

STANDARD CONDITIONS OF CONTRACT

1 Definitions

In this Contract, save where the context otherwise requires, the following expressions shall have the meaning hereby assigned to them:

"Commencement Date" means the date from which the Contractor is required to commence to provide the Services, that is the preparation and submission of a

"Conditions" means these Conditions, any supplementary Conditions and any modification thereof;

"Contract" means any formal contract document entered into between the Contractor and the Council and includes the documents incorporated therein and forming part thereof. A reference to an Act of Parliament or any Order, Regulation, Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same;

"Contract Period" means the period during which the Contract shall remain in force in accordance with Condition 6.

"Contract Price" means the price at which the Contractor offers to perform the Services and which is accepted by the Council for the performance of the Services.

"Contract Standard" means such standards as appear in the Specification and must comply in each and every respect with all the relevant provisions of the Contract and where no criteria is stated in the Contract the standard is to be to the satisfaction of the Supervising Officer.

"Contractor" means the person, persons or company whose Tender is accepted;

"Council" means the Council of the Babergh District or any successor authority;

"Equipment" means any vehicles, plant, machinery and equipment used in the performance of the Services.

"Form of Tender" means the offer to provide the Services in the form accompanying the Conditions, together with all the documents, evidence and information required by the Council in accordance with the Instructions to the Tenderers.

"Services" means the whole of the specification to be executed and the whole of the goods, vehicles, plant and materials to be supplied by the Contractor in accordance with the Contract and any Variations to these Conditions.

"Specification" means the specification for tender provided with these conditions and any modifications or addition as may from time to time be approved in writing by the Supervising Officer.

"Supervising Officer" means the Repairs Manager and includes any other officer to be nominated in writing by him to act on his behalf in accordance with Condition 7.

"Tender Document" means the Tender and Contract documents relating to External Works 2011-2013.

1. General

- a. The masculine includes the feminine and in the case of a limited company the indefinite article and the singular includes the plural and vice versa.
- b. Headings and Sub-Headings are for ease of reference only and shall not affect the construction of these conditions.
- c. References to Conditions, Paragraphs and Schedules, are references to these conditions and paragraphs and schedules therein unless otherwise specified.
- d. Reference to an Act of Parliament or any Order, Regulation, Statutory Instrument or the like shall include reference to any amendment or re-enactment of the same.
- e. The Contract shall be governed by and construed in accordance with English law.
- f. Reference to time shall be construed during the period of Summer Time to be British Summer Time and otherwise to be Greenwich Mean Time save as may be amended by legislative enactment or by delegated legislation.
- g. Reference to employees of the contractor shall be deemed to include the contractor's agents and sub-contractors and the employees and agents thereof unless the context otherwise requires.

2. Sufficiency of Tender

The Contractor shall be deemed to have satisfied himself before submitting his tender as to the correctness and sufficiency of his rates and prices which shall (except insofar as it is otherwise provided in the Contract) cover all his obligations under the Contract.

3. Correction of Errors

Any error in description in the Contract Documents or omission there from shall not vitiate the Contract nor release the Contractor from the performance of the whole or any part of the Services according to the Specification or from any of his obligations or liabilities under the Contract.

4. Documents Mutually Explanatory

The several documents forming the Contract are to be taken as mutually explanatory of one another and in case of ambiguities or discrepancies the same shall be explained and adjusted by the Supervising Officer who shall thereupon issue to the Contractor appropriate instructions in writing.

5 Indemnity and Insurance

5.1 The Contractor shall fully indemnify and keep indemnified the Council against the injury to, or death of, any person, or loss of, or damage to, any property including property belonging to the Council except to the extent that it may arise out of the act, default or negligence of the Council, its employees or agents not being the Contractor or employed by the Contractor and except as aforesaid against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

5.2 Without thereby limiting its responsibilities under this condition, the Contractor shall, at his own cost and expense, insure with an Insurance company approved by the Supervising Officer against the injury to, or death of, any person and loss of, or damage to, any property arising out of or in consequence of the Contractor's obligations under the Contract and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof

5.3 The insurance in respect of any such personal injury to, or death of, any person arising under a contract of service with the Contractor and arising out of an incident occurring during the course of such person's employment shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1972 and any statutory orders made thereunder or successor legislation.

