

SHIP REPAIR CONTRACT – HM CUTTERS SHIP LIFE EXTENSION PROGRAMME PROJECT_651

between THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(acting through Border Force) and SOUTHAMPTON MARINE SERVICES LIMITED

PART III

ADDITIONAL CLAUSES

18. SUPPLY CHAIN

18.1 Appointing Subcontractors

18.1.1 The Contractors must exercise due skill and care when it selects and appoints Subcontractors to ensure that the Contractors are able to:

- (a) manage Subcontractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Contract; and
- (c) assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Owners.

18.2 Mandatory provisions in Sub-Contracts

18.2.1 For Sub-Contracts in the Contractors' supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:

- (a) where such Sub-Contracts are entered into after the Effective Date, the Contractors will ensure that they all contain provisions that; or
- (b) where such Sub-Contracts are entered into before the Effective Date, the Contractors will take all reasonable endeavours to ensure that they all contain provisions that:
 - a. allow the Contractors to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
 - b. require the Contractors to pay all Subcontractors in full, within thirty (30) days of receiving a valid, undisputed invoice; and
 - c. allow the Owners to publish the details of the late payment or non-payment if this thirty (30) day limit is exceeded.

18.3 When Sub-Contracts can be ended

18.3.1 At the Owners' request, the Contractors must terminate any Sub-Contracts in any of the following events:

- (a) there is a Change of Control of a Subcontractor which isn't pre-approved by the Owners in writing;
- (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 12(a);
- (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Owners;
- (d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
- (e) the Owners have grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

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18.4 **Competitive terms**

- 18.4.1 If the Owners can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Contractors and that cost is reimbursable by the Owners, then the Owners may require the Contractors to replace its existing commercial terms with the more favourable terms offered for the relevant items.
- 18.4.2 If the Owners use Clause 18.4.1 then the Contract Price must be reduced by an agreed amount by using the Variation Procedure.

18.5 **Ongoing responsibility of the Contractors**

The Contractors are responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

19. **DATA PROTECTION AND SECURITY**

- 19.1 The Contractors must process Personal Data and ensure that Contractors' staff process Personal Data only in accordance with Data Protection Legislation.
- 19.2 The Contractors must not remove any ownership or security notices in or relating to the Government Data.
- 19.3 The Contractors must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Owners copies via a secure encrypted method, upon reasonable request.
- 19.4 The Contractors must ensure that any Contractors, Subcontractor and Subprocessor system (including any cloud services or end user devices used by the Contractors, Subcontractor and Subprocessor) holding any Government Data, including back-up data, is a secure system that complies with the Cyber Essentials Schedule (if used), the Security Schedule (if used), the Security Policy and the security requirements specified in the Award Form. and otherwise as required by Data Protection Legislation.
- 19.5 If at any time the Contractors suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Contractors must immediately notify the Owners and suggest remedial action.
- 19.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Owners may either or both:
 - 19.6.1 tell the Contractors to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Owners receives notice, or the Contractors finds out about the issue, whichever is earlier; and
 - 19.6.2 restore the Government Data itself or using a third party.
- 19.7 The Contractors must pay each Party's reasonable costs of complying with Clause 19.6 unless the Owners are at fault.
- 19.8 The Contractors:
 - 19.8.1 must provide the Owners with all Government Data in an agreed format (provided it is secure and readable) within ten (10) Working Days of a written request;

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- 19.8.2 must have documented processes to guarantee prompt availability of Government Data if the Contractors stops trading;
- 19.8.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice, other than in relation to Government Data which is owned or licenced by the Contractors or in respect of which the Parties are either Independent Controllers or Joint Controllers;
- 19.8.4 securely erase all Government Data and any copies it holds when asked to do so by the Owners (and certify to the Owners that it has done so) unless and to the extent required by Law to retain it other than in relation to Government Data which is owned or licenced by the Contractors or in respect of which the Parties are either Independent Controllers or Joint Controllers; and
- 19.8.5 indemnifies the Owners against any and all Losses incurred if the Contractors breaches Clause 19 or any Data Protection Legislation.

