

BGS Keyworth – Water Hygiene Contract

NEC3 Term Service Short Contract ‘Z’ Clauses

Z1

Freedom of Information Act and the Environmental Information Regulations

The Contractor shall provide all assistance to enable the Employer and/or its clients to comply with any request received under the Freedom of Information Act 2000 and/or the Environmental Information Regulations should either be applicable to the Employer.

In no event shall the Contractor or its Subcontractors respond directly to a Request for Information unless expressly authorised to do so by the Employer.

Z2

Transparency

In order to comply with the Government’s policy on transparency in the areas of procurement and contracts the Contractor agrees that the Term Service Contract and the sourcing documents issued by UK SBS which led to its creation will be published by UK SBS on a designated web site.

The entire Term Service Contract and all the sourcing documents issued by UK SBS will be published on the designated web site save where to do so would disclose information the disclosure of which would:

- (i) contravene a binding confidentiality undertaking that protects information which UK SBS, at the time when it considers disclosure, reasonably considers to be confidential to the Contractor;
- (ii) be contrary to regulation 21 of the Public Contracts Regulations 2015; or
- (iii) in the reasonable opinion of UK SBS be prevented by virtue of one or more of the exemptions in the FOIA or one or more of the exceptions in the Environmental Information Regulation (EIR).

If any of the situations in (i),(ii),(iii) apply the Contractor consents to the Term Service Short Contract or sourcing documents being redacted by UK SBS to the extent necessary to remove or obscure the relevant material and being published on the designated website subject to those redactions.

In this entire clause the expression “sourcing documents” means the advertisement issued by UK SBS seeking expressions of interest, any pre- qualification questionnaire stage and the invitation to tender.

Z3

Termination Para 1

The Employer may terminate the Term Service Short Contract by written notice to the Contractor in any of the following circumstances:

- (i) Where it considers that the Term Service Short Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 ("PCR 2015");
- (ii) Where it considers that the Contractor has at the time of the award of the Term Service Short Contract been in one of the situations referred to in Regulation 57(1) of the PCR 2015,

including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure;

(iii) Where the Term Service ShortContract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the EU Treaties and Directive 2014/24/EU of the European Parliament and of the Council that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;

(iv) Where the European Commission sends a reasoned opinion to the United Kingdom or brings the matter before the Court of Justice of the European Union under Article 258 of the TFEU alleging that the Term Service Short Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and Directive 2014/24/EU of the European Parliament and of the Council; or

(v) Where a third party starts court proceedings against the Employer seeking a declaration that the Term Service Contract is ineffective or should be shortened under Regulations 98 to 101 of the PCR 2015, which the Employer considers have a reasonable prospect of success.

Such termination shall be effective immediately or at such later date as is specified in the notice. The Employer shall not incur any liability to the Contractor by reason of such termination and shall not be required to pay any costs, losses or damage to the Contractor. Termination under this clause shall be without prejudice to any other rights of the Employer.

Termination Para 2

The Employer shall, at any time, have the right for convenience to terminate the Term Service Short Contract or reduce the quantity of Supplies or Services to be provided by the Contractor in each case by giving to the Contractor reasonable written notice. During the period of notice the Employer may direct the Contractor to perform all or any of the work under the Term Service ShortContract. Where the Employer has invoked either of these rights, the Contractor may claim reasonable costs necessarily and properly incurred by him as a result of the termination or reduction, excluding loss of profit.

Z4

Payment to other parties

The Contractor shall ensure, pursuant to Regulation 113(2)(c) of the Public Contracts Regulations 2015, that any subcontract awarded by the Contractor contains suitable provisions to impose, as between the parties to the subcontract, requirements that –

(i) any payment due from the Contractor to the subcontractor under the subcontract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;

(ii) any invoice for payments submitted by the subcontractor are considered and verified by the Contractor in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed;

and

(iii) any subcontractor will include, in any subcontract which it in turn awards, suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those imposed in paragraphs (i), (ii) and (iii) of this Clause Z.4, subject to suitable amendment to reflect the identities of the relevant parties.

Z5

Sub-contractors

The Employer may (without cost to or liability of the Employer) require the Contractor to replace any subcontractor where in the reasonable opinion of the Employer any mandatory or discretionary grounds for exclusion referred to in Regulation 57 of the Public Contracts Regulations 2015 apply to the subcontractor.

Z6

Delay Damages

- Z6.1 The Contractor pays delay damages at the rate stated in the Contract Data from the Task Order Completion Date for each day until the earlier of
 - Task Order Completion and
 - the date when the Employer takes over the work comprised in the Task.
- Z6.2 If the Task Order Completion Date is changed to a later date after delay damages have been paid, the Employer repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.
- Z6.3 If the Employer takes over part of the work comprised within the Task before Task Completion, the delay damages are reduced from the date on which the part is taken over. The Service Manager assesses the benefit to the Employer of taking over the part of the work comprised in a Task as a proportion of the benefit to the Employer of taking over the whole of the work comprised in a Task not previously taken over. The delay damages are reduced in this proportion.
- Z6.4 The total aggregate amount of delay damages payable by the Contractor to the Employer shall be limited to 20% of the value of the Task Order so delayed.

Z 7

Identified and defined terms

Add the following:

- Clause 11.2 (17) The Defects Certificate is either a list of Defects that the Service Manager has notified before the defects date which the Contractor has not corrected or if there are no such Defects, a statement that there are none.

END