5.4 The Council shall not be liable for any damages or compensation payable at law in respect of or in consequence of any accident or injury to any workman or other person in the employment of the Contractor save and except to the extent that such accident or injury results from or is contributed to by the negligence of the Council, its agents or servants and the Contractor shall indemnify and keep indemnified the Council against all such damages and compensation (save and except as aforesaid) and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

5.5 For all claims other than under Condition 5.3 against which this Condition requires the Contractor to insure, the insurance cover shall be not less than £5,000,000?????? in respect of any one incident or such other sum as the Supervising Officer may determine from time to time and the Contractor's insurance policy effecting such cover shall have the interest of the Council enclosed thereon, or shall otherwise expressly by its terms confer its benefits upon the Council. The terms shall include a provision whereby in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Council the insurer will indemnify the Council.

- 5.6 The Council shall indemnify and keep indemnified the Contractor against the injury to, or death of, any person, or loss of, or damage to, any property including property belonging to the Contractor to the extent that it may arise out of the act, default or negligence of the Council, its employees or agents other than the Contractor its employees and agents and against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 5.7 The Contractor shall fully indemnify the Council against any liability to any person whatsoever whether in tort or contract arising out of or connected with the performance of the Services or any act or omission of any agent or employee of the Contractor howsoever such liability may arise.
- 5.8 The Contractor shall at least 14 days before the commencement of the contract period and annually at renewal and in any case upon request produce to the Supervising Officer a copy of the policies effecting the insurances and a certificate from its insurers or brokers confirming that the Contractor's insurance policies are in force and comply with this Condition. All insurances shall be subsequently renewed and kept in force for the entirety of the contract period. The Contractor shall obtain the Supervising Officer's approval to his proposed insurers before entering into any contract of insurance, such approval not to be unreasonably withheld.

5.9 Remedy on Contractor's Failure to Insure

Should the Council become aware of any default by the Contractor in insuring or continuing to insure as provided above, without prejudice to the other rights of the Council under the Contract (including rights under this Condition), the Council may itself provide such insurance and may charge the cost of such together with all properly incurred administration costs to the Contractor either by way of deduction from amounts payable by the Council to the Contractor under the terms of the contract or by recovering the same as a debt due to the Council from the Contractor.

6 Contract Period

The period of the contract commences on ????? or such other date as may be agreed between the Council and the Contractor provided that all the Contract documents have been received by the Council by that date and will end on the delivery of all Services in accordance with the Specification on such as may be agreed between the Council and the Contractor.

7 The Supervising Officer

- (1) Where not otherwise stated the functions, rights and powers conferred by this Contract upon the Council shall be exercised by the Supervising Officer. The Contractor shall in no circumstances question the existence or extent of authority of any person nominated by the Supervising Officer to act on his behalf where

the duties and extent of authority are given in writing to the Contractor.

- (2) The Supervising Officer and any duly nominated officer acting on his behalf shall have full power and authority to issue instructions on any matter in connection with the proper performance of the Services and the Contractor shall be bound by the same.

8 Contractor's Supervision

- (1) The Contractor shall give or provide all necessary management and supervision during the performance of the Services. Such management and supervision shall be given by sufficient persons having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) as is necessary for the satisfactory performance of the Services.
- (2) The Contractor or a competent and authorised agent or representative approved in writing by the Supervising Officer (which approval may at any time be withdrawn) is to be constantly available and based within a reasonable distance of the district and shall effectively supervise the Services. Such authorised agent or representative shall receive on behalf of the Contractor directions and instructions from the Supervising Officer who shall be provided by the Contractor with sufficient details to enable the Supervising Officer to contact such person or a suitable Deputy at any time of the day or night.

9 Performance of Services

The Contractor shall at all times during the Contract Period perform and provide the Services and any variations ordered under the conditions in accordance with the Conditions and the Specification and in a continually efficient and effective manner to the satisfaction of the Supervising Officer.

10 Commencement of Work

The Contractor shall commence the performance of the Services on the Commencement Date and thereafter shall perform the Services with due expedition and without delay in accordance with the Contract.

11 Observance of Statutory Requirements

The Contractor shall comply with all statutory and other provisions to be observed and performed in connection with the Services provided under the Contract and shall indemnify the Council accordingly.

12 British Standards

Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current, all goods used or supplied and all workmanship shall be in accordance with that Standard.

13 Payments

- (1) The sum payable for the Services executed under the Contract shall be as set out in the Form of tender and in the Council's letter of acceptance.
- (2) Payment of the Contract price will be made on delivery of the Reports to the Council.

