

Highways England

Technical Surveys and Testing

Professional Services Short Contract
for

East Area - 605746 - A5 SB Portway-
Kelly Kitchen – FWD Survey

Contract Documents

**TECHNICAL SURVEYS AND TESTING CONTRACT
CONTENTS AMENDMENT SHEET**

Amend. No.	Issue Date	Amendments	Initials	Date
0	With tender	N/A	EB	30/06/2021

1. Contract Data

- The *Client* is Highways England Company Limited a company incorporated in and in accordance with the laws of England and Wales having as its registered number 09346363 of Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.
- The *services* are to undertake a Falling Weight Deflectometer survey.
- The *Scope* is in the document entitled East Area - 605746 - A5 SB Portway- Kelly Kitchen - FWD - Scope
- The *starting date* is 9th August 2021.
- The *completion date* is 18th August 2021.
- The *delay damages* for late Completion are Nil per day.
- The *law of the contract* is the law of England and Wales, subject to the jurisdiction of the Courts of England and Wales.
- The *period for reply* is 1 week.
- The *defects date* is 52 weeks weeks after Completion.
- The *assessment day* is the last day of each month.
- Work is to be carried out on a time charge basis as indicated in the Price List.
- The period for payment is three weeks.
- The interest rate for this contract is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, 3% per annum above the Bank of England base rate in force from time to time.
- The *Consultant* provides the following insurance cover

Insurance against	Minimum amount of cover	Period following Completion or earlier termination
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 any one claim the number of claims being unlimited in any annual policy period and in the annual aggregate in respect of pollution and contamination, with an inner limit of £1,000,000 in the annual aggregate in respect of asbestos	from the <i>starting date</i> until 6 years following completion of the whole of the services 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>	£10,000,000 for any one occurrence without limit to the number of occurrences (except for claims arising out of pollution, contamination and products liability, where the minimum amount of cover applies in the aggregate in any one annual period of insurance)	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	£10,000,000 for any one occurrence without limit to the number of occurrences	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination

- The *Client* does not provide any insurance cover.
- The *Consultant's* total liability to the *Client* for matters for which insurance is provided is

Failure to use the skill and care normally used by professionals providing services similar to the *services*: £5,000,000 in respect of any one claim but in the aggregate in each year of insurance in respect of claims arising out of pollution or contamination and £1,000,000 in the aggregate in each year of insurance in respect of claims arising out of asbestos.

Loss of or damage to property resulting from an action or failure to take action by the *Consultant*: £10,000,000 for any one occurrence but in the aggregate in each year of insurance in respect of claims arising out of pollution or contamination.

The *Consultant's* liability for death of or bodily injury to persons arising under or in connection with this contract is unlimited.

- The *Consultant's* total liability to the *Client* for other matters is £10,000,000.00.

- The adjudicator is the person chosen by the Parties from the list of adjudicators published by the Institution of Civil Engineers.
- The adjudicator nominating body is the Institution of Civil Engineers.
- The *tribunal* is arbitration.
- The *arbitration procedure* is the Institution of Civil Engineers Arbitration Procedure (April 2012).
- The place where arbitration is to be held in London.
- The person who will choose the arbitrator
 - if the Parties cannot agree a choice or
 - if the arbitration procedure does not state who selects an arbitrator
 is the President for the time being of the Institution of Civil Engineers or his nominee.
- The *conditions of contract* are the NEC3 Professional Services Short Contract (April 2013) and the following additional conditions:

Clause Z1 Conditions of Contract

Identified and defined terms

Insert the following definitions into clause 11.2:

“(8) Intellectual Property Rights are any current and future legal and equitable interests in patents, trademarks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registration.

(9) RIDDOR Incident is an incident occurring under any contract between

- the *Consultant* or a company associated with the *Consultant* and
- the *Client* or any other person

which results in death or serious injury to any worker or non-worker and for which the *Consultant* is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it).”

Assessing compensation events

At the end of clause 63.2 insert the following sentence:

“If the Parties agree, a compensation event is assessed using lump sums.”

