Crown Commercial Service

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CONSTRUCTION PROFESSIONAL services DPS CONTRACT schedule

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 15th May 2023**

**FORM OF AGREEMENT**

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

**Between**

**Defence Infrastructure Organisation, Ministry of Defence**

**And**

**AECOM Limited**

**For the provision of**

**Biennial Airfield Inspection Programme 2023-2027**

**THIS AGREEMENT is made the 15th day of May 2023**

**PARTIES:**

1. **DEFENCE INFRASTRUCTURE ORGANISATION, MINISTRY OF DEFENCE** acting as part of the Crown (the "***Client***"); and

2. **AECOM Limited, which is a company** incorporated in and in accordance with the laws of England and Wales (Company No. 01846493 whose registered office address is at Aecom Limited, Aldgate Tower, 2 Leman Street, London, E1 8FA (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 RM6242) which is dated 3rd November 2021 (the “**Framework Agreement**”). In the Framework Agreement, the Consultant is identified as the “Supplier”.
3. On the *insert date of issue of tender* 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 10th July 2023 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:

W1; Options X2, X5, and Y(UK)3

 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 ***[REDACTED]*** for and on behalf of AECOM Limited

***[REDACTED]***

Director

Signed by ***[REDACTED]***, for and on behalf of the Defence Infrastructure Organisation, Ministry of Defence

***[REDACTED]***

Senior Commercial Officer,

Defence Infrastructure Organisation

**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 W1 Secondary Options X2, X5, Y(UK)3 and Z. |
|  | The *service* is Biennial Airfield Inspection Programme 2023-2027The *Client* is Defence Infrastructure Organisation, Ministry of Defence*Address for communications* Defence Infrastructure Organisation Head Office,DMS Whittington,Lichfield,Staffordshire,WS14 9PY *Address for electronic communications* *Pre-Contract award via CCS e-sourcing only**Post award* ***[REDACTED]***  |
|  | The *Service Manager* is ***[REDACTED]****Address for communications* *as above* *Address for electronic communications* ***[REDACTED]*** |
|  | The Scope is in as per the Statement of Requirement and per the Framework Agreement. |
|  | 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. The *period for reply* for tender submission is 4 weeks The *period for retention* is 6 years following Completion or earlier termination. |
| 2 The *Consultant’s* main responsibilities |  |
|  | The *key dates* and *conditions* to be met are as per the Statement of Requirement (SOR). The dates within this SOR are indicative, and will be agreed with the successful supplier at contract award, and throughout. |
|  | The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than 4 weeks |
| 3 Time | *The starting date* is TBC at Contract Award |
|  | The *Client* provides access to persons, places and things as per the SOR |
|  | The *Consultant* submits revised programmes at intervals no longer than one month.**The contact will have a commitment of 2 years, with an optional 2 years to be taken up ONLY if the contract is being met.** |
|  | The *completion date* for the 1st tranche of Reports (and the first 2 years) is 31st May 2025.If the +2 option years are used, the completion date for the whole of the services is 31st May 2027. |
| 4 Quality Management |  |
|  | The period between Completion of the whole of the *service* and the *d*e*fects date* is NOT APPLICABLE*.* |
| 5 Payment |  |
|  | The *currency of the contract* is the pound sterling (£). |
|  | The *interest rate* is, 3% per annum above the Bank of England base rate in force from time to time. |
|  | The period within which payments are made is one month. |
| 6 Compensation events |  |
|  | Compensation events shall follow the NEC4 process |
| 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* | £10,000,000 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 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 |
|  | *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 £10,000,000 in the aggregateThe *Consultant* provides these additional insurances:Airside Vehicle Insurance (if using own vehicles on a live airfield). |
| 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 LondonThe 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: Institution of Civil Engineers*.* |
|  | 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*Defence Infrastructure Organisation Head Office,DMS Whittington,Lichfield,Staffordshire,WS14 9PY *Address for electronic communications* *DIOComrcl-EnSer@mod.gov.uk*  |
|  | The *Adjudicator nominating body* is the *Institution of Civil Engineers*  |
| Option X2 Changes in the law | **If Option X2 is used***The* *law of the project* is the law of England and Wales |
| Option X5 Sectional Completion | **If Option X5 is used***The* *completion* *date* for each *section* of the *service* is as per the SOR |
| 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 £10,000,000 in the aggregateThe *Consultant’s* liability to the *Client* for Defects that are not found until after the *defects date* is limited to £10,000,000 in the aggregate The *end of liability* date is 6 years after Completion of the whole of the *service*. |
| Option X20 Key performance indicators | **If Option X20 is used** |
|  | A report of performance against each Key Performance Indicator is provided at intervals of 2 months. |
| Option Y(UK)3 The Contracts (Rights of Third Parties) Act | **If Y(UK)3 is used**

