

CROWN COMMERCIAL SERVICE

AND

SUPPLIER

WORKPLACE SERVICES CONTRACT

(FM MARKETPLACE PHASE 2)

REF: RM6089

JOINT SCHEDULE 6

SUBCONTRACTING AND KEY SUBCONTRACTORS

0.1 Sub-contracting any part of the Contract shall not relieve the Supplier of any of its obligations, duties or liabilities under the Contract.

1. KEY SUBCONTRACTORS

- 1.1 The Supplier is entitled to subcontract its obligations under the Framework Contract to the Key Subcontractors set out in the Framework Award Form.
- 1.2 The Supplier is entitled to sub-contract its obligations under a Call-Off Contract to Key Subcontractors listed in the Framework Award Form who are specifically nominated in the Order Form.
- 1.3 Where during the Contract Period the Supplier wishes to enter into a new Key Sub-contract or replace a Key Subcontractor, it must obtain the prior written consent of CCS and the Buyer and the Supplier shall, at the time of requesting such consent, provide CCS and the Buyer with the information detailed in Paragraph 1.4. The decision of CCS and the Buyer to consent or not will not be unreasonably withheld or delayed. Where CCS consents to the appointment of a New Key Subcontractor then they will be added to section 18 of the Framework Award Form. Where the Buyer consents to the appointment of a New Key Subcontractor then they will be added to Key Subcontractor section of the Order Form. CCS and the Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
 - 1.3.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
 - 1.3.2 the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other Buyers; and/or
 - 1.3.3 the proposed Key Subcontractor employs unfit persons.
- 1.4 The Supplier shall provide CCS and the Buyer with the following information in respect of the proposed Key Subcontractor:
 - 1.4.1 the proposed Key Subcontractor's name, registered office and company registration number;
 - 1.4.2 the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
 - 1.4.3 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the CCS and the Buyer that the proposed Key SubContract has been agreed on "arm'slength" terms;
 - 1.4.4 for CCS, the Key SubContract price expressed as a percentage of the total projected Framework Price over the Framework Contract Period;
 - 1.4.5 for the Buyer, the Key SubContract price expressed as a percentage of the total projected Charges over the Call Off Contract Period; and
 - 1.4.6 (where applicable) Credit Rating Threshold (as defined in Joint Schedule 7 (Financial Distress)) of the Key Subcontractor.

- 1.5 If requested by CCS and/or the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.4, the Supplier shall also provide:
 - 1.5.1 a copy of the proposed Key SubContract; and
 - 1.5.2 any further information reasonably requested by CCS and/or the Buyer.
- 1.6 The Supplier shall ensure that each new or replacement Key SubContract shall include:
 - 1.6.1 provisions which will enable the Supplier to discharge its obligations under the Contracts;
 - 1.6.2 a right under CRTPA for CCS and the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon CCS and the Buyer respectively;
 - 1.6.3 a provision enabling CCS and the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
 - 1.6.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to CCS and/or the Buyer;
 - 1.6.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Framework Contract in respect of:
 - (a) the data protection requirements set out in Core Terms Clause 14(Data protection);
 - (b) the FOIA and other access request requirements set out in Core Terms Clause 16 (When you can share information);
 - (c) the obligation not to embarrass CCS or the Buyer or otherwise bring CCS or the Buyer into disrepute;
 - (d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
 - (e) the conduct of audits set out in Core Terms Clause 6 (Record keeping and reporting);
 - 1.6.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on CCS and the Buyer under Core Terms Clause 10.4 (When CCS or the Buyer can end this contract) and 10.5 (What happens if the contract ends) of this Contract; and
 - 1.6.7 a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of CCS and the Buyer.

2. MOD ORDERS UNDER LOT 2A, 2B AND LOT 3

2.1 Where MoD is the Buyer:

- 2.1.1 In addition to the matters specified in paragraph 1.3 above, the Buyer may withhold its consent to the appointment of a proposed Key Subcontractor if the proposed conditions of a proposed Key Sub-Contract do not comply

with the requirements set out in this Schedule (including the requirements set out at paragraph 1.6 above).

- 2.1.2 All Key Sub-Contracts shall include a right for the Supplier to require the Key Subcontractor to enter into a collateral warranty with the Buyer in the form specified in the Call-Off Contract.
- 2.1.3 The Buyer shall not be obliged to notify or seek consent of CCS under this Schedule.
- 2.1.4 The Supplier shall provide Buyer with the following information additional information in respect of a proposed Key Subcontractor:
 - (a) the reason for the proposed change;
 - (b) the likely impact on the outgoing Key Sub-contractor and its ability to survive the consequences of the loss of business; and
 - (c) other reasonable information requested by the Buyer.
- 2.1.5 The Supplier shall deliver to the Buyer a copy of each Key Sub-Contract entered into between the Supplier and a Key Subcontractor as soon as it is entered into. The Supplier shall not allow a Key Subcontractor to commence performance until such copy has been delivered together with the signed collateral warranties in favour of the Buyer.
- 2.1.6 The Supplier shall not, without the Buyer's prior written consent, amend any Key Sub-Contract he has entered into or waive or release any Key Subcontractor from its obligations under the relevant Key Sub-Contract or otherwise stop himself from enforcing or seeking redress for any material obligation or duty owed by any such Key Subcontractor.

3. DECOUPLING CLAUSE – SUB-CONTRACTING WITH A CROWN BODY

3.1 If the Supplier shall enter into any other contract with a Crown Body relating in any way to the subject matter of the Contract, then no breach by the Crown Body of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown Body its servants or agents or other contractors relating to or connected with any other contracts as aforesaid shall regardless of any negligence on its part or their part:

- 3.1.1 give the Supplier any right under the Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Buyer; or
- 3.1.2 affect, modify reduce or extinguish either the obligations of the Supplier or the rights or remedies of the Buyer (including without limitation the right to liquidated damages under the Contract); or
- 3.1.3 be taken to amend add to, delete or waive any term or condition of the Contract.