

Area 4

Interim Construction Works Contract (CWF)

Asset Delivery (AD)

Scope

Annex 8

Confidentiality, Security and Conflict of Interest

CONTENTS AMENDMENT SHEET

Amend. No.	Revision No.	Amendments	Initials	Date
1	1	Tender Issue	LP	04/05/20

LIST OF CONTENTS

1	CONFIDENTIALITY AND SECURITY	4
1.1	Mandatory Obligations	4
1.2	Security Checks – Minimum Requirement	4
1.3	Security Checks – Additional Vetting Requirement	5
	PART ONE – BPSS COMPLIANCE	6
1.4	Procedures	6
1.5	Security check process for BPSS.....	7
1.6	Verification of Identity – Outline Requirements.....	8
1.7	Nationality and Immigration Status (including an entitlement to undertake the work in question) – Outline Requirements	8
1.8	Employment history (past 3 years) – Outline Requirements	8
1.9	Criminal record (unspent convictions only) – Outline Requirements.....	9
1.10	Approval for employment.....	9
1.11	Incomplete or unsatisfactory BPSS Verification Records	10
1.12	Renewal of the BPSS.....	10
1.13	Ongoing personnel security management (“aftercare”)	10
1.14	Retention of documentation.....	11
	PART TWO – NATIONAL SECURITY VETTING (NSV)	12
1.15	Procedures	12
2	CONFLICT OF INTEREST.....	13
3	DISCLOSURE OF INFORMATION.....	14
	APPENDIX A	15
	APPENDIX B	16

1 CONFIDENTIALITY AND SECURITY

1.1 Mandatory Obligations

- 1.1.1 The *Client* is required to adopt the Personnel Security requirements and management arrangements set down in Security Policy No 3: Personnel Security of HMG Security Policy Framework July 2014 issued by the Cabinet Office as amended from time to time (the “**Security Policy Framework**”).
- 1.1.2 The Security Policy Framework is available to be downloaded from the Cabinet Office website and is referred to as a Reference Document in 3 Table 1. The Contractor familiarises himself with the objectives and principles embodied within the Security Policy Framework, in addition to the mandatory obligations abstracted from the Security Policy Framework and set down in this Annex.
- 1.1.3 The Contractor ensures that the appropriate level of Personnel Security is obtained and maintained for all Staff in accordance with the Security Policy Framework.
- 1.1.4 The *Service Manager* notifies the Contractor of any revisions to the Personnel Security requirements arising as a consequence of subsequent amendments to the Security Policy Framework.

1.2 Security Checks – Minimum Requirement

- 1.2.1 The Baseline Personnel Security Standard (BPSS) forms the minimum security check requirement for all Staff whose duties include
- working unsupervised by the *Client* at their premises, including offices, Regional Operations Centres (ROC), the National Traffic Operations Centre (NTOC), depots and any outstations owned and/or operated by the *Client*,
 - usage of the *Client’s* Information Systems
 - handling the *Client’s* information where that information is marked “OFFICIAL” with or without the SENSITIVE rider (formerly “PROTECT” or “RESTRICTED” which may still apply to historical documents), or
- The *Service Manager* may notify the Contractor of a modification to the categories of Staff requiring BPSS checks at any time.
- 1.2.2 The BPSS is available to be downloaded from the Cabinet Office website and is referred to as a Reference Document in Annex Gen 3 Table 1.
- 1.2.3 Procedural and other details for ensuring compliance with the BPSS are set down in Part One below.

1.3 Security Checks – Additional Vetting Requirement

- 1.3.1 Where Staff require unrestricted access to or are required to regularly handle information marked SECRET or TOP SECRET), the *Service Manager* will additionally instruct the Contractor to carry out the appropriate level of National Security Vetting (NSV) as a change to the Scope.
- 1.3.2 Procedural and other details for ensuring compliance with NSV are set down in Part Two below.

