

This is Schedule B of ITT number 01674 issued by the Scottish Ministers

SCHEDULE B

This Schedule B consists of the following:

- Part 1 of Schedule B – General Information;
- Part 2 of Schedule B – Specification;
- Part 3 of Schedule B – Duties of the Quantity Surveyor;
- Part 4 of Schedule B – Project and Approval Gateway Cycles;
- Part 5 of Schedule B – Terms and Conditions for the Call-Off Arrangement;
- Part 6 of Schedule B – Award Procedures; and
- Part 7 of Schedule B – Management Arrangements.

GENERAL INFORMATION

The following is for background information only.

1.0 BACKGROUND

1.1 Scottish Prison Service (SPS)

The Scottish Prison Service (the 'Authority') is an Executive Agency of the Scottish Ministers and currently has an estate comprising 13 operational establishments throughout Scotland plus its headquarters (Calton House), central store (Fauldhouse) and college facility (Polmont). The addresses for and a map of all establishments and sites can be found on www.sps.gov.uk prisons.

The capital investment and maintenance programmes represent an important input into the service delivery of the Authority. It is envisaged that by delivering excellent building solutions which are fit for purpose, this will provide a positive contribution in enabling the delivery service outputs and support the Authority's Vision of:

Helping to build a safer Scotland – Unlocking Potential - Transforming Lives.

The last decade has seen the focus of the Authority's Estate project activity being on the redevelopment of four existing establishments (HMP Edinburgh, HMP Glenochil, HMP Perth and HMYOI Polmont) and the building of replacement establishments at HMP Low Moss, HMP Shotts and HMP & YOI Grampian. More recently Quantity Surveying Services have been procured under the exiting Framework Agreement for Estate redevelopment at HMP Highland, HMP Greenock Replacement and the Women's Estate (comprising the new National Facility and up to five Community Custodial Units).

In future there is envisaged to be further investment in the estate with the major redevelopment/replacement of at least one further establishment anticipated, and the number and scale of building projects, are likely to be more varied, with a substantial increase in the number of smaller projects to alter and extend existing facilities within establishments being undertaken. In addition, the Authority is to adopt a more structured and programmed approach to maintenance, resulting in a consolidated and managed approach to maintenance related projects. The construction of new establishments will, due to budget constraints, be progressed singularly and not concurrent with other large developments.

The cost and commercial input into feasibility and business cases is currently undertaken by the in-house Quantity Surveying team. It is proposed that this will continue. A Quantity Surveying service is required, to support the Authority, and to provide the service to progress approved projects forward to completion on site. In addition, the Estates teams responsible for maintenance of the prison estate, may require assistance with feasibility costing for Business Cases, budget submissions, etc. and to progress maintenance projects.

1.2 Highland and Islands Enterprise (H&IE):

H&IE have requested to be included in this Framework Agreement, however their programme of work is unknown at present. Their website is as follows for further information:

www.hie.co.uk

2.0 PROJECTS AND PROJECT COMPOSITION

- 2.1 The programme of work for the Authority is being developed from the process of reviewing business cases that are submitted from the establishments and reviewing maintenance and

replacement requirements across the estate. At this stage, a complete programme of intended works and requirements cannot be provided.

The projects that will likely require the Services could range from a value of approximately £20K to in excess of £150M (ex VAT). During the period of the Framework Agreement there is a forecast annual expenditure programme of between £2M and £4M for maintenance replacement works. The annual expenditure on capital projects works is in the region of £5M but with the potential for large scale new build projects resulting in further annual expenditure of up to circa £30M.

3.0 PROJECT DELIVERY STRATEGY

3.1 Contract Strategy

It is anticipated that the majority of works projects will be procured via a design and build contract under GC Works form (with amendments) of contract. A Framework Public Body may, however, choose by utilising in house staff or appointed design services consultants to fully, or partly, design a project as part of integrated Project Team(s). The Framework Contractor shall note that on occasion the use of NEC form of contracts may be used in lieu of the GC Works suite by the Framework Public Body.

The Framework Public Body follows a project and Approval Gateway cycle process and this will typically be either a single stage design and build contract or a traditional approach. The processes are illustrated and detailed at Part 4 of Schedule B.

3.2 Major Works

The Framework Public Body may choose in future to procure major works contractors using framework agreements. Currently, contractors are appointed on a project-by-project basis.

3.3 Standardisation and Continuous Improvement

The primary aim of the Framework Public Body is to achieve:

1. Predictability in time, cost and quality on all projects; and
2. Continuous improvement on all projects in a number of areas including:
 - (a) Cost and quality of solutions;
 - (b) Working practices; and
 - (c) Processes.

