

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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Date 09 Oct 2023

FORM OF AGREEMENT

Incorporating the NEC3 Professional Services Contract April 2013

Between

The Secretary of State for Defence

And

Arcadis LLP

For the provision of

708695453 – RAF Odiham Phase 2 & 3

Land Quality Assessments (LQAs)

THIS AGREEMENT is made the 9th day of October 2023

PARTIES:

1. **The Ministry of Defence - Defence Infrastructure Organisation (MOD-DIO)** acting as part of the Crown (the "**Employer**"); and
2. **Arcadis LLP** which is a company incorporated in and in accordance with the laws of **England** (Company No. **OC368843** whose registered office address is at **80 Fenchurch Street, London, EC3M 4BY** (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) On the 11 Aug 2023 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).
- (D) On the 19 Sep 2023 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.

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 and Option Y(UK)3

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.

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.

3. 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.
4. 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>

Contracting Authorities are able to select the most appropriate W, X, Y and Z clauses and include additional Z clauses that meet their requirement.

Executed under hand

Signed by **REDACTED** for and on behalf of **Arcadis LLP**

REDACTED

Authorised Signatory

Date: 12 October 2023

Signed On Behalf of **The Secretary of State for Defence**

PRINT Name: **REDACTED**

Position: DIO Commercial Officer

Signature **REDACTED**

Date: 12 October 2023

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, X20, and Z of the NEC3 Professional Services Contract (April 2013).
 - The *Employer* is MOD-DIO, DIO HQ DMS Whittington, Lichfield
 - The *Adjudicator* is the *Chartered Institute of Arbitrators*
 - The *services* are as detailed in Annex A – 20230807 – Statement of Requirement Phase 3 LQA ODI_V2.
 - The *Scope* is in schedule of CCS Framework Agreement RM 6165].
 - The *language of this contract* is English.
 - The *law of the contract* is the law of England and Wales
 - The *period for reply* is two weeks
 - The *period for retention* is 6 years following Completion or earlier termination.
 - The *Adjudicator nominating body* is the *Chartered Institute of Arbitrators*
 - The *tribunal* is arbitration

- 2 The Parties' main responsibilities**
- The *Employer* provides access to the following persons, places and things
- | access to | access date |
|--------------|-------------|
| • RAF Odiham | tba |

- 3 Time**
- The *starting date* is 09 Oct 2023
 - The *Consultant* submits revised programmes at intervals no longer than one month.

- 4 Quality**
- The quality policy statement and quality plan are as per DEFCON 602B (Edn 12/06) - Quality Assurance (Without Quality Plan).

- The *defects date* is 4 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 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 6 years 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	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	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination

- *The Consultant's total liability to the Employer for all matters arising under or in connection with this contract, other than the excluded matters, is limited to £1,000,000 in the aggregate*

Optional Statements

If the *Employer* has decided the *completion date* for the whole of the *services*

- The *completion date* for the whole of the *services* is 31 March 2024.

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 4 weeks.

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)

- *The incentive schedule* for Key Performance Indicators is in n/a.
- A report of performance against each Key Performance Indicator is provided at intervals of one months.
- Where X20 is used, the amount due under clause 50 is adjusted to account for the application of the *incentive schedule*.

Option Y(UK)3 • If Option Y(UK)3 is used

term	person or organisation
All listed conditions and Z clauses	Eurofins
	GAP

Option Z

- The *additional conditions of contract* are as selected below and as detailed in the appended Standard Boilerplate Amendments:

**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 Z10	Freedom of information applies
Option Z8	Conflict of interest applies
Option Z9	Publicity and Branding 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 Z26	Building Information Modelling does not apply
Option Z42	The Housing Grants, Construction and Regeneration Act 1996

does not apply

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, below:

DEFCON 076 Edition 11/22 - Contractor's Personnel at Government Establishments

DEFCON 501 (Edn 10/21) - Definitions and Interpretations

DEFCON 503 (Edn 06/22) - Formal Amendments To Contract

DEFCON 513 (Edn 04/22) - Value Added Tax

DEFCON 514 (Edn 08/15) - Material Breach

DEFCON 520 (08/21) - Corrupt Gifts and Payments of Commission

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 532A (Edn. 05/22) - Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

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 540 (Edn. 05/23) - Conflicts of Interest

DEFCON 550 (Edn 02/14) - Child Labour and Employment Law

DEFCON 602B (Edn 12/06) - Quality Assurance (Without Deliverable Quality Plan)

DEFCON 604 (Edn 06/14) - Progress Reports

DEFCON 609 (Edn 07/21) - Contractor's Records

DEFCON 611 (Edn 12/22) - Issued Property

DEFCON 632 (11/21) - Third Party Intellectual Property - Rights and Restrictions

DEFCON 649 (Edn 12/21) - Vesting

DEFCON 656A (Edn 08/16) - Termination for Convenience (Contracts Under £5M)

DEFCON 658 (Edn 10/22) – Cyber

Note: Cyber Risk level – Very Low, RAR -353694134; SAQ 119225558 Met

DEFCON 670 (Edn 02/17) - Tax Compliance

DEFCON 671 (Edn 10/22) - Plastic Packaging Tax

DEFCON 703 (Edn 06/21) - Intellectual Property Rights - Vesting in the Authority

Further details: at <https://www.gov.uk/guidance/knowledge-in-defence-kid>

Note: Where there is a discrepancy between an NEC3 term, and a Defence Condition (DEFCON), the DEFCON will take precedence.

Option Z47 Small and Medium Sized Enterprises (SMEs)
does not apply

Option Z48 Apprenticeships
does not apply

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
applies

Option Z101 Cyber Essentials
applies

**Other *Additional
conditions of
contract***

Part two – Data provided by the *Consultant*

1 Statements given in all contracts

- The *Consultant* is
 - Name Arcadis LLP
 - Address 80 Fenchurch Street, London, EC3M 4BY
- The *key people* are
 - Name: **REDACTED**
 - Job: Project Director/Sponsor
 - Responsibilities: Overall Accountability for deliverable and performance of the Project
 - Experience: 35 years
- Name: **REDACTED**
- Job: Project Lead
- Responsibilities: oversight of the deliverable and performance of the project.
- Experience: 22 years
- The *staff rates* are:

Name/job title	Rate (Hourly)
REDACTED /Director	REDACTED
REDACTED /Principal Consultant	REDACTED
REDACTED /Principal Consultant	REDACTED
REDACTED /Senior Consultant	REDACTED
TBC/Consultant	REDACTED
REDACTED /Junior	REDACTED
TBC/Graphics/Technician	REDACTED
- The following matters will be included in the Risk Register
 - ...Refer to Arcadis Technical Response

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 28th March 2024

If the programme is to be identified in the Contract Data

- The programme identified in the Contract Data is 31st March 2024

Include where expenses are being stated by the Consultant

If the *Consultant* states any expenses

- The *expenses* stated by the *Consultant* are

item	amount
Expenses	£ REDACTED
Third Party Costs	£ REDACTED

[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

RAF Odiham.....TBC

If Option A or C is used

- The *activity schedule* is: refer to Arcadis Tender Commercial Response.....
- The tendered total of the Prices is £42,619.69
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