



Public Health
England

Contract Document

Laboratory 237a Refurbishment

Contract Reference No. 190041

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Part 1 – Form of Contract

Part 1.1 – Form of Contract

FORM OF AGREEMENT

This agreement is made on the 12th January 2022

Between

UK Health Security Agency
17 Smith Square
London
SW1P 3JR
(the Employer)

And

Modular Sterile Developments Ltd
Unit 1B, Dale Mill, Burnley Road East
Rossendale, Lancashire, BB4 9HU

WHEREAS the Employer wishes to have provided the following works:

Refurbishment of Laboratory 237a

NOW IT IS AGREED THAT

1. The *Contractor* will provide the Works in accordance with the *conditions of contract* identified in the Contract Data.
2. The *Employer* will pay the *Contractor* the amount due £876,595.00 (Eight Hundred and Seventy Six Thousand, Five Hundred and Ninety Five Pounds) in accordance with the *conditions contract*
3. The documents forming part of the agreement are:
 - this Form of Agreement;
 - the NEC3 Engineering and Construction Contract April 2013 Option A: Priced Contract with Activity Schedule, incorporating X Clauses and amendments detailed in Contract Data Part 1.
 - the Contract Data part one and part two;
 - works information
 - the prices

IN WITNESS WHEREOF this agreement has been executed and delivered as a deed on the date stated above.

Signed for and on behalf of the Employer

By: (Name of Director)

..... (Signature of Director)

Executed as a Deed by the Contractor

By: (Name of Director)

..... (Signature of Director)

By: (Name of Director/ Company Secretary)

..... (Signature of Director/ Company Secretary)

Part 1.2 – Contract Data Part 1

CONTRACT DATA

1.1 Part one – Data provided by the *Employer*

Statements given in all Contracts

1 General

The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X2, X7, X16, X18 Y(UK)2, Y(UK)3, Z Option clauses of the NEC3 Engineering and Construction Contract April 2013.

The *works* are: **Refurbishment of Laboratory 237a**

The *Employer* is

Name: **UKHSA**

Address: **17 Smith Square, London SW1P 3JR**

The *Project Manager* is

Name:

Address: **UKHSA, Porton Down, Salisbury, SP4 OJG**

The *Supervisor* is

Name: **UKHSA**

Address: **UKHSA, Porton Down, Salisbury, SP4 OJG**

The *Adjudicator* will be appointed on the application of either party by a named *Adjudicator (The Adjudicator nominating body provided below will nominate the Adjudicator)*

The Works Information and the Site Information are set out in **Pre-Construction Information Pack at Part 2.5**

The *boundaries of the site* are detailed in the **Pre-Construction Information Pack at Part 2.5**

The *language of this contract* is **English**

The *law of the contract* is the **law of England and Wales**

The *period for reply* to a communication is **2 weeks**.

The *Adjudicator nominating body* is the **President of the Royal Institution of Chartered Surveyors**.

The *tribunal* is **Arbitration**

The following matters will be included in the Risk Register

To be Agreed between the Contractor and Employer

3 Time

The *starting date* is **10th October 2021**

The *access dates* are

For Construction works - following approved design

The *Contractor* submits revised programmes at intervals no longer than **4 weeks**.

4 Testing and Defects

The *defects date* is **52 weeks** after Completion of the whole of the *works*.

The *defect correction period* is **2 weeks**

5 Payment

The *currency of this contract* is the **Pound Sterling (£)**

The *assessment interval* is **calendar monthly and according to a list of dates to be agreed by the Contractor and the Project Manager**.

The *interest rate* is **8 % per annum** (not less than 2) above the base lending rate of **The Bank of England**

6 Compensation events

The place where weather is to be recorded is the site.

The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 08.00hours GMT
and these measurements:

The *weather measurements* are supplied by the **Met Office, Fitzroy Road, Exeter, Devon, EX1 3PB**

The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at **Boscombe Down Weather Station** and which are available from the Met Office.

8 Risks and insurance

The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with this contract for any one event is **£5,000,000.00**.

the minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is **£5,000,000.00**

The Contractor currently maintains professional indemnity insurance cover with a reputable insurance company with a limit of indemnity of not less than **£5,000,000** in respect of each and every claim to cover any claims made against the Contractor in relation to his design of the Works and, provided that such insurance is available in the market, the Contractor shall continue to maintain such insurance with that insurer or another reputable insurer throughout the duration of the Works and for a period of 12 years following the Defects Date.

If for any period such insurance is not available, the Contractor shall forthwith so inform the Employer in writing, of any new insurance arrangements which the Contractor (acting reasonably) deems necessary.

Any such insurance is referred to above are placed with insurers to be approved by

the Employer, and the Contractor send to the Project Manager for deposit with the Employer the policy or policies and the premium receipts therefore.