A long-term aim for the Framework Public Body is to achieve a portfolio of standard solutions which are designed to ensure maximum value for money, and to support the core service delivery of the Framework Public Body as effectively as possible.

The main focus of the integrated Project Team(s) will be to develop and implement the most appropriate solutions and design/physical security standards to meet the Framework Public Bodies business needs, ensuring that high quality and cost standards are met and maintained.

The Framework Contractor shall be required to assist the Framework Public Body to achieve these aims by providing cost advice on possible solutions, in relation to capital cost and life cycle costs and facilitate predictability in time and quality on all projects.

End of Part 1 of Schedule B

SPECIFICATION

1.0 SCOPE OF SERVICES

The scope of this Framework Agreement is for the provision of Quantity Surveying Services to assist the Framework Public Body achieve their aims and objectives in the delivery of building and maintenance projects. The Framework Contractor is not the sole provider of these Services to the Framework Public Body.

2.0 AIMS AND OBJECTIVES

The aims and objectives for this Framework Agreement are as follows:

2.1 Quantity Surveying Service:

The Framework Contractor shall:

- Provide value for money Quantity Surveying Services to the Framework Public Body;
- Ensure value for money is achieved on building and maintenance projects;
- Provide an effective challenge on projects in terms of costs, design creep and alternative solutions;
- Provide up-to-date market knowledge;
- Provide realistic budgets on which to base communications to government ministers, taking into account external factors and market conditions;
- Facilitate predictability in time, cost and quality on all projects;
- Facilitate continuous improvement on all projects in a number of areas including: cost and quality of solutions; working practices; and process; and
- Provide an effectively managed Service by qualified professionals who fully understand the design and build methodology, including: project delivery (on time and price) and the monitoring of the works contractor (controls/procurement/cost management).

An overview of the duties of the Quantity Surveyor are detailed at Part 3 of Schedule B. The duties listed are comprehensive and not all of those listed may be required for a Call off Contract. Actual duties required for any Call off Contract, will be identified in the "Required" column of the Duties Schedule.

End of Part 2 of Schedule B

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DUTIES OF THE QUANTITY SURVEYOR

	DUTIES OF THE QUANTITY SURVEYOR	Required	Actioned
Notes: <ol style="list-style-type: none"> 1. This Schedule shall be completed by the Framework Public Body inserting a tick within the box adjacent to the services to be provided by the Framework Contractor under a Call off Contract. 2. Services that have been ticked shall be deemed to be Basic Services under the terms of a Call off Contract. 3. All other Services which are not ticked shall be deemed to be Additional Services and subject to separate instruction under the terms of a Call off Contract, should they be required. 4. This Schedule contains generic job references which may be subject to change depending on the Framework Public Body and their specific organisational roles. 			
0.0	DUTIES UP TO AG1: Preparation of Business Case		
0.1	Obtain information from the Framework Public Body and prepare an Order of Cost Estimate, to inform the preparation of the Business Case and identification of the project budget.	<input type="checkbox"/>	<input type="checkbox"/>
1.0	DUTIES FROM AG1 TO AG2: Preparation of Design Proposals, Cost Plan & Programme		
1.1	Obtain the Framework Public Bodies Brief and all necessary information to allow a clear understanding of the Employers Requirements, constraints, programme and outline cost parameters.	<input type="checkbox"/>	<input type="checkbox"/>
1.2	Visit the site. Advise the Framework Public Body on any factors likely to affect cost, time or method of implementation.	<input type="checkbox"/>	<input type="checkbox"/>
1.3	Prepare a preliminary cost plan (Formal Cost Plan 1). The cost plan should be in sufficient detail and identify cost targets, to assist the Framework Public Bodies Project Manager (PM) and other members of the project Team to develop their design within the overall cost limit approved by the Framework Public Body .	<input type="checkbox"/>	<input type="checkbox"/>
1.4	Advise on the likely effect of market conditions.	<input type="checkbox"/>	<input type="checkbox"/>
1.5	Prepare a spend profile identifying forecast spend on a month by month basis over the duration of the project.	<input type="checkbox"/>	<input type="checkbox"/>
1.6	Provide cost estimates for option appraisal/feasibility studies on alternative design and construction options. Ensure that final solutions adopted are within the overall approved cost.	<input type="checkbox"/>	<input type="checkbox"/>
1.7	Attend and contribute to value engineering exercises as necessary to ensure that the design is developed within the approved budget.	<input type="checkbox"/>	<input type="checkbox"/>
1.8	Attend and contribute to early warning and risk reduction meetings.		
1.9	Prepare a monthly progress report including the following information: <ul style="list-style-type: none"> • Summary of key activities undertaken by the Framