Crown Commercial Service

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CONSTRUCTION PROFESSIONAL services framework schedule 5

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

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**Date 4Th January 2023**

**FORM OF AGREEMENT**

**Incorporating the NEC4 Professional Services Contract June 2017 incorporating amendments January 2019 and October 2020**

**Between**

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

**And**

**AECOM**

**For the provision of**

**Technical Service Provider (tsp) For Fountain Lake Jetty – Capital Dredge**

**DIO Contract Number: 706010453**

**CCS RM6165 Framework Lot 5**

**ACUA Reference: CPS1-22692-2022**

**THIS AGREEMENT is made the fourth day of January 2023**

**PARTIES:**

1. **Ministry of Defence** acting as part of the Crown (the "***Client***"); and

2. **AECOM** which is a company incorporated in and in accordance with the laws of **England & Wales** (Company No. **01846493** whose registered office address is at Portwall Place, Portwall Lane, Bristol, BS1 6NA (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. 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 A

W2;

Option X2, X18 and X20

Option 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 [NAME OF DIRECTOR] for and on behalf of [NAME OF COMPANY]

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

[SIGNATURE OF DIRECTOR]

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 A  Option for resolving and avoiding disputes W2  Secondary Options X2, X18, X20 and Z Clauses | | |
|  | The *service* is determined in Lot 5 of the Framework Agreement RM6165.  The *Client* is  *Defence Infrastructure Organisation, Marlborough lines, Andover, Hampshire SP118HJ*  *Address for communications*  *Address for electronic communications*  Redacted | | |
|  | The *Service Manager* is *Redacted*  *Address for communications*  *Defence Infrastructure Organisation, Redacted*  *Address for electronic communications*  Redacted | | |
|  | The Scope is in Fountain Lake Jetty – Capital Dredge Technical Statement of Requirement & Schedule of Services documents | | |
|  | 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  N/A | | |
|  | Early warning meetings are held at intervals no longer than  Two 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~~  *~~condition~~* ~~to be met~~ *~~key date~~*  ~~[….] [….]~~  ~~[….] [….]~~  ~~[….] [….]~~ | | |
| If Option A is used | The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than four weeks | | |
|  |  | | |
| 3 Time | *The starting date* is contract award. | | |
|  | The *Client* provides access to the following persons, places and things   * access to *access date* * Fountain Lake Jetty Contract Award * [….] [….] * [….] [….] | | |
|  | The *Consultant* submits revised programmes at intervals no longer than one 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 31st March 2024. | | |
| 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 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 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 four weeks. | | |
|  |  | | |
|  | The *interest rate* is 3% per annum above the Bank of England base rate in force from time to time. | | |
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| 6 Compensation events |  | | |
| If there are additional compensation events | These are additional compensation events  N/A | | |
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| 8 Liability and insurance |  | | |
|  |  | | |
|  | 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 | 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 | from the *starting date* until all notified Defects have been corrected or earlier termination |
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|  |  | | |
|  | *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) | | |
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|  |  | | |
|  | The *Senior Representatives* of the *Client* are   * *Redacted*   *Address for electronic communications*  *Redacted*  The *Senior Representatives* of the *Client* are  *Redacted*  *Redacted* | | |
|  | The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicator*s published by the Institution of Civil Engineers or nominated by the *Adjudicator nominating body* in the absence of agreement.  *Address for communications*  160 Aldergate Street, • Barbican, • London EC1A 4HT | | |
|  | * The *Adjudicator nominating body* is the *Technology and Construction Solicitors Association (TeCSA)* | | |
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| Option X2 Changes in the law | **If Option X2 is used**  *The* *law of the project* is the law of England and Wales. | | |
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| Option X10 Information modelling | **If Option X10 is used** | | |
| 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 Iinformation Execution Plan for acceptance is six weeks | | |
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| 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 £0.00.  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*. | | |
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| X20: Key Performance Indicators | To be agreed up on Contract Award | | |
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| Option Z | The *additional conditions of contract* are: | | |

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| Contract Data relating to Z clauses | *The additional conditions of contract are as selected below and as detailed in the appended Standard Boilerplate Amendments* |
| 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 |
| 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* | **Z46 – MOD DEFCONS**  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 |
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| --- | --- |
| Part two – Data provided by the *Consultant* | |
| 1 Statements given in all contracts | The *Consultant Redacted* |
|  |  |
|  | The *key persons* are  Name [ ]  Job [ ]  Responsibilities [ ]  Experience [ ]   * *[repeat as necessary]* |
|  | The following matters will be included in the Early Warning Register  [….]. |
| 2 The *Consultant’s* main responsibilities |  |
| If the Consultant is to provide the Scope | The Scope provided by the *Consultant* is in [ ] |
| 3 Time |  |
| If a programme is to be identified in the Contract Data | The programme identified in the Contract Data is [ ] |
| 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 [….] |
| 5 Payment |  |
| **If the *Consultant* states any *expenses*** | The *expenses* stated by the *Consultant* are   |  |  | | --- | --- | | * **item** | * **amount** | | * [ ] | * [ ] | |
|  |  |
| **If Option A or C is used** | The *activity schedule* is ]  The tendered total of the Prices is [ ] |
| **Resolving and avoiding disputes** | The *Representatives* of the *Consultant* are  *[ insert name 1 ]*   * *Address for communications [ ]*   *Address for electronic communications [ ]*  *[ insert name 2 ]*   * *Address for communications [ ]*   *Address for electronic communications [ ]* |
|  | The *Senior Representatives* of the *Consultant* are  *[ insert name 1 ]*   * *Address for communications [ ]*   *Address for electronic communications [ ]*  *[ insert name 2 ]*   * *Address for communications [ ]*   *Address for electronic communications [ ]* |
| Option X10 Information modelling  *[Include if used]* | If Option X10 is used |
| If an *information execution plan* is to be identified in the Contract Data | The Information Execution Plan identified in the Contract Data is [ ] |
|  |  |
|  | The *project bank* is [ ] |
|  | *named suppliers* are [ ] |
| Data for the Schedule of Cost Components (used only with Options A and C) |  |
|  | The *overhead percentages* for the cost of support people and office overhead are  location  *overhead percentage*  [ ] [ ]  [ ] [ ]  [ ] [ ] |
| Data for the Schedule of Cost Components (used only with Option A) |  |
|  | The *people rates* are:  Category of person Unit Rate  [ ] [ ] [ ]  [ ] [ ] [ ]  [ ] [ ] [ ] |