Clause Z2 Corrupt practices

Z2.1 The *Consultant* does not

- offer or give to any person in the service of the *Client* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Client* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Client*, or
- enter into this contract or any other contract with the *Client* if, in connection with this contract or any such other contract,

commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

Z2.2 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z3 Recovery of sums due from *Consultant*

Z3.1 Where under this contract, or any other contract between the *Consultant* and the *Client*, any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from, or reduced by, the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this contract or any other contract with the *Client*.

Clause Z4 Discrimination, Bullying and Harassment

Z4.1 The *Consultant* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.

Clause Z5 Subconsulting – RIDDOR

Z5.1 Before appointing a proposed subconsultant or allowing a subconsultant to appoint a proposed subsubconsultant, the *Consultant* submits to the *Client* for acceptance details of any RIDDOR Incident under any contract for which the proposed subconsultant or subsubconsultant is responsible and of any enforcement action brought against the proposed subconsultant or subsubconsultant.

Z5.2 The *Consultant* does not appoint the proposed subconsultant (or allow the subconsultant to appoint the proposed subsubconsultant) until the *Client* has accepted the submission. A reason for not accepting the submission is that the *Client* is not satisfied that the proposed subconsultant or subsubconsultant has put in place adequate measures to ensure that the RIDDOR Incident or enforcement action will not recur.

Z5.3 If requested by the *Client*, the *Consultant* provides further information to support, update or clarify a submission under clause Z5.1.

Z5.4 If, following the acceptance of a submission under clause Z5.2, it is found that the subconsultant or subsubconsultant has not put in place adequate measures to ensure that the RIDDOR Incident or enforcement action will not recur, the *Client* may instruct the *Consultant* to

- replace the subconsultant or
- require the subconsultant to replace the subsubconsultant.

Clause Z6 Value Added Tax (VAT) Recovery

- Z6.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.

Clause Z7 Intellectual Property Rights

- Z6.1 All Intellectual Property Rights in material created by or on behalf of the *Client* in connection with this contract are the property of the *Client*.
- Z6.2 The *Consultant* assigns to the *Client* all present and future Intellectual Property Rights in all material created by the *Consultant* or any subconsultant in Providing the Services. The *Consultant* obtains from a subconsultant equivalent rights over the material prepared by the subconsultant.

Clause Z8 Removal of services

- Z8.1 The *Client* may instruct the *Consultant* that for urgent reasons of health and safety, part or all of the *services* is to be temporarily removed from this contract. The *Consultant* acknowledges that the *Client* may himself provide or may appoint another supplier in place of the *Consultant* to provide work similar to the removed *services* (or part of them).
- Z8.2 An instruction given under clause Z8.1 is assessed as a compensation event, except that if the instruction is given because of a substantial failure by the *Consultant* to comply with his obligations, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *services*.

Clause Z9 Termination – PCRs, Regulation 73

- Z9.1 The *Client* may terminate the *Consultant's* obligation to Provide the Services if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the date of this contract. This is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.
- Z9.2 The *Client* may terminate the *Consultant's* obligation to Provide the Services if
- this contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or

- the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

If the modification or infringement was due to a default by the *Consultant*, this is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.

Clause Z10 *Consultant's premises and Access and Storage to Client's Data*

Z10.1 In this contract

Risk Assessment is a full risk assessment and security review carried out by the *Client* in accordance with this contract.

Offshore is a location outside the United Kingdom of Great Britain and Northern Ireland.

Z10.2 Any failure of the *Client* to gain approval for storing information Offshore or allowing access to information from an Offshore location in accordance with this contract

- is not a compensation event and
- does not relieve the *Consultant* from his obligation to Provide the Services.

Z10.3 Failure of *premises to pass the Risk Assessment*

- is not a compensation event and
- does not relieve the *Consultant* from his obligation to Provide the Services.

Z10.4 The *Consultant* pays the *Client's* costs associated with undertaking any Risk Assessment.

2. The *Consultant's* Offer

The *Consultant* is

Name

Address

Telephone Fax

E-mail address

The name, job, qualifications and experience of the *Consultant's key people* are in
[*Consultant to insert reference*]

The *staff rates* are

Person or Job	Unit of Measurement	Rate
.....		
.....		
.....		
.....		
People not stated here at open market or competitively tendered prices		

The offered total of the Prices is

3. Price List

The Price List can be found in East Area - 605746 - A5 SB Portway- Kelly Kitchen - FWD - Price List