

THE LORD CHANCELLOR

AND

SUPPLIER

FACILITIES MANAGEMENT MARKETPLACE CONTRACT

REF: RM3830 (HMCTS SECURITY)

CALL-OFF SCHEDULE 4

FACILITIES MANAGEMENT

The following facilities management specific provisions shall apply to the Call-Off Contract. If the provisions in this schedule conflict with any Clauses in the Core Terms then the provisions in this schedule shall prevail.

1. BUYER REMEDIES FOR DEFAULT

1.1 Remedies

1.1.1 Without prejudice to any other right or remedy of the Buyer howsoever arising (including under Framework Schedule 6 (Order Form and Call-Off Schedules Template) (as amended in the Call off Special Terms) and subject to the exclusive financial remedy provisions in Paragraph 2.4 of Call-Off Schedule 14 (Key Performance Indicators), if the Supplier commits any Default of this Call-Off Contract then the Buyer may (whether or not any part of the Deliverables have been Delivered) do any of the following:

- (a) at the Buyer's option, give the Supplier the opportunity (at the Supplier's expense and within such reasonable time as the Buyer shall require) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Deliverables and carry out any other necessary work to ensure that the terms of this Call-Off Contract are fulfilled, in accordance with the Buyer's instructions;
- (b) where the option to remedy has been provided but the Supplier failed to remedy the Default the Buyer may itself or through a third party carry out, at the Supplier's expense, any work necessary to make the provision of the Deliverables comply with this Call-Off Contract
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (including where such Defaults occur at one or more of the Buyer's Premises or one or more of the Regions) - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Supplier to comply with the Rectification Plan Process;
 - (ii) suspend this Call-Off Contract (whereupon the relevant provisions of Clause 10.8 Core Terms (Partially ending and suspending the contract), as amended in the Call off Special Terms, shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Deliverables;
 - (iii) without terminating or suspending the whole of this Call-Off Contract, terminate or suspend this Call-Off Contract in respect of part of the provision of the Deliverables (including any Region

or Buyer Premises where the material Default has occurred) only (whereupon the relevant provisions of Clauses 10.8 Core Terms (Partially ending and suspending the contract), as amended in the Call off Special Terms, and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Deliverables;

- (d) The parties acknowledge and agree that Abandonment (as defined in Schedule 14 and detailed at paragraph 4 of Schedule 14) is not capable of remedy.

1.1.2 Where the Buyer exercises any of its step-in rights under Paragraphs 1.1.1(c)(ii) or 1.1.1(c)(iii), the Buyer shall have the right to charge the Supplier for and the Supplier shall on demand pay any Costs reasonably incurred by the Buyer (including any reasonable administration and management costs) in respect of the supply of any part of the Deliverables by the Buyer or a third party and provided that the Buyer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Deliverables.

1.2 Without prejudice to the provisions of paragraph 1.1 of this Schedule, where there is a Major Incident:

1.2.1 where the Buyer considers it necessary or expedient to do so, the Buyer may exercise the step-in rights under Paragraphs 1.1.1(c)(ii) or 1.1.1(c)(iii); and

1.2.2 where the Major Incident was not caused by the Supplier, the Buyer shall continue to pay the Charges during the period of step-in and Paragraph 1.1 of this Schedule shall not apply.

2. PAYMENTS DUE ON TERMINATION

2.1 Upon termination of the Contract by the Buyer in accordance with clause 10.3.2 Core Terms (and for the avoidance of doubt including partial termination under 10.8 each as amended in the Call off Special Terms), the amount that is due for payment will be as set out below:

2.1.1 the Charges for Deliverables which have been properly provided by the Supplier in accordance with the terms of the Contract;

2.1.2 any reasonable and proven direct costs incurred by the Supplier for removing Supplier Equipment and/or demobilising;

2.1.3 direct Losses that have been or will be reasonably and properly incurred by the Supplier as a direct result of termination of this Contract but only to the extent that:

(a) the Losses are incurred in respect of the provision of the Deliverables including any materials or goods ordered or sub-contract placed that cannot be cancelled without such Losses being incurred; and

(b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms,

provided that such amounts shall only be recoverable if and to the extent that the Supplier has used all reasonable endeavours to minimise them.

3. SMALL AND MEDIUM SIZED ENTERPRISES ("SMEs")

- 3.1 The Supplier shall take all reasonable steps to engage SMEs as Subcontractors and use best endeavours to ensure that no less than the percentage of the Subcontractors stated in the Order Form are SMEs ("SME Percentage") or that a similar proportion of the Deliverables of the service is undertaken by SMEs
- 3.2 The Supplier shall report to the Buyer on the number of SMEs which it appoints as Subcontractors and the value of the cost of the Deliverables undertaken by those SMEs within its normal reporting procedures.
- 3.3 Improving visibility of subcontract opportunities available to SMEs and VCSEs in the supply chain
- 3.3.1 The Supplier shall:
- (a) subject to clause 3.3.1(e), advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £25,000 that arise during the Contract Period;
 - (b) within 90 (ninety) days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
 - (c) monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
 - (d) provide reports on the information at Paragraph 3.3.1(c) to the Buyer and CCS in the format and frequency as reasonably specified by the Buyer and/or CCS from time to time; and
 - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 3.3.2 Each advert referred to at Paragraph 3.3.1 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 3.3.3 The obligation at Paragraph 3.3.1 shall only apply in respect of subcontract opportunities arising after the Effective Date.
- 3.3.4 Notwithstanding Paragraph 3.3.1, the Buyer may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

4. ACCESSED CONTRACTS

- 4.1 The Supplier acknowledges that the Buyer may from time to time notify the Supplier of contracts ("**Government Frameworks**") which are available to the Buyer and which the Buyer can grant access to the Supplier to use or which the Supplier shall use in connection with the supply of the Deliverables.
- 4.2 The Supplier will consider the use of the Government Frameworks as part of its provision of the Deliverables and will prior to the Start Date and at reasonable intervals

thereafter liaise with the Buyer to agree which Government Frameworks it will actually use in connection with the supply of the Deliverables.