|  |  |
| --- | --- |
|  **term** |  **person or organisation** |
|  All named within this contract  | Ebeni Ltd |

 |
| Option Z | The *additional conditions of contract* are: |

|  |  |
| --- | --- |
| Contract Data relating to Z clauses |  |
|  | * Option Z2 - Identified and defined terms
* Option Z4 - Admittance to Clients Premises
* Option Z5 - Prevention of fraud and bribery
* Option Z6 - Equality and diversity
* Option Z7 - Legislation and Official Secrets
* Option Z8 - Conflict of interest
* Option Z9 - Publicity and Branding
* Option Z10 - Freedom of information
* Option Z13 - Confidentiality and Information Sharing
* Option Z14 - Security Requirements
* Option Z16 - Tax Compliance
* Option Z22 - Fair payment
* Option Z44 - Intellectual Property Rights
* Option Z45 - HMRC Requirements
* Option Z46 - MoD DEFCON Requirements
* Option Z47 - Small and Medium Sized Enterprises (SMEs)
* Option Z49 - Change of Control
* Option Z50 - Financial Standing
* Option Z52 - Records, audit access and open book data
* Option Z100 - Data Protection
* Option Z101 - Cyber Essentials
 |
| Other *Additional conditions of contract* | Joint Schedules for RM6242* Joint Schedule 3 (Insurance Requirements)
* Joint Schedule 4 (Commercially Sensitive Information)
* Joint Schedule 5 (Corporate Social Responsibility)
* CCS PSC Core Terms RM6242

The following MOD DEFCONS apply:* DEFCON 5J (Edn 18/11/16) - Unique Identifiers
* DEFCON 76 (Edn 06/21) - Contractors Personnel at Government Establishments
* DEFCON 501 (Edn 10/21) - Definitions And Interpretations
* DEFCON 503 (Edn 06/22) - Formal Amendments To Contract
* DEFCON 513 (Edn 004/22) - Value Added Tax (VAT) and Other Taxes
* DEFCON 514 (Edn 08/15) - Material Breach
* DEFCON 515 (Edn 06/21) - Bankruptcy And Insolvency
* DEFCON 516 (Edn 04/12) - Equality
* DEFCON 522 (Edn 11/21) - Payment And Recovery of Sums Due
* DEFCON 530 (Edn12/14) – Dispute Resolution (English Law)
* DEFCON 531 (Edn 09/21) - Disclosure Of Information
* DEFCON 532A (Edn 05/22) – Protection of Personal Data
* 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 539 (Edn 01/22) - Transparency
* DEFCON 550 (Edn 02/14) - Child labour and Employment Law
* DEFCON 566 (Edn 10/20) - Change Of Control Of Contractor
* DEFCON 602B (Edn 12/16) - Quality Assurance Without Quality Plan
* DEFCON 642 (Edn 07/21) - Progress Meetings
* DEFCON 649 (Edn 12/16) - Vesting
* DEFCON 656A (Edn 08/16) - Termination for Convenience – Under £5M
* DEFCON 658 (Edn 09/21) - Cyber (Cyber Risk Profile for the contract – in accordance with the Guidance and information contained within the Statement of Requirement).
* DEFCON 659a (Edn 09/21) - Security Measures
* DEFCON 660 (Edn 12/15) - Official-Sensitive Security Requirements
* DEFCON 670 (Edn 02/17) - Tax Compliance
* DEFCON 697 (Edn 11/22) - Contractors On Deployed Operations
* DEFCON 703 (Edn 06/21) - Intellectual Property Rights

Where there is a discrepancy/contradiction between NEC terms and DEFCONS, the MOD DEFCONS will take precedence. MOD DEFCONS are available through <https://www.gov.uk/guidance/knowledge-in-defence-kid>  |

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| --- |
| Part two – Data provided by the *Consultant* |
| 1 Statements given in all contracts | The *Consultant* is [ ]*Address for communications [ ]* *Address for electronic communications [ ]*  |
|  | The *fee percentage* is [ ]% |
|  | The *key persons* are * Named within the tender documentation
 |
|  | 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 [ ]* |
| 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 arelocation  *overhead percentage*[ ] [ ][ ] [ ][ ] [ ]  |
| Data for the Schedule of Cost Components (used only with Option A) |  |
|  | The *people rates* are:Category of person Unit Rate[ ] [ ] [ ][ ] [ ] [ ][ ] [ ] [ ]  |

1. [↑](#footnote-ref-2)