14 Invoicing

- (1) Within 14 days after the Contract Price becomes due to the Contractor under condition 14 above, the Contractor will submit to the Supervising Officer at the Council's principal office a statement setting out the sum for which the Contractor is entitled to receive payment from the Council together with a valid VAT invoice.
- (2) Subject to the Supervising Officer certifying that the works have been satisfactorily completed and that the statement and invoice provided are correct, the Council will pay the invoice within 21 days from the date when the invoice was received.

15 Value Added Tax

The Council shall pay to the Contractor such VAT as may be properly chargeable by the Contractor in connection with the provision of the Services at the appropriate rates and in accordance with the value added Tax Act 1983 or any re-enactments thereof. The Contractor shall be required to issue a VAT invoice in accordance with the Appendix.

16 Notices

- (1) Any notice to be given to the Contractor under the terms of the Contract shall be served by sending it by post to or leaving it at the Contractor's principal place of business or in the event of the Contractor being a Company to or at its registered office.
- (2) Any notice to be given to the Council under the terms of the Contract shall be served by sending it by post to or leaving it addressed to the Chief Executive at the Council Offices, Corks Lane, Hadleigh, Ipswich, Suffolk IP7 6SJ.

17 Assignment

- (1) The Council shall be entitled to assign the benefit of this Contract or any part thereof to a statutory or other public body and shall give written notice of any assignment to the Contractor.
- (2) The Contractor shall in no circumstances assign, sub-let or purport to assign or sub-let any part of this Contract to any person whatsoever PROVIDED that any assignment occurring as a result of any internal reconstruction of a Contractor which is a limited company shall be deemed not to be a breach of this condition.

18 Records

- (1) The Contractor shall keep all necessary and prescribed records as laid down in the Contract.
- (2) The records will be open for inspection by the Supervising Officer at any time.
- (3) The Council shall be entitled to such financial and other information in respect of the operation of the Contract as is deemed reasonable by the Supervising Officer.

19 Liability of Council

- (1) The Council shall in no circumstances be liable to the Contractor for any loss of profit, business or production or for any similar loss or damage whether direct, indirect or consequential however caused.
- (2) The Council in no way warrants the truth or accuracy of any representation which may have been made to the Contractor prior to his entering into this Contract and the Contractor acknowledges that he did not rely upon any representation made by or on behalf of the Council when entering into this Contract.

20 Rights and Duties Reserved

All rights and duties which the Council has as a Local Authority or which the Council's Officers have as Local Authority Officers are expressly reserved.

21 Council's Rights Not to be Limited

Any right granted to the Council or Supervising Officer in any of these Conditions shall not be limited by any provision in any other Condition unless the contrary expressly appears.

22 Staff and Discipline

- (1) The Contractor shall employ or cause to be employed in and about the performance of the Contract and in the superintendence thereof only such persons as are properly and sufficiently qualified, competent, honest, careful, skilled, experienced, instructed and supervised as the case may be with regard to the Contract.
- (2) The Contractor shall at all times take all such precautions as are necessary to protect the health and safety of all employees engaged in the performance of the Services and shall comply with the requirements of the Health and Safety at Work etc. Act 1974, the Control of Substances Hazardous to Health Regulations 1989 and of any other Acts, Regulations, Orders relating to the Health and Safety of Employed Persons.

- (3) The Contractor shall ensure that every person employed by him in and about the provision of the Services is at all times properly and sufficiently trained and instructed with regard to:
 - (a) The task or tasks that that person has to perform,
 - (b) Any relevant provisions of the Contract,
 - (c) Fire risks and precautions,
 - (d) The Contractor's and Council's health and safety policy and the responsibilities placed on such persons in undertaking their duties.
- (4) The Contractor shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions or levies of any kind, relating to or arising out of the employment of any person employed by the Contractor and shall indemnify the Council in respect of any liability in respect thereof.
- (5) The Contractor shall comply with any law which prohibits discrimination in relation to employment on the grounds of sex, age, colour, race, ethnic or national origination or religion

23 Health and Safety at Work Etc. Act 1974

- (1) The Contractor shall at all times take all such precautions as are necessary to protect the health and safety of all persons employed by him and all users and shall comply with the requirements of the Health and Safety at Work, etc, Act 1974 (and any amendment or re-enactment thereof) and of any other Acts, Regulations or Orders pertaining to the health and safety of employed persons.
- (2) The Contractor shall provide suitable facilities for the use of all personnel and shall provide and maintain all health and welfare facilities required by statutory Regulations.
- (3) The Contractor shall, during the course of the Contract, at his own cost provide and at all times keep first aid equipment for the use in the event of accident to staff or users of the facilities in connection with the services in such quantities and at such points as may be required by law.

