

Crown Commercial Service

CONSTRUCTION PROFESSIONAL SERVICES FRAMEWORK SCHEDULE 5
TEMPLATE CALL OFF AGREEMENT (INCORPORATING THE NEC3 PROFESSIONAL SERVICES CONTRACT
APRIL 2013) AND CONTRACT DATA

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OFFICIAL

Date: 20 December 2022

FORM OF AGREEMENT

Incorporating the NEC3 Professional Services Contract April 2013

Between

The Secretary of State for Defence

And

WSP Environment and Infrastructure Solutions UK Limited

For the provision of

DM Longtown, Land Quality Assessment and UXO Phase One Project

THIS AGREEMENT is made the 20th day of December 2022

PARTIES:

1. **The Ministry of Defence – Defence Infrastructure** acting as part of the Crown (the "**Employer**"); and
2. **WSP Environment and Infrastructure Solutions UK Limited** which is a company incorporated in and in accordance with the England (Company No. **02190074** whose registered office address is at **70 Chancery Lane, London, WC2A 1AF**, (the "**Consultant**").

BACKGROUND

- (A) 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.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number RM6165 which is dated 3rd November 2021 (the "**Framework Agreement**"). In the Framework Agreement, the Consultant is identified as the "Supplier".
- (C) The *Employer*, 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 *Employer's* construction professional services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).]¹
- (D) On the 7 October 2022 the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
- (E) The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

IT IS AGREED AS FOLLOWS:

1. The *Employer* 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.
2. The *Consultant* will Provide the Services in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. This contract incorporates the conditions of contract in the form of the NEC3 Professional Services Contract April 2013 and incorporating the following Options:

W1

Option X2 and X20

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 NEC3 Professional Services Contract April 2013 Edition to "the contract" are references to this contract.

4. This contract and the Framework Agreement is the entire agreement between the parties in relation to the *services* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
5. Neither party has been given, nor entered into this agreement in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.
6. Nothing in clauses 4 or 5 shall exclude liability in respect of misrepresentations made fraudulently.

General note

Access to the NEC suite of contracts, including guidance and membership details can be found via the NEC Website: <https://www.neccontract.com/>

Additionally, Crown Commercial Service has worked together with NEC to provide discounted access to the suite of contracts . Further information can be found on the Project Management and Full Design Team Services Framework Agreement Webpage:

<http://ccs-agreements.cabinetoffice.gov.uk/project-management-and-full-design-team-services-rm3741>

Executed under hand

Signed On Behalf of The Secretary of State for Defence

PRINT:

POSITION: Senior Commercial Manager

SIGNATURE

DATE: 20 December 2022

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 *Employer*

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Option A dispute resolution Option W1 and secondary Options X2 and X20 and Z of the NEC3 Professional Services Contract (April 2013).
 - The *Employer* is **Ministry of Defence -Defence Infrastructure Organisation**
 - The *Adjudicator* is The Chartered Institute of Arbitrators
The *services* are For the Provision of **DM Longtown, Land Quality Assessment and UXO Phase One Project**
 - The Scope of Works is in the enclosed Statement of Requirements.
 - The *language of this contract* is English.
 - *The law of the contract* is the law of England and Wales.
 - The *period for retention* is 6 years following Completion or earlier termination.
 - The *Adjudicator nominating body* is *Chartered Institute of Arbitrators*
 - The *tribunal* is arbitration
- 2 The Parties' main responsibilities**
- The *Employer* provides access to the following persons, places and things

<ul style="list-style-type: none"> • access to 	<i>access date</i> TBC
DM Longtown	
- 3 Time**
- *The starting date* is 21 December 2022. (Subject to Contract Award)
 - The *Consultant* submits revised programmes at intervals no longer than one month.
 - *The end date* is 31 March 2023.
- 4 Quality**
- The quality policy is as per DEFCON 602B (Edn 12/06) - Quality Assurance (Without Quality Plan)

- The *defects date* is four weeks after Completion of the whole of the *services*.

5 Payment

- The *assessment interval* is 30 days after date of invoice.
- The *currency of this 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.]

8 Indemnity, insurance and liability

- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

event	cover	Period
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£5,000,000.00 (Five Million Pounds) in respect of each claim, without limit to the number of claims 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 <i>starting date</i> until 6years following completion of the whole of the <i>services</i> or earlier termination
death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	As required under Framework Agreement or such higher figure as may be appropriate.	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	As required under Framework Agreement or such higher figure as may be appropriate.	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination

If the *tribunal* is arbitration

- The *arbitration procedure* is the London Court of International Arbitration Rules;
- The number of arbitrators shall be one.
- The place where arbitration is to be held is London.
- The language to be used in the arbitration proceedings shall be English
- If the parties cannot agree the identity of the arbitrator then the nominating body shall be: Chartered Institute of Arbitrators.

If Option A is used:

- The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than four weeks.

Option X2 If Option X2 is used

- *The law of the project* is the law of England and Wales.

Option X20 If Option X20 is used (but not if Option X12 is also used)

- A report of performance against each Key Performance Indicator is provided at intervals of one months.

- Option Z**
- The *additional conditions of contract* are as selected below and as detailed in the appended Standard Boilerplate Amendments.
 - **Where there is a discrepancy between an NEC3 term, and a Defence Condition (DEFCON), the DEFCON will take precedence.**

**Contract Data
relating to Z clauses**

Option Z2	Identified and defined terms Applies
Option Z4	Admittance to Employer'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 Does Not Apply
Option Z16	Tax Compliance Applies
Option Z22	Fair payment Applies
Option Z44	Intellectual Property Rights Does Not Apply
Option Z45	HMRC Requirements Does Not Apply
Option Z46	MoD DEFCON Requirements Applies This clause is to incorporate MoD special terms and conditions in the form of DEFCONs and DEFFORMs as detailed at https://www.gov.uk/guidance/knowledge-in-defence-kid MoD DEFCONs and DEFFORMS take precedent.
Option Z49	Change of Control Applies
Option Z50	Financial Standing Applies
Option Z51	Financial Distress Applies
Option Z52	Records, audit access and open book data Applies
Option Z100	Data Protection (GDPR) Applies
Option Z101	Cyber Essentials Applies;

***Other Additional
conditions of
contract***

DEFCON 5J (Edn 18/11/16) - Unique Identifiers
 DEFCON 76 (Edn 06/21) - Contractor's Personnel at Government Establishments
 DEFCON 501 (Edn 10/21) - Definitions and Interpretations
 DEFCON 513 (Edn 04/22) - Value Added Tax
 DEFCON 514 (Edn 08/15) - Material Breach
 DEFCON 516 (Edn 04/12) - Equality
 DEFCON 522 (Edn 11/21) - Payment and Recovery of Sums Due
 DEFCON 530 (Edn 12/14) - Dispute Resolution (English Law)
 DEFCON 531 (Edn 09/21) - Disclosure of Information
 DEFCON 532B (Edn 09/21) - 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 602B (Edn 12/06) - Quality Assurance (Without Quality Plan)
 DEFCON 604 (Edn 06/14) - Progress Reports
 DEFCON 642 (Edn 07/21) - Progress Meetings
 DEFCON 649 (Edn 12/21) - Vesting
 DEFCON 656A (Edn 08/16) - Termination for Convenience
 DEFCON 670 (Edn 02/17) - Tax Compliance
 DEFCON 703 (Edn 06/21) - Intellectual Property Rights - Vesting In The Authority

Milestone Payment Plan

Milestone	Date	Price £
1. On receipt of Draft LQA report and accompanying Technical Note.	28 February 2023	
2. On receipt of Draft UXO-PRA report and accompanying UXO Liability Assessment	28 February 2023	
3. On receipt Final LQA report and accompanying Technical Note.	31 March 2023	
4. On receipt of Final UXO-PRA report and accompanying UXO Liability Assessment.	31 March 2023	

Part two – Data provided by the *Consultant*

1 Statements given in all contracts

- The *Consultant* is

Name WSP UK Ltd

Address **WSP House, 70 Chancery Lane, London, WC2A
1AF**

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Optional statements If the *Consultant* is to decide the *completion date* for the whole of the services

The *completion date* for the whole of the services is 31st March 2023

If the programme is to be identified in the Contract Data

- The programme identified in the Contract Data is Provided in the proposal spreadsheet.

*Include where
expenses are being
stated by the
Consultant*

If the *Consultant* states any expenses

- The expenses stated by the *Consultant* are

item	amount
Brimstone Site Investigation	
Local Authority search	
Base mapping	
Travel (train and Taxi)	
Subsistence and accommodation	

*[Include if the
Consultant requires
additional access]*

If the *Consultant* requires additional access

The *Employer* provides access to the following persons, places and things

access to

access date

Site and site records including previous reports 3 weeks from
commissioning

DSTL record search

5 weeks from
commissioning

UXO Estate Intelligence

5 weeks from
commissioning

If Option A or C is used

- The *activity schedule* is

	Activity	Date	Price £ (ex VAT)
1	LQA Site visit and initial data review	14 December 2022	
2	UXO site visit	14 December 2022	
3	Draft LQA report and accompanying Technical Note.	28 February 2023	
4	Draft UXO-PRA report and accompanying UXO Liability Assessment	28 February 2023	
5	Final LQA report and accompanying Technical Note.	31 March 2023	
6	Final UXO-PRA report and accompanying UXO Liability Assessment.	31 March 2023	

- The tendered total of the Prices is £ex VAT.....
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If Option Y(UK)1 is used

- The *project bank* is
- The *named suppliers* are