PART ONE – BPSS COMPLIANCE**1.4 Procedures**

- 1.4.1 The Contractor undertakes security checks to ensure the confidentiality, integrity and availability of the *Client's* asset.
- 1.4.2 The recruitment controls of the BPSS are required to have been carried out for all Staff to whom paragraph 1.2.1 applies prior to their employment on this contract. The recruitment control process is completed satisfactorily before an individual
- is issued with a security pass giving unsupervised access to the *Client's* premises,
 - potentially has access to the *Client's* sensitive, possibly protectively-marked, information or
 - is given access to the *Client's* IT network.
- 1.4.3 The Contractor takes all necessary measures to confirm that any previous security checking carried out on existing Staff meets the requirements of the BPSS, either in full or by exception using the risk management assessment process guidance contained in the Security Policy Framework. The Contractor must notify which Staff have met or not met these requirements. The *Client* may from time to time carry out independent audits of these findings and their methodology.
- 1.4.4 The Contractor should note that, for existing Staff with more than three years continuous employment and who have not had any access passes or permits revoked in that time, then the requirements for references in the BPSS check can be deemed to be discharged by a letter from a Director or Head of Personnel of the Contractor certifying the same. The remainder of the BPSS check must be carried out.
- 1.4.5 The Contractor rectifies any unacceptable gaps identified between the BPSS and existing security checking in accordance with the requirements of the BPSS.
- 1.4.6 Any new Staff to whom paragraph 1.2.1 applies are assessed strictly in accordance with the requirements of the BPSS.
- 1.4.7 The Contractor keeps full and auditable records of all security checks carried out on Staff and makes such records available to the *Client* or its appointed representatives for audit purposes at all reasonable times.
- 1.4.8 If
- the *Client* discovers any non-compliance with the requirements of the BPSS from the audit process,
 - the Contractor fails to keep full records of security checks carried out on Staff or

- the Contractor fails to make such records available on reasonable request,

the *Service Manager* may

- invoke individual withdrawal of permits or passes to Staff,
- invoke systematic withdrawal of permits or passes to Staff or
- require that an independent audit of the Contractor's BPSS check procedure is undertaken at the expense of the Contractor.

The Contractor takes the appropriate action to immediately address any non-compliance with the BPSS notified to it by the *Service Manager*.

1.4.9 It should be noted that the BPSS does not constitute a formal security clearance. It is designed to provide a level of assurance as to the trustworthiness, integrity and reliability of the individual involved.

1.4.10 The Contractor submits a monthly report to the *Service Manager* on all its employees and former employees who no longer need Extranet access to *Client's* business IT network including nil returns.

1.5 Security check process for BPSS

1.5.1 The security check process of the BPSS follows the guidance provided in the BPSS.

1.5.2 The BPSS comprises verification of four main elements

- identity,
- nationality and immigration status (including an entitlement to undertake the work in question),
- employment history (past three years) and
- criminal record declaration (unspent convictions only).

Additionally, prospective Staff are required to give a reasonable account of any significant periods (six months or more in the past three years) of time spent abroad.

1.5.3 The specific requirements for verification of each of the four main elements are set down in Part II, The Verification Process of the BPSS. An outline description of the core requirements is included below but does not relieve the Contractor from his obligation to comply with all the requirements of the BPSS.

1.5.4 Information collected at each stage of the process is reviewed, assessed and recorded on the BPSS Verification Record (Annex B of the BPSS). References of the BPSS Verification Record forms are listed in this Annex as Annex A for information

1.6 Verification of Identity – Outline Requirements

- 1.6.1 Identity may be verified by physically checking a range of appropriate documentation (e.g. passport or other photo ID together with utility bills, bank statements etc) or by means of a commercially available ID verification service.
- 1.6.2 Only original documents should be used for identification purposes: copies are not appropriate.
- 1.6.3 There is no definitive list of identifying documents. The Contractor should note that not all documents listed in the BPSS are of equal value. The objective is a document that is issued by a trustworthy and reliable source, is difficult to forge, has been dated and is current, contains the owner's name, photograph and signature and itself requires some evidence of identity before being issued (e.g. passport or ID card).
- 1.6.4 National Insurance numbers (NINOs) can be obtained fraudulently and cannot be relied on as a sole means of establishing identity or right to work. Temporary numbers beginning with TN or ending in a letter from E to Z inclusive are not acceptable.
- 1.6.5 Where verification of identity is not straightforward but a decision is nevertheless taken to employ an individual, the Contractor notifies the *Service Manager* and records the matter on the Risk Register.

1.7 Nationality and Immigration Status (including an entitlement to undertake the work in question) – Outline Requirements

- 1.7.1 Nationality and Immigration Status may be verified by physically checking appropriate documentation or, in exceptional circumstances only, by means of an independent check of UK Visas and Immigration records.
- 1.7.2 The Contractor takes the necessary steps to ensure that an individual has the right to remain in the United Kingdom and undertake the work in question.
- 1.7.3 Checks need to be applied consistently and the *Contractor* needs to be aware of its obligations under the Equality Act 2010 (see link in Annex 03).