24 Agency

- (1) The Contractor is not and shall in no circumstances hold himself out as being the servant or agent of the Council.
- (2) The Contractor is not and shall in no circumstances hold himself out as being authorised to enter into any Contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.

- (3) The Contractor has not and shall in no circumstances hold himself out as having the power to make, vary, discharge or waive any bye-law or regulation of any kind.
- (4) The employees of the Contractor are not, shall not hold themselves out to be and shall not be held out by the Contractor as being servants or agents of the Council for any purposes whatsoever.

25 Termination

25.1

The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or
- (b) commit an offence under the Bribery Act 2010 or Section 117(") of the Local Government Act 1972, or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council Members, contractors or employees. Any clause limiting the Contractor's liability shall not apply to this clause."

25.2 If the Contractor:

- (a) commits a breach of any of its obligations under the Contract and fails to remedy the breach (if capable of remedy) for a period of 14 days after written notice of the breach given by the Group;
- (b) becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its company for voluntary arrangement for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986;
- (c) has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver;
- (d) has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- (e) has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- (f) has an administrative receiver, as defined in the Insolvency Act 1986, appointed;

- (g) has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;
- (h) is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the Court to make a winding-up order;

then in any such circumstances the Council may, without prejudice to any accrued rights or remedies under the Contract, terminate the Contractor's employment under the Contract by notice in writing having immediate effect.

25.3 If the Contractor's employment is terminated as provided in Conditions 27.1 or 27.2 and is not reinstated, the Council shall:-

- (a) cease to be under any obligation to make payment until the costs, loss and/or damage resulting from or arising out of the termination of the Contractor's employment shall have been calculated and provided such calculation shows a sum or sums due to the Contractor;
- (b) be entitled to repossess any of its equipment, clothing, or other goods loaned or hired to the Contractor and to exercise a lien over any of the equipment, materials, or other goods belonging to the Contractor for any sum due hereunder or otherwise from the Contractor to the Council;
- (c) be entitled to employ and pay other persons to provide and complete the provision of the Services of any part thereof;
- (d) be entitled to deduct from any sum or sums which would but for Condition 27.3(a) have been due from the Council to the Contractor under this Contract or any other contract or be entitled to recover the same from the Contractor as a debt, any loss or damage to the Council resulting from or arising out of the termination of the Contractor's employment. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contractor's employment and in making alternative arrangements for the provision of the Services or any part thereof;
- (e) when the total costs, loss and/or damage resulting from or arising out of the termination of the Contractor's employment have been calculated and deduced so far as practicable from any sum or sums which would but for Condition 27.3(a) have been due to the Contractor, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council subject to Condition 27.5 shall pay to the Contractor any balance shown as due to the Contractor.

25.3 The rights of the Council under this Condition 27 are in addition to and without prejudice to any other rights the Council may have whether against the Contractor directly or pursuant to any guarantee, indemnity or bond.

25.4 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this Contract or any other Contract with the Council or the same may be recoverable as a debt at the Council's discretion.

26 Arbitration

- (1) All disputes, differences or question between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract other than a matter or thing as to which the decision of the Supervising Officer is under the Contract to be final and conclusive shall, except to the extent that special provision for arbitration is made elsewhere in the Contract, be referred to any Arbitrator agreed upon by the parties or in default of such agreement nominated by the Chartered Institute of Arbitrators or the Chartered Institute of Public Finance and Accountancy, as relevant.
- (2) For the avoidance of doubt whenever in this Contract the Supervising Officer is given the power or duty to form an opinion, make a decision or issue any kind of notice or instruction and that power or duty is not qualified by a duty to act reasonably or any similar limitation then the decision of the Supervising Officer is to be treated as final and conclusive.
- (3) The Arbitrator shall be entitled to make such decision or award as he thinks just and equitable having regard to the circumstances then existing, the cost of such arbitration to follow the event so that it is apportioned between the parties by the Arbitrator in such proportions as he in his absolute discretion thinks fit. Any fee in appointing an Arbitrator shall be met by the Party initiating arbitration.
- (4) Any award or decision of such Arbitrator shall be final and binding on the parties hereto.
- (5) Unless the Contract shall have already been determined, the Contractor shall in every case continue to proceed with the services with all due diligence and the Contractor and the Council shall both give effect forthwith to every such decision of the Supervising Officer unless and until the same be revised by an Arbitrator as hereinbefore provided.

