

Appendix 3a

FRAMEWORK AGREEMENT

FOR THE SUPPLY OF GOODS

THIS FRAMEWORK AGREEMENT is dated [DATE]

PARTIES

- (1) TRANSPORT SYSTEMS CATAPULT incorporated and registered in England and Wales with company number 8041919 whose registered office is at 170 The Pinnacle, Midsummer Boulevard, Milton Keynes MK9 1BP ("the **Catapult**").
- (2) [COMPANY] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [ADDRESS] ("the **Company**").

Each a "Party" and together the "Parties"

BACKGROUND

- A. The Catapult published an ITT for IT Goods subject to a Framework Agreement.
- B. The Company responded to the ITT by submitting a Tender and was selected to be on the Catapult's Framework Agreement for the supply of IT Goods.
- C. This Framework Agreement sets out the award and ordering procedure for Goods that may be required by the Catapult.
- D. There will be no obligation for the Catapult to place any Purchase Order or Orders under this Framework Agreement during its Term.

IT IS AGREED as follows:-

1. INTERPRETATION

- 1.1. Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Award Criteria" Means the award criteria as set out in the Invitation to Tender;

"Call-Off Award Criteria" means the award criteria to be used for call-off contracts as set out in the Invitation to Tender

"Call-Off Contract" means the legally binding agreement (made pursuant to the provisions of the Framework Agreement) for the provision of Goods made between the Catapult and the Contractor comprising:

- (i) the Order Form;
- (ii) the Call-Off Terms and Conditions;
- (iii) any Special Terms and Conditions; and
- (iv) the Tender;

"Call-Off Terms and Conditions" means the terms and which were set out in the Invitation to Tender;

"Commencement Date" means the date of this Agreement;

"Contractor(s)" means the contractor(s) who has/have been appointed under the Framework and where applicable this shall include the contractor's Employees, sub-contractors, agents,

representatives, and permitted assigns and, if the Contractor is a consortium or consortium leader, the consortium members;

"Framework" means the overarching arrangement whereby the Catapult seeks to appoint one or more Contractors as a potential supplier of the Goods as described in the Invitation to Tender;

"Framework Agreement" means the agreement between the Catapult and each Contractor which sets out the terms governing contracts to be awarded during the Term and which incorporates:

- (i) The Framework Terms and Conditions;
- (ii) The Invitation to Tender; and
- (iii) The Tender;

"Framework Terms and Conditions" means the terms and conditions set out in this Agreement;

"Goods" means the Goods described in the Invitation to Tender, to be supplied by the Contractor in accordance with the Framework Agreement;

"Guidance" means any guidance issued or updated by the UK Government from time to time in relation to the Regulations;

"Invitation to Tender" means the Catapult's invitation to tender for the Goods including all the Schedules thereto;

"Law" means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;

"Ordering Procedures" means the ordering and award procedures specified in Clause 6;

"Party" means the Catapult and the Contractor;

"Purchase Order" means the document setting out details of an order in a form to be specified by the Catapult;

"Quotation" means the completed Request for a Quotation form for Goods provided by the Contractor to the Catapult in accordance with the Ordering Procedures;

"Regulations" means the Public Contracts Regulations 2015;

"Replacement Contractor" means any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Call-Off Contract;

"Request for Quotation" means a request for a quotation for Goods served by the Catapult on a Contractor in accordance with the Ordering Procedures;

"Tender" means the Contractor's tender for the Goods in response to the Catapult's Invitation to Tender;

"Term" means the period commencing on the Commencement Date and ending after a period of 2 years unless extended by agreement in writing between the Parties for a maximum duration of one year as described in Condition 2.2.

The interpretation and construction of this Framework Agreement shall be subject to the following provisions:-

- 1.1.1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.1.2. words importing the masculine include the feminine and the neuter;
- 1.1.3. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.1.4. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.1.5. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.1.6. headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.1.7. In the event and to the extent only of any conflict between the provisions of the Call-Off Terms and Conditions and the Framework Agreement, the Call-Off Terms and Conditions shall prevail.