20. CONFIDENTIALITY

20.1 Each Party must:

- 20.1.1 keep all Confidential Information it receives confidential and secure;
- 20.1.2 not disclose, use or exploit the other Party's Confidential Information without the other Party's prior written consent, except for the purposes anticipated under this Contract; and
- 20.1.3 immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

20.2 In spite of Clause 20.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

- 20.2.1 where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the other Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- 20.2.2 if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the other Party;
- 20.2.3 if the information was given to it by a third party without obligation of confidentiality;
- 20.2.4 if the information was in the public domain at the time of the disclosure;
- 20.2.5 if the information was independently developed without access to the other Party's Confidential Information;
- 20.2.6 on a confidential basis, to its auditors or for the purpose of regulatory requirements;
- 20.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and

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- 20.2.8 to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 20.3 The Contractors may disclose Confidential Information on a confidential basis to Contractors' staff on a need-to-know basis to allow the Contractors to meet its obligations under this Contract. The Contractors' staff shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 20.4 The Owners may disclose Confidential Information in any of the following cases:
 - 20.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Owners;
 - 20.4.2 on a confidential basis to any other Crown Body, any successor body to a Crown Body or any company that the Owners transfers or proposes to transfer all or any part of its business to;
 - 20.4.3 if the Owners (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions; or
 - 20.4.4 where requested by Parliament.
- 20.5 For the purposes of Clauses 20.2 to 20.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 20.
- 20.6 Transparency Information and any information which is exempt from disclosure by Clause 21 is not Confidential Information.
- 20.7 The Contractors must not make any press announcement or publicise this Contract or any part of them in any way, without the prior written consent of the Owners and must use all reasonable endeavours to ensure that Contractors' staff do not either.

21. FREEDOM OF INFORMATION

- 21.1 The Contractors must tell the Owners within forty eight (48) hours if it receives a Request For Information.
- 21.2 In accordance with a reasonable timetable and in any event within five (5) Working Days of a request from the Owners, the Contractors must give the Owners full co-operation and information needed so the Owners can:
 - 21.2.1 publish the Transparency Information; and
 - 21.2.2 comply with any Request for Information.
- 21.3 To the extent that it is allowed and practical to do so, the Owners will use reasonable endeavours to notify the Contractors of a FOIA request and may talk to the Contractors to help it decide whether to publish information under Clause 21.1. However, the extent, content and format of the disclosure is the Owners' decision in its absolute discretion.

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22. EQUALITY, DIVERSITY AND HUMAN RIGHTS

- 22.1 The Contractors must follow all applicable equality Law when they perform their obligations under this Contract, including:
 - 22.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
 - 22.1.2 any other requirements and instructions which the Owners reasonably imposes related to equality Law.
- 22.2 The Contractors must use all reasonable endeavours, and inform the Owners of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on this Contract.

23. HEALTH AND SAFETY

- 23.1 The Contractors must perform its obligations meeting the requirements of all applicable Law regarding health and safety.
- 23.2 The Contractors and the Owners must as soon as possible notify the other of any health and safety incidents or material hazards they become aware of that relate to the performance of this Contract.

24. SUSTAINABILITY

- 24.1 The Contractors must perform its obligations at all times meeting the requirements of Annex E (Sustainability).

25. TAX

- 25.1 The Contractors must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Owners cannot terminate this Contract where the Contractors have not paid a minor tax or social security contribution.
- 25.2 Where the Charges payable under this Contract are or are likely to exceed £5 million, and an Occasion of Tax Non-Compliance occurs, the Contractors must notify the Owners of it within five (5) Working Days including:
 - 25.2.1 the steps that the Contractors are taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
 - 25.2.2 other information relating to the Occasion of Tax Non-Compliance that the Owners may reasonably need.
- 25.3 Where the Contractors or any Contractors' staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under this Contract, the Contractors must both:

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25.3.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and

25.3.2 indemnify the Owners against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract period in connection with the provision of the Scope of Work by the Contractors or any of the Contractors' staff.

26. CONFLICT OF INTEREST

26.1 The Contractors must take action to ensure that neither the Contractors nor the Contractors' staff are placed in the position of an actual, potential or perceived Conflict of Interest.

26.2 The Contractors must promptly notify and provide details to the Owners if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

26.3 The Owners will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Owners, such measures do not or will not resolve an actual or potential Conflict of Interest, the Owners may terminate its Contract immediately by giving notice in writing to the Contractors where there is or may be an actual or potential Conflict of Interest and Clause 12(a) shall apply.

27. REPORTING A BREACH OF THE CONTRACT

27.1 As soon as it is aware of it the Contractors and Contractors' staff must report to the Owners any actual or suspected:

27.1.1 breach of Law; or

27.1.2 breach of Good Industry Practice.

27.2 The Contractors must not retaliate against any of the Contractors' staff who in good faith reports a breach or Default listed in Clause 27.1 to the Owners or the BFOO.