27 Copyright

Copyright in the Contract Documents shall vest in the Council, but the Contractor may obtain or make at his own expense any further copies required for use by the Contractor in performance of the Services.

28 Confidentiality

The Contractor shall not without the written consent of the Supervising Officer during the Contract Period or at any time thereafter make use for his own purposes or disclose to any person the Contract documents or any information contained therein or any material provided to the Contractor by the Council pursuant to the Contract, all of which information shall be deemed to be confidential save as may be otherwise required by the general law.

29 Waiver

Failure by the Council at any time to enforce the provisions of the Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

30 Guarantees by Subsidiary Companies

If the successful Contractor is a Subsidiary Company within the meaning of Section 736 of the Companies Act 1985, it shall also provide to the Council within 28 days of receipt of the Council's written acceptance of the Tender a Guarantee by its Holding Company or Companies (as defined by the Act) to secure the due performance by the successful operator or Contractor of its obligations to the Council in accordance with the appendix.

31 Legal Fees

Each party shall pay its own legal fees and other fees in relation to the preparation and submission of the Tender documents and any formal contract documents arising.

32 The Ombudsman

- (1) Under the Local Government Act 1974 the Ombudsman may investigate a complaint about an action taken by or on behalf of the Council.
- (2) The investigation of the Ombudsman may include the actions of firms or individuals undertaking work on behalf of the Council.
- (3) If the Contractor is the subject of a complaint and subsequent investigation by the Ombudsman, he and his employees and agents must co-operate fully with the Ombudsman for example by attending interviews, by producing any documents requested, and answering all questions accurately and comprehensively.

- (4) In the event of that the Ombudsman finds maladministration and injustice as a result of fault by a Contractor or any of his employees or agents and accordingly the Council is requested by the Ombudsman to make payments to the complainant, such payments shall be deducted by the Council from any payments due to the Contractor under this Contract or may be recoverable as a debt at the Council's discretion.

33 Force Majeure

Both parties shall be released from their respective obligations in the event of national emergency war prohibitive Governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this Contract impossible whereupon all money due under this Contract shall be paid immediately and in particular:-

- (a) the Council shall immediately pay to the Contractor all arrears of payments;
- (b) each party shall be liable to pay to the other damages for any breach of this agreement and all expenses and costs incurred by that party in enforcing its rights under this contract.

Provided that this clause shall have effect only at the discretion of the Council except when such event renders performance impossible for a continuous period of not less than 3 calendar months.

34 Data Protection

- (i) The Contractor hereby agrees and undertakes that if in the performance of this Agreement or otherwise the Contractor, its officers, servants or agents, are given or gain access to information held by the Council consisting of personal data within the meaning of Section 1 (3) of the Data Protection Act 1998, as amended or superseded such information shall be received by the contractor in the strictest confidence and remain confidential and shall not be disclosed to any other person for any reason whatsoever without the express authority in writing of the Council.

The Contractor hereby agrees and undertakes to indemnify the Council against any loss or damage suffered or sustained by or compensation payable by the Council arising from or in respect of any breach of agreement and undertaking contained in the sub-clause above whether such loss damage or compensation is suffered sustained or payable in respect if a claim made pursuant to Section 22 or 23 of the Data Protection Act 1998 as amended or superceded or otherwise or and the contractor shall so indemnify the Council unless any damage or loss results from notwithstanding any negligence or default of the Council, its officers, servants or agents as to the accuracy of any information or otherwise

35. FREEDOM OF INFORMATION

- 35.1 The Contractor hereby acknowledges that the Council is a public authority for the purposes of the freedom of Information Act, the Environmental Information Regulations and the data Protection Act (“the legislation”). The Council has duties and obligations under the legislation to produce information and disclose and supply information when requested. This contract is subject to the legislation.
- 35.2 Any provisions of this contract that are considered to be confidential by the Council and Contractor have been identified. However, both parties acknowledge that the confidentiality will need to be reviewed following a request for disclosure, change in legislative provisions or revised guidance. The Contractor hereby agrees that the Council’s decision in respect of the disclosure and supply of information is final and binding.