taking out such insurance from the Consultant as a debt.

83.4.8 If the Client is entitled to terminate under clause 91 of the Delivery Agreement the Client may deduct from any sums due to the Consultant under this or any other contract between them a sum equal to the cost of up to twelve years latent defects insurance in respect of the service (and such deduction may be made whether the Client actually buys such insurance or provides for or takes on the risk in some other way).'

90 Termination

91.1 Add new bullet:
"any Change of Control"

92.3 Add new clause as follows:

"The Parties shall continue to perform their obligations under this contract, notwithstanding the serving of a termination notice, until the termination of the contract becomes effective in accordance with the provisions of the relevant Clause."

92.4 Add new clause as follows:

Save as otherwise expressly provided in this contract, termination of this contract shall be without prejudice to any accrued rights and obligations under this contract at the date of termination.

92.5 Add new clause as follows:

Termination of this contract shall not affect the continuing rights and obligations of the Client and the Consultant with respect to warranties and disclaimers, Compensation Events, Payment, Indemnification and Insurance, Use of Information Technology and Intellectual Property Rights, Dispute Resolution, Confidentiality and Publicity , Transfer, Mitigation, Governing Law, No Consequential Loss, Limit of Liability, Sole Remedy and under any other provision of this contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

***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

applies

Option Z45 HMRC Requirements

applies

Option Z46 MoD DEFCON Requirements

applies

Option Z49 Change of Control

applies

Option Z50 Financial Standing

applies

Option Z52 Records, audit access and open book data

applies

Option Z100 Data Protection

applies

Option Z101 Cyber Essentials

applies

Option Z102 Insert a new clause

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> ;

- *DEFCON 76 (Edn. 11/22) – Contractor's Personnel at Government Establishments*
- *DEFCON 501 (Edn. 10/21) - Definitions and Interpretations*
- *DEFCON 503 (Edn 06/22) – Formal Amendments to the Contract*
- *DEFCON 514 (Edn 08/15) – Material Breach*
- *DEFCON 516 (Edn 04/12) – Equality*
- *DEFCON 515 (Edn 06/21) - Bankruptcy and Insolvency*
- *DEFCON 518 (Edn 02/17) - Transfer*
- *DEFCON 520 (Edn 08/21) - Corrupt Gifts and Payments of Commission*

- ***DEFCON 526 (Edn 08/02) - Notices***
- ***DEFCON 531 (Edn. 09/21) - Disclosure of Information***
- ***DEFCON 532B (Edn. 12/22) - Protection Of Personal Data (Where Personal Data is being***
processed on behalf of the Authority)
- ***DEFCON 534 (Edn 06/21) – Subcontracting and Prompt Payment***
- ***DEFCON 537 (Edn 12/21) - Rights of Third Parties***
- ***DEFCON 538 (Edn 06/02) - Severability***
- ***DEFCON 566 (Edn 10/20) - Change of Control of Contractor***
- ***DEFCON 632 (Edn 11/21) - Third Party Intellectual Property - Rights and Restrictions***
- ***DEFCON 658 (Edn 10/22) - Cyber***
- ***DEFCON 659A (Edn 09/21) - Security Measures***