1.8 Employment history (past 3 years) – Outline Requirements

- 1.8.1 Employment history may be verified by checking with previous employers, by following up references or by means of a commercially available CV checking service or, in exceptional circumstances only, by means of an independent check of HMRC records.
- 1.8.2 To ensure that prospective employees are not concealing associations or gaps, the Contractor as a minimum verifies the individual's recent (past 3 years) employment or academic history.

1.8.3 Where there are unresolved gaps or doubts remain about an individual's employment history, an independent check of HMRC records may be made.

1.8.4 Every effort should be made to check that the individual has held the previous employment history claimed. Any gaps in the past 3 years employment history should be investigated.

1.9 Criminal record (unspent convictions only) – Outline Requirements

1.9.1 The Contractor should note that the requirement to verify "unspent" convictions does not apply when the BPSS is being carried out as part of the groundwork for NSV, where a full check of criminal records ("spent" and "unspent") will be made as part of that process.

1.9.2 Under the terms of the Rehabilitation of Offenders Act 1974, it is reasonable for employers to ask individuals for details of any "unspent" criminal convictions. The Act states that if an offender remains free of further convictions for a specified period (the "rehabilitation period"), the conviction becomes spent. Where rehabilitation has taken place, the individual must be treated as if the offence had never been committed.

1.9.3 The Contractor must obtain a Basic Disclosure Certificate check available from Disclosure Scotland.

1.9.4 Where "unspent" convictions have been disclosed, the Contractor carries out a risk assessment, which may include the need for legal advice, before proceeding.

1.10 Approval for employment

1.10.1 General guidance and requirements post BPSS verification are contained in Part IV – Post Verification Process of the BPSS. An outline description of the core requirements is included below but does not relieve the Contractor from his obligation to comply with all the requirements of the BPSS.

1.10.2 Subject to paragraph 1.10.3 and unless advised to the contrary by the *Service Manager*, all Staff for whom a completed BPSS Verification Record has been submitted may be treated by the Contractor as suitable to undertake the duties referred to in paragraph 1.2.1.

1.10.3 The Contractor should note that the *Client* will ordinarily require a period of three working days from receipt of a fully completed BPSS check for its internal approvals process and prior to the subsequent issue of access permits and passes. The *Service Manager* may exclude from the Affected Property any individual for whom a BPSS Verification Record is not supplied, is incomplete or is otherwise unsatisfactory.

1.10.4 BPSS Verification Records with a sealed Criminal Record Declaration will be assessed separately on a case by case basis by the *Service Manager*. The

Service Manager advises the Contractor if the individual has been approved as suitable to undertake all or any of the duties referred to in paragraph 1.2.1.

1.11 Incomplete or unsatisfactory BPSS Verification Records

1.11.1 Where a BPSS is incomplete or is otherwise unsatisfactory, the *Service Manager* advises the Contractor of the deficiencies and the actions needed to correct them.

1.12 Renewal of the BPSS

1.12.1 Under most circumstances, renewal of the BPSS is not required.

1.12.2 The Contractor rechecks the immigration status of migrant Staff before their current right to remain expires or within twelve months of the previous check, whichever is the sooner. These checks are repeated until the employee is able to demonstrate an indefinite right to remain in the United Kingdom or until the employment comes to an end.

1.12.3 The *Service Manager* instructs the Contractor to carry out additional security checks on any Staff required to operate in or on a List X site. An instruction to carry out additional security checks is a change to the Scope.

1.12.4 If an employee, who has previously been subject of a BPSS check, leaves the employment of the Contractor and is subsequently re-employed by the Contractor within twelve months, the original security check authorisation may be reinstated. The *Client* may require additional evidence before reinstating the original security check authorisation. In all other cases of re-employment, the full BPSS check must be carried out.

1.13 Ongoing personnel security management (“aftercare”)

1.13.1 The Contractor monitors, manages and supports the required behaviours of Staff who are approved for work on this contract and reports to the *Service Manager* immediately if the continuing suitability of an employee is in doubt.

1.13.2 Where the Contractor reports a case of doubt or the *Service Manager* considers that the actions of any of the Staff do not conform to the required behaviours, the *Service Manager* may instruct the Contractor to review the performance of the individual concerned. The Contractor takes appropriate action in consequence of the review, which may include:

- performance improvement,
- temporary suspension of permits and passes or
- removal of the individual in accordance with core clause 24.3.