2. TERM OF FRAMEWORK AGREEMENT

- 2.1. The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.
- 2.2. In the event that the Catapult intends to take up the option to extend the Framework Agreement for a period of a maximum of one year, the Contractor shall be notified in writing within the 3 months prior to the commencement of the extension. If no such notification is issued the Framework Agreement shall automatically expire after the initial Contract Period.
- 2.3. Clause 2.1 and 2.2 shall not apply to any Call-Off Contract made under this Framework Agreement which is due to expire after the end of the Term which shall expire in accordance with the terms of that Call-Off Contract.

3. SCOPE OF FRAMEWORK AGREEMENT

- 3.1. This Framework Agreement governs the relationship between the Catapult and the Contractor in respect of the provision of the Goods by the Contractor to Catapult.
- 3.2. The Contractor acknowledges that there is no obligation for the Catapult to purchase any Goods from the Contractor during the Term.
- 3.3. No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Catapult in respect of the total quantities or values of the Goods to be ordered by it pursuant to this Framework Agreement and the Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

4. CONTRACTOR'S APPOINTMENT

- 4.1. The Catapult appoints the Contractor as a potential supplier of the Goods referred to in the Invitation to Tender and the Contractor shall be eligible to be considered for the award of Purchase Orders for such Goods by the Catapult during the Term.

5. NON-EXCLUSIVITY

- 5.1. The Contractor acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Catapult for Goods from the Contractor and that the Catapult and the Contractor is at all times entitled to enter into other contracts and agreements with other contractors for the provision of any of the Goods.

6. AWARD PROCEDURES

Award of initial supply

- 6.1. The Invitation to Tender allows for the Catapult to award without re-opening competition (a direct award) for the initial supply of Goods and the Catapult shall, when ordering such Goods:-
- 6.1.1. identify the relevant Goods;
 - 6.1.2. (where there is more than one Contractor) select the Contractor in accordance with the method set out in the Invitation to Tender;
 - 6.1.3. place a Purchase Order with the successful Contractor which:-
 - 6.1.3.1. states the requirements;
 - 6.1.3.2. identifies the Goods;
 - 6.1.3.3. states the price payable in accordance with the Tender submitted by the successful Contractor; and
 - 6.1.3.4. incorporates the Call-Off Terms and Conditions.

Mini Competition for further supplies of Goods

- 6.2. Where there is more than one Contractor appointed under the Framework and the Invitation to Tender so specifies, the Catapult shall, prior to placing a Purchase Order for further supplies of Goods subsequent to any initial supply:
- 6.2.1. identify the Contractors capable of supplying the Goods for the Catapult's requirements;
 - 6.2.2. invite tenders by conducting a mini-competition for its requirements in accordance with the Invitation to Tender, the Regulations and Guidance and in particular:
 - 6.2.2.1. consult in writing all the Contractors capable of performing the Call-Off Contract by sending a copy of the completed Quotation form from the Invitation to tender and invite them within a specified time limit to submit a Quotation for the specific Goods;
 - 6.2.2.2. set a time limit for the receipt by the Catapult of the tenders in the form of a completed Quotation form; and
 - 6.2.2.3. keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.
 - 6.2.3. apply the Call-Off Award Criteria, including where relevant in any pricing the consideration of any and all additional cost(s) to the Catapult to the Contractors' compliant Quotations submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its requirements.

- 6.3. The Contractor agrees that all Quotations submitted by the Contractor in relation to a mini-competition held pursuant to Clause 6.1 shall remain open for acceptance for thirty (30) days (or such other shorter period specified in the invitation issued by the Catapult in accordance with the Ordering Procedure).
- 6.4. The Contractor acknowledges that any Quotation sent to the Catapult pursuant to this Framework constitutes an offer to supply the Goods.
- 6.5. Notwithstanding the fact that the Catapult has followed the procedure set out above in this Clause 6, the Catapult shall be entitled at all times to decline to make an award. Nothing in this Framework Agreement shall oblige the Catapult or any Contracting Authority to place any Purchase Order.