If the Employer has decided the completion date for the whole of the works

The completion date for the whole of the works is **N/A Based on accepted Programme**

If no programme is identified in part two of the Contract Data

The Contractor is to submit a first programme for acceptance within **2 weeks** of the Contract Date.

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 within which payments are made is **30 days**

If Option X2 is used

A change in the law of the country in which the Site is located is a compensation event if it occurs after the Contract Date. The Project Manager may notify the Contractor of a compensation event for a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

If Option X7 is used

Delay damages for each section of the works are:

Section Description	Amount per week
Completion	£1,000.00 per week or part thereof Capped @ 5% of the Contract Sum

If Option X16 is used

The *retention free amount* is **£0**
The retention percentage is **5%**
2.5% on completion / 2.5% on 12months

If Option X18 is Used

The Contractor's total liability to the Employer

The Contractor's total liability to the Employer for all and any sums which are or may become due from the Contractor to the Employer and for all and any claims arising out of or in any

way connected with this agreement, whether in tort (including negligence), for breach of contract, for breach of statutory duty or howsoever caused or arising, shall not in any event exceed The Contract Sum.

If Option Z is used

The *additional conditions of contract* are

Z1: Amendments to the core clauses of Option A Priced Contract with Activity Schedule.

Identified and defined terms

- Clause 11.2(2) Amend the clause
Delete the second bullet point and insert
“corrected notified defects.”

- Clause 11.2(27) Amend the clause
Amend the last sentence to read
“A completed activity is one which is without Defects.”

Ambiguities and Inconsistencies

- Clause 17.1 Amend the clause
Insert the following additional paragraphs.

“17.2 During the tendering period it is the Contractor's responsibility to search for ambiguities and inconsistencies in or between the documents which are part of this contract and issued for tendering purposes.”

“17.3 The resolution of any ambiguities or inconsistencies shall not form a Compensation event if the Project Manager judges that an experienced Contractor should have identified and notified these at tender stage.”

Working with the Employer and Others

- Clause 25.3 – Amend the clause
Delete the sentence:

“The Project Manager assesses the additional cost within four weeks of the date when the Condition for the Key Date is met”

Insert the following in place of the above

“The Project Manager assesses the additional cost at four weekly intervals following the Key Date stated within the Accepted Programme.”

Subcontracting

- Clause 26.2 – Amend the clause

Insert the following paragraphs

“The Contractor shall submit the names of his proposed Subcontractors as part of the tender submission.”

“The rejection of a Subcontractor by the Project Manager shall not form a compensation event.”

Revising the programme

- Clause 32.1 – Amend the clause

Delete “and of notified early warning matters” in the second bullet point

Assessing the amount due

- Clause 50 – Insert the following additional clauses:

“50.6 The O&M manuals for the project shall be submitted to the Project Manager for acceptance four weeks prior to the Completion date shown on the accepted programme. The Project Manager shall within two weeks review the submitted O&M manuals and reply to the Contractor his acceptance or detail any further information required. The Contractor shall then resubmit the O&M manuals within two weeks enclosing the additional information as requested.”

“If either no O&M manual or resubmitted manual containing the additional information requested from the Project manager is not submitted at the Completion date shown on the accepted programme, 10% of the contract value shall be retained from the assessment of the amount due until the Contractor has submitted the O&M manuals to the approval of the Project Manager.”

Compensation Events

- Clause 60.1(5) – Amend the clause

Delete the third bullet point

- Clause 60.3 – Amend the clause

Insert the following paragraph:

“The resolution of any ambiguities or inconsistencies shall not form a Compensation Event if the Project Manager judges that an experienced Contractor should have identified and notified these at tender stage”

Compensation Events

- Clause 61.3 – Amend the clause

Delete – “within eight weeks”

Insert – “within four weeks”

- Clause 62.6 – Amend the clause

Delete – “within two weeks”

Insert – “within four weeks”

The Project Managers Assessments

- Clause 64.4 – Amend the clause

Delete – “within two weeks”

Insert – “within four weeks”

The Project Managers Assessments

- Clause 80.1 – Amend the clause

Delete the last sentence

Insert – “Payment is made within 30 days of the Project Manager’s certificate”

Z2 Assignment

The Contractor shall not, without the written consent of the Employer, assign this Contract. In the event of transfer by the Employer of this freehold or of a grant by the Employer of a leasehold interest in the whole of the premises comprising the *Works*, the Employer may at any time after Completion of the *Works*, assign to any such transferee or lessee, the right to bring proceedings in the name of the Employer (whether by arbitration or litigation) to enforce any of the terms of this contract made for the benefit of the Employer hereunder. The

assignee shall be stopped from disputing any enforceable agreements reached between the Employer and the Contractor and which arise out of and relate to this Contract (whether or not they are or appear to be a derogation from the right assigned) and made prior to the date of any assignment. The maximum number of occasions this Contract can be assigned is two, subject to any reasonable objections from The Contractor'.