1.14 Retention of documentation

- 1.14.1 The documentation associated with a BPSS check is retained by the Contractor until the expiry of the Contract Period and for a period of twelve months after the individual has ceased to be employed on this contract.
- 1.14.2 The Contractor destroys, in an appropriate secure manner, all electronic and paper copies of documentation which he is no longer required to retain.

PART TWO – NATIONAL SECURITY VETTING (NSV)**1.15 Procedures**

- 1.15.1 In all cases, verification of identity and the individual's entitlement to undertake the work in question must be carried out before embarking on NSV.
- 1.15.2 Other than in exceptional circumstances, NSV must not be undertaken before the BPSS's full controls have been applied. The Contractor agrees with the *Service Manager*, on a case by case basis, any exceptional cases where NSV and BPSS procedures are required to be carried out in parallel.
- 1.15.3 The determines if any Staff need to undertake NSV in addition to the BPSS check.
- 1.15.4 If the *Service Manager* considers that NSV is required, the *Client* identifies, manages and undertakes the necessary vetting at the *Client's* expense.
- 1.15.5 Where the *Service Manager* determines that NSV is required, the approvals process set out in paragraph 1.10 does not apply, unless the *Service Manager* instructs otherwise. Access permits and passes are ordinarily only issued on satisfactory completion of NSV.

2 CONFLICT OF INTEREST

- 2.1.1 The Contractor does not take an action which would cause a conflict of interest to arise in connection with this contract.
- 2.1.2 The Contractor notifies his employees and subcontractors (at any stage of remoteness from the *Client*), and procures that any subcontractor (at any stage of remoteness from the *Client*) notifies its employees, who are engaged in the performance of contractual duties that they must not take an action which would cause an actual or potential conflict of interest to arise in connection with the *service*.
- 2.1.3 The Contractor ensures that any employee of the Contractor or of any subcontractor (at any stage of remoteness from the *Client*) who is engaged in performance of contractual duties completes a declaration of interests and conflict of interests in the form set out in Appendix B. The Contractor issues to the *Service Manager* any completed declaration of interests and conflict of interests.
- 2.1.4 The Contractor:
- immediately notifies the *Service Manager* and
 - procures that any subcontractor (at any stage of remoteness from the *Client*) immediately notifies the Contractor
- if there is any uncertainty about whether a conflict of interest may exist or arise.
- 2.1.5 Following a notification from the Contractor, the *Service Manager* may
- require the Contractor to stop Providing the Services until any conflict of interest is resolved or
 - require the Contractor to submit to the *Service Manager* for acceptance a proposal to remedy the actual or potential conflict of interest.
- A reason for not accepting the submission is that it does not resolve the conflict of interest. The Contractor amends the proposal in response to any comments from the *Service Manager* and resubmits it to the *Service Manager* for acceptance. The Contractor complies with the proposal once it has been accepted.
- 2.1.6 A failure to comply with this section is treated as the Contractor having substantially hindered the *Client* or Others.

3 DISCLOSURE OF INFORMATION

3.1.1 The Contractor acknowledges that the *Client* is obliged to publish the provisions of the contract in accordance with Procurement Policy Note 01/17 entitled “The Transparency of Suppliers and Government to the Public” dated 16th February 2017 (or any later revision) (the “PPN”), except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Client* consults with the Contractor before deciding whether information is exempt, but the Contractor acknowledges that the *Client* has the final decision.

3.1.2 The Contractor:

- co-operates with and assists the *Client* to comply with its obligation under clause 3.1 above,
- agrees with the *Client* a schedule for the release to the public of information relating to the contract in accordance with the terms of the PPN,
- provides information to assist the *Client* in responding to queries from the public as required by the PPN and
- supplies the *Client* with financial data relating to the contract in the form and at the times specified in the PPN.

APPENDIX A**List of BPSS Verification Record Forms contained in the BPSS Verification Record (Annex B of the BPSS).**

Forms to be completed by the Contractor to demonstrate BPSS compliance as required in accordance with the BPSS Guidance

- Verification Record
- Nationality and Immigration Status Form
- UK Visas and Immigration Employment Enquiry Form
- Employment History Report Form
- HMRC Record Check Form
- Criminal Record Declaration



APPENDIX B

Official-Sensitive
(only when not a nil return)

Highways England Company Limited Declaration Form
(for use by individuals with non-employment contract status)

Purpose

This form asks you to provide information in respect of actual, potential or perceived conflicts of interest in line with the requirements of the Companies Act 2006, the Articles of the Company, *Managing Public Money*, the Framework Document, the Company's obligation to follow UK Corporate Governance Code and public sector governance code principles and policies, requirements in respect of accounting and other disclosures and the Company's own policies including in regard to procurement and transparency.