- 4.3 Where the Buyer and the Supplier agree on the use by the Supplier of a Government Framework then the Buyer shall endeavour to facilitate such use by the Supplier. Any such use by the Supplier shall be as agent on behalf of the Buyer.
- 4.4 The Supplier shall ensure that all benefits (including volume rebates and enhanced discounts) gained through or in connection with use of a Government Framework shall be passed on for the benefit of the Buyer.
- 4.5 Where the Supplier intends to use a Government Framework the Supplier shall:
 - 4.5.1 act in accordance with such procedures, rules and guidance as the Buyer may from time to time notify the Supplier;
 - 4.5.2 with the prior written agreement of the Buyer, directly award a contract to a supplier under the Government Framework or run a further competition to obtain the most economically advantageous offer; and
 - 4.5.3 manage all contracts it enters into pursuant to Paragraph 4.5.2 as agent on behalf of the Buyer, and the Supplier's obligations and responsibilities in this regard shall be to:
 - (a) not terminate or otherwise amend the terms of the Accessed Contract or enter into any new or replacement agreements in addition to or in substitution for the Accessed Contract without obtaining the prior written consent of the Buyer;
 - (b) advise the Buyer of the steps to be taken to avoid or mitigate any event which may adversely affect the performance of Accessed Contracts and where required by the Buyer the Supplier shall take such steps;
 - (c) provide to the Buyer such other information as the Buyer may from time to time reasonably require in relation to the performance by the parties pursuant to an Accessed Contract; and
 - (d) notify the Buyer of any changes to the prices charged under the Accessed Contract. For the avoidance of doubt, the Supplier shall not be entitled to negotiate or accept any changes to the price without obtaining the Buyer's prior written consent.
- 4.6 In addition, at all times in carrying out its obligations and responsibilities under this Paragraph 4 the Supplier shall:
 - 4.6.1 comply with all Laws, rules and guidance that apply to the Buyer including, without limitation, public procurement rules;
 - 4.6.2 act towards the Buyer dutifully and in good faith, not allow its interests to conflict with the duties that it owes to the Buyer under this Contract and generally to carry out its agency in the way which it thinks best to promote the interests of the Buyer;
 - 4.6.3 except as authorised by the Buyer, not act in a way which will incur any liabilities on behalf of the Buyer, nor pledge the credit of the Buyer;

- 4.6.4 comply with all reasonable and lawful instructions from the Buyer from time to time concerning its duties under the Accessed Contracts;
 - 4.6.5 describe itself in all dealings with suppliers under Government Frameworks and on all correspondence, marketing and advertising material as the agent of the Buyer;
 - 4.6.6 use all reasonable endeavours to ensure that each supplier under an Accessed Contract performs its relevant obligations in accordance with each Accessed Contract; and
 - 4.6.7 discharge the obligations of the Buyer under each Accessed Contract (including, where required by the Buyer, making payments thereunder) as though it were the Buyer and in accordance with the terms of each such Accessed Contract.
- 4.7 The parties acknowledge that the Government Frameworks or Accessed Contracts may through the effluxion of time expire or may terminate during the Term. Prior to any Government Framework or Accessed Contract expiring or otherwise terminating where the Supplier receives notice of such termination it shall immediately notify the Buyer of the same.
- 4.8 Throughout and after the Contract Period the Supplier shall indemnify the Buyer and keep the Buyer indemnified against all losses, claims, damages, costs and expenses (including reasonable legal fees) incurred by the Buyer arising from the Supplier's breach of any Government Framework or Accessed Contract and from the acts or omissions of the Supplier which may put the Buyer or another person in breach of any Government Framework.
- 4.9 For the avoidance of doubt, the Supplier shall not be entitled to use any Government Framework or Accessed Contract for its own benefit or for any purpose other than as set out in this Paragraph 4.
- 4.10 The Buyer shall be entitled to terminate this Contract, in accordance with Clause 10.4 Core Terms, if the Supplier breaches any of the provisions of this Clause 4.

5. CONSTRUCTION CONTRACTS – NOT USED

6. REPLACEMENT EQUIPMENT - NOT USED

7. INSTALLATION WORKS – NOT USED

8. TAKING INSTRUCTIONS

- 8.1 The Supplier acknowledges and agrees that except in the event of an Emergency, the Facility Managers, Senior Person on Site and the Buyer Authorised Representative are the only persons authorised by the Buyer to instruct any Billable Works with the Helpdesk.

- 8.2 In an Emergency, in addition to those persons specified in Paragraph 8.1, the Judiciary, and any person who confirms to the Supplier that they have been instructed by the Judiciary to do so, is also able to instruct Billable Works with the Helpdesk.