Form of Purchase Order

- 6.6. On the direct award for the initial supply of Goods or on the selection of a Contractor for a specific purchase of Goods set out in a Quotation and subject to the provisions of Clause 6.1, 6.2 6.3 and 6.4 above, the Catapult may serve a Purchase Order with the Contractor in writing in such form agreed with the Contractor including systems of ordering involving facsimile, electronic mail or other on-line solutions.
- 6.7. The Purchase Order constitutes an acceptance by the Catapult to purchase the Goods at the Price specified in the Quotation subject to the Call-Off Terms and Conditions.

7. CALL-OFF CONTRACT PERFORMANCE

- 7.1. The Contractor shall perform all Call-Off Contracts entered into with the Catapult in accordance with:-
- 7.1.1. the requirements of this Framework Agreement; and
 - 7.1.2. the Call-Off Terms and Conditions.
- 7.2. In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the Call-Off Terms and Conditions, the Call-Off Terms and Conditions shall prevail.

8. TERMINATION BY THE CATAPULT

- 8.1. The Catapult shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving one month's written notice to the Contractor.
- 8.2. The Catapult may suspend or terminate the Framework Agreement with immediate effect by notice in writing to the Contractor on or at any time if:
- 8.2.1. the Contractor becomes bankrupt, insolvent, makes any composition with its creditors; or
 - 8.2.2. the Contractor is convicted of a criminal offence; or
 - 8.2.3. the Contractor ceases or threatens to cease to carry on its business; or
 - 8.2.4. the Contractor has a change in Control which the Catapult believes will have a substantial impact on the performance of any Call-Off Contracts; or
 - 8.2.5. there is a risk or a genuine belief that reputational damage to the Catapult will occur as a result of the Framework Agreement with the Contractor continuing; or
 - 8.2.6. the Contractor is in material or substantial breach of any of its obligations under one or more Call-Off Contracts that is incapable of remedy, or if capable of remedy has not been remedied to the satisfaction of the Catapult within 14 days, or such other reasonable period as may be specified by the Catapult after issue of a written notice specifying the breach and requesting it to be remedied; or

8.2.7. the Contractor commits persistent minor breaches under one or more Call-Off Contracts whether remedied or not.

9. CONSEQUENCES OF TERMINATION AND EXPIRY

- 9.1. Notwithstanding the service of a notice to terminate the Framework Agreement under clause 8, the Contractor shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 9.
- 9.2. Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 9.3. Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

10. TRANSFER AND SUB-CONTRACTING

- 10.1. The Framework Agreement is personal to the Contractor and the Contractor shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Catapult. The Contractor shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.
- 10.2. The Catapult shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Catapult provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Framework Agreement.

11. DATA PROTECTION

- 11.1. The Contractor shall (and shall procure that any of its Employees involved in the provision of the Goods shall) comply with any requirements under the DPA.

12. VARIATIONS TO THE FRAMEWORK AGREEMENT

- 12.1. Any variations to the Framework Agreement must be made in writing and agreed by the Catapult and all Contractors on the Framework.
- 12.2. Any variation to the Framework Agreement must not amount to a material change in the Framework Agreement or the Goods.

13. ENTIRE AGREEMENT

- 13.1. This Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 13.2. Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.
- 13.3. Nothing in this Clause 16 shall operate to exclude Fraud or fraudulent misrepresentation

14. LAW AND JURISDICTION

- 14.1. The Parties accept the exclusive jurisdiction of the English courts and agree that the Framework Agreement, including non-contractual claims and disputes is to be governed by and construed according to English law.