The fact that you have an actual, potential or perceived conflict of interest is not necessarily a barrier to your involvement in a particular decision. The nature of action taken, when handling conflicts of interest, will depend on a number of factors. Please see Conflicts of Interest Policy and Guidance in Annex 3 for further information.

1. Personal details (for Highways England and statutory records, please advise any subsequent changes)	
a) Role/service provided	
b) Present surname and any former surname(s)	
c) Present forename(s) and any former forename(s)	
d) Phone Numbers a) landline b) mobile (Highways England restricted use only)	
e) Date form completed	

2. Directorships	
Are you a director or a "shadow director" ¹ of any company? YES/NO	If YES, please provide the names of the companies, business sector, and date you became a director.
3. Other business interests	
Are you a partner, employee or a consultant (paid or otherwise) in any business? YES/NO	If YES state the names and give the nature of the businesses where this is not indicated in the title and the nature and start date of your involvement with each partnership, employment or consultancy.
Have you held any fiduciary office or position of trust (paid or otherwise) in the last 10 years? YES/NO Include public and any political offices.	If YES please give details and if you no longer hold the position, describe the circumstances in which you ceased to do so.
Do you have a direct shareholding in any company in the sector in which Highways England operates? YES/NO	I hold the following shares/I do not hold any shares in the sector in which Highways England operates.

¹ "shadow director " means a person in accordance with whose instructions the directors of the company are accustomed to act. If you are a director or a shadow director of a company and, as a consequence are also a director or shadow director of several subsidiaries, a general description of the subsidiaries will suffice.

4. Voluntary work	
Are you involved in or a member of any professional bodies, charities, special interest or political groups in the sector which Highways England operates? YES/NO.	If YES provide details.
5. Other	
Are there any other matters which you, or a reasonable member of the public might perceive that Highways England should be aware of which might impact on your provision of services to/role in Highways England or the reputation of Highways England? YES/NO	If YES provide details.
<p>Are there any matters or relevant interests, (including significant interests of close members² of your family) which might influence your judgement, deliberation or action in providing services to/your role in Highways England or be perceived by a reasonable member of the public as doing so? YES/NO</p> <p>Please include information on any directorships and business interests in respect of close members of your family in respect of the sphere in which Highways England operates.</p>	If YES provide details.

² Close members means a) an individual's domestic partner and children b) children of an individual's domestic partner c) dependents of an individual or an independents domestic partner.

6. Connected persons	
<p>Please confirm (in the box to the right) that, in relation to the questions contained in sections 3, 4, 6, above, no additional information would need disclosure in relation to any connected person.</p>	<p>I confirm that no additional information requires disclosure.</p> <p>I have provided additional information above.</p>

Declaration

1. I declare that to the best of my knowledge and belief (having taken all reasonable care to ensure that such is the case) the answers to all of the above questions are true and not misleading.
2. I shall not communicate to any legal or natural person other than Highways England employees any commercially sensitive or confidential information in connection with my work at Highways England.
3. I shall not seek to obtain any commercial or personal advantage from my work at Highways England.
4. I shall not assist my employer, any organisation connected with my employer, or any other organisation or person in tendering for any contract opportunity with Highways England that I have worked in my capacity as a consultant to Highways England.
5. I shall not pay, give, receive or offer to pay, give, receive any sum of money or other consideration directly or indirectly to any person whatsoever for any act described in paragraphs 2, 3 and 4 above. If any offer is made to me to breach this declaration, I shall report it immediately to Highways England.
6. All documentation that I have access to in my role as a consultant to Highways England shall be made available to form part of any relevant tender information pack.
7. I understand that I may only be involved in the evaluation of a tender for Highways England where expressly sanctioned by Highways England.
8. Should any of the information on this declaration change or should I become aware of a potential, perceived or actual conflict of interest I will immediately contact Highways England to inform them and will take all reasonable steps to mitigate or remove the potential, perceived or actual conflict of interest.
9. I understand that if I do not comply with the statements in this declaration I may prejudice my employers ability to participate in tendering for contract opportunities with Highways England, I may have my contract with Highways England terminated and could face legal action.

Signature	
-----------	--