

BUYER

AND

SUPPLIER

FACILITIES MANAGEMENT MARKETPLACE CONTRACT

REF: RM3830

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) and subject to the exclusive financial remedy provisions in Paragraph 2.4 of Call-Off Schedule 14 (Key Performance Indicators) and Paragraph 9.1.2 [concerning Delay Payments] of Part A of Call-Off Schedule 13 (Mobilisation Plan and Testing), 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) 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 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 - 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) 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 only (whereupon the relevant provisions of Clauses 10.8 Core Terms (Partially ending and suspending the contract) and

step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Deliverables;

- 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 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.

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), 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 any reasonable and proved unrecovered investment costs directly applicable to the provision of the Deliverables, if applicable; and
- 2.1.4 any other Costs reasonably incurred in expectation of completing the whole of the Services and any amounts retained by the Supplier,

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") are SMEs 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.

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 Contract Period. 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

- 5.1 Where a Call Off Contract is a construction contract within the meaning of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009, the following provisions shall apply to the Deliverables which constitute construction operations:
- 5.2 *Notice of Intention to Pay Less*
 - 5.2.1 If the Buyer wants to pay less than the amount specified in an invoice or exercise its rights under Clause 4.6 it must, not less than seven days before the final date for payment of the invoice set out in Clause 4.4, give the Supplier notice that it intends to pay less than the sum invoiced specifying:
 - (a) the sum that the Buyer considers to be due and intends to pay under the invoice; and
 - (b) the basis on which that sum is calculated.

(a "Pay Less Notice")
 - 5.2.2 Where the Buyer has given a notice to pay less in accordance with Paragraph 5.2 the obligation to pay the invoiced sum applies only in respect of the sum specified in that Pay Less Notice.

5.3 *Suspension of Performance*

5.3.1 Notwithstanding Clause 5 (the Buyer's obligations to the Supplier) the Supplier may suspend the provision of construction works under S112 of the Construction Act by giving at least seven days' notice (excluding bank holidays) of non-payment stating the grounds relied upon to suspend performance if the Buyer has:

- (a) issued a Pay Less Notice and failed to pay the amount specified in the Pay Less Notice by the final date for payment specified in Clause 4; or
- (b) where no Pay Less Notice has been issued the Buyer has failed to pay the amount specified in an invoice by the final date for payment specified in Clause 4.4

5.4 *Requirement to Adjudicate*

5.4.1 In addition to Core Terms the Clause 34 (Resolving Disputes) the Parties may at any time during a Call Off Contract refer a Dispute to adjudication under Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998/649.

6. REPLACEMENT EQUIPMENT

- 6.1 All Replacement Equipment delivered must be new, or (with the Buyer's written approval at its sole discretion) as new if recycled, reconstructed, unused and of recent origin.
- 6.2 All manufacturer warranties covering the Replacement Equipment must be assignable to the Buyer on request and at no cost.
- 6.3 Unless otherwise required in the Call Off Contract or from time to time by the Buyer, title of the Replacement Equipment shall transfer to the Buyer on completion of the Installation Works requiring the Replacement Equipment.
- 6.4 Unless otherwise agreed by the Buyer in writing the risk in any Replacement Equipment shall remain with the Supplier during the Contract Period.
- 6.5 The Supplier warrants that title in any Replacement Equipment is capable of transferring to the Buyer in accordance with the provisions of this Paragraph 6.
- 6.6 The Supplier must recall Replacement Equipment where the manufacturer has requested a recall and indemnify the Buyer against the costs of any Recall of the Replacement Equipment and give notice of actual or anticipated action about the Recall of the Replacement Equipment.
- 6.7 The Replacement Equipment must comply with the Framework Schedule 1 (Specification), Call-Off Contract and any additional requirements agreed between the Supplier and the Buyer from time to time.
- 6.8 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Replacement Equipment that the Buyer rejects because it does not conform to this Paragraph 6. If the Supplier doesn't do this, it will pay the Buyer's costs including repair, replacement or re-supply by a third party.

7. INSTALLATION WORKS

- 7.1 The Supplier shall carry out Installation Works in accordance with any installation programme agreed by the Buyer and the Supplier.
- 7.2 The Installation Works shall be executed in the manner set out in the Call Off Contract or, where not so set out, to the reasonable satisfaction of the Buyer, and all work on any Site shall be carried out in accordance with such reasonable directions as the Buyer may give.
- 7.3 The Buyer or an authorised representative or adviser of the Buyer shall have, at all reasonable times and upon giving reasonable notice, the right to inspect the state and progress of the Installation Works and to ascertain whether they are being properly executed.
- 7.4 The Supplier shall carry out the testing and commissioning of the Installation Works in accordance with the testing and commissioning requirements of the Call Off Schedule 13 Part B (Testing).
- 7.5 No rights of estoppel or waiver shall arise as a result of the acceptance by the Buyer of the Installation Works.
- 7.6 Throughout the Call-Off Contract Period, the Supplier shall be responsible for procuring and maintaining (at its own cost) at all times all licences, approvals and consents necessary to enable the Supplier and the Supplier Staff to carry out the Installation Works.