Z3: Site Rules and Regulations

The Contractor shall ensure that all of its staff shall comply with all the Employer's site rules and regulations when visiting or carrying out work at the Employer's premises and shall comply with all safety and security policies and procedures of the Employer in each case as notified to such staff. If access to the Employer's premises is required outside of normal business hours, the representative nominated by the Employer for the purposes of this Agreement should be notified in advance, in order for appropriate security arrangements to be made.

The Contractor shall note that smoking is strictly prohibited other than in a designated external area in the Employer's site. This regulation is rigidly enforced and any breach of this policy will involve the offender being removed from the site.

Z4: Publicity

The Contractor shall not issue any press release or other publicity materials or make any representation in respect of the existence of this Agreement or the subject matter thereof without the prior written consent of the Employer. However, this restriction shall not apply to announcements or disclosures required by law except that in such event the parties shall co-ordinate to the extent possible with respect to the wording of any such announcement.

Part 1.3 – Contract Data Part 2

CONTRACT DATA

1.2 Part two – Data provided by the *Contractor*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

Statements given in all contracts

- The Contractor is

Name: Modular Sterile Developments Ltd

Address: Unit 1B, Dale Mill, Burnley Road East Rossendale, Lancashire, BB4 9HU

- The *direct fee percentage for people* is 80%.
- The *subcontracted fee percentage* is 17%.
- The *working areas* are the Site and Modular Sterile Developments Ltd BB4 9HU
- The key people are

(1) Name:

Job: Project Manager

Responsibilities: Project Delivery

Qualifications: HNC Building Services Engineer

Experience: 23 years working within the sector

(2) Name:

Job: Site Manager

Responsibilities: Site management and delivery of the works, as well as H&S

Qualifications:

Experience: 5 Years working within the sector

- The following matters will be included in the Risk Register

- **The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are:**

Part 2 – Works Information

Part 2.1 – Works Information General Preliminaries

Part 2.2 - Programme

To be supplied by the contractor within 2 weeks of the contract start date

Part 2.3 - Design Information

2.4 – Employers Scope of Work

2.5 – Pre-Construction Information

2.6 – URS Compliance Checklist

Part 3 – Site Information

Part 3.1 - Site Information

PART 3

SITE INFORMATION

Contents

SI 100	The Site
SI 200	Existing Services
SI 300	Site Access
SI 400	Health And Safety
SI 500	Site Visit

SI 100 THE SITE:

The works are situated at PHE, Porton Down, Salisbury, Wiltshire The areas allocated to the Contractor for his compound shall be reinstated and left tidy on completion. The Contractor will be provided with an area to locate site offices and a car park / laydown area.

The works are situated at PHE, Porton Down, Salisbury, Wiltshire
The location of the site for this development is shown on drawing SKH0777 (3)

THE EXISTING BUILDING(S):

The Contractor's attention is drawn to the adjacency and close proximity of existing buildings which will remain fully operational throughout the construction period and the access and working limitations of the site.

The Contractor shall be deemed to have visited the site and to have satisfied himself as to the means of communication, access to the site, the areas available for storage, the extent of work, the nature of the site, the existence of asbestos or other potentially hazardous circumstances affecting health & safety, and all the conditions under which the works will be carried out, together with conditions affecting the supply of labour and materials and to have made due allowance within the Contract sum. No claim arising from the lack of any such knowledge will be entertained.

The existing buildings, plant, equipment and paved areas adjacent to this site will be in constant use throughout the contract period and access to all areas surrounding the Contractor's site must be maintained free from all obstructions at all times for the use of the Employer's staff and other authorised personnel and the Contractor is to liaise with all others working within the site on the mutual use of access routes and any necessary diversions.

The Contractor is to be restricted to the working areas required to carry out the works, the authorised access routes to and from the working areas and other restrictions shown on drawings.

The Contractor shall ensure the compound; storage and parking areas and all other existing areas are reinstated at his expense to the same condition as at the time of possession.

There is no parking available other than within the Contractor's compound.

SI 200 EXISTING BUILDINGS ON/ADJACENT TO THE SITE:

Refer to the Construction Information Pack

PROTECTION TO EXISTING BUILDING:

The Contractor is to provide complete internal and external protection as necessary to the existing buildings and services, in particular, the external facades, roof areas and any external plant.

If damaged, the Contractor shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings provided always that the damage is due to any negligence, omission or default of the Contractor's workpeople or those of his subcontractors.

The Contractor must protect, uphold and maintain all existing structures, live drainage, ducts, water, gas and other mains or power services and if any such items are damaged he shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim or

proceedings provided always that the damage is due to any negligence, omission or default of the Contractor's workpeople or those of his subcontractors.

The Contractor shall ensure there is no unauthorised access to the site or building.

The Contractor must not make connections or interfere with the operation of existing services, such as live drainage, water, gas or other mains or power services without the written permission of the Project Manager/Employer.

The Contractor is to comply in all respects with the Public Health England Permit to work Policy.

The Contractor must give two weeks notice before any service is interrupted except by agreement in accordance with the Permit to Work Procedure.

EXISTING MAINS/SERVICES:

The Contractor must undertake his own investigations to ascertain the service positions or positions of other unknown services.

Prior to any construction taking place the Contractor is to confirm in writing that through his own investigations of the area has been undertaken and that the service utilities have been consulted.

No claim for additional costs will be accepted due to information being inaccurate/incomplete.

The Contractor is responsible for taking all necessary precautions for protecting the services during the building operation and ensures that these are not damaged in any way.

Any such damage must be made good to the satisfaction of the Project Manager, the Employer any Statutory Authority, and adjoining owners or occupiers at the Contractors expense.

SITE INVESTIGATION:

The Contractor shall be responsible for all additional site investigation works required as necessary and include all such costs within his Contract Sum.

No variation will be issued through the Contractor's lack of knowledge of the existing building, its structure, services, ground conditions etc.

SI 300 ACCESS TO THE SITE:

Access to the site for construction and delivery vehicles shall be from the A30, access shall not be permitted through the villages of Porton or Idmiston.

The Contractor is required to ensure that access and public rights of way outside the site are maintained at all times for the duration of the project and kept clean and clear of mud and debris. To this end the Contractor is required to install on site a system of wheel washing for approval by the Project Manager prior to construction activities starting on site.

The Contractor shall not be entitled to a Compensation Event if works are halted for a failure to comply with this requirement.

Within the secure area of the existing PHE facility:

- Security must be maintained at all times, the Contractor shall liaise with PHE's security personnel to ensure this requirement is fulfilled. See Pre-Construction Information Pack for PHE Health, Safety and Security Guidance Notes.
- The access to the site for materials, plant and labour is to be via the main site gate.
- The site operates a one way system which will be maintained and adhered to. Where this access route will be affected due to the works, PHE will be informed and alternative signing will be arranged and agreed with the Project Manager.

ACCESS TO EXISTING ADJACENT BUILDINGS:

The Contractor's attention is drawn to the adjacent and close proximity of existing buildings and the access and working limitations of the restricted site.

There is to be no access for the Contractor's personnel including his sub-contractors' into existing buildings unless specific site works are to be carried out and subject to the prior written consent of the owner.

PARKING:

There is no parking available other than within the Contractor's compound

USE OF THE SITE:

Do not use the site for any purpose other than carrying out the Works.

The Contractor shall obtain the approval of the Project Manager for the erection of all temporary structures, temporary paths and roads, spoil heaps, material dumps, plant, machinery and the like which are necessary for the execution of the works.

Do not display or permit advertisements to be displayed on site without the consent of the Project Manager.

Ensure that no material or equipment is brought onto site except that required for the works.

SURROUNDING LAND/BUILDING USES:

The Building will be in constant use over the duration of the contract.

The contractor must ascertain for himself any information he may require to ensure the safety of all persons and the works.

Do not use the surrounding land or building(s) for any purpose other than carrying out the Works.

SI 400 RISKS TO HEALTH AND SAFETY:

Refer to the Construction Information Pack at Section C Part 2.4.

The nature and condition of the site cannot be fully and certainly ascertained before it is opened up.

Risks have been identified within the Construction Information Pack.

The accuracy and sufficiency of this information is not guaranteed by the Employer or the Project Manager and the Contractor must ascertain for himself any information he may require to ensure the safety of all persons and the works.

SI 500 SITE VISIT:

The Contractor shall be deemed to have visited the Site and acquainted himself with the restrictions and other matters, which may affect the works.

The Contractor must undertake his own investigations to ascertain positions of unknown services.

Prior to any excavations taking place the Contractor is to confirm in writing that a thorough CAT scan of the area has been undertaken.

The Contractor is responsible for taking all necessary precautions for protecting services to be retained during the installation and ensure that these are not damaged in any way.

Any such damage must be made good to the satisfaction of the Project Manager, any Statutory Authority affected and adjoining owners or occupiers, if appropriate, at the Contractor's expense.

No diversion of any of the existing services, etc other than works expressly shown in the Works Information shall be carried out without the prior written approval of the Project Manager.

The Contractors attention is drawn to the presence of existing services crossing the proposed site access route.

Appropriate protection measures are to be agreed with the Project Manager.

Part 3.2: Contractor's Site and Parking Layout

Refer to Pre-construction information

Part 4 – The Prices

Part 4. 1 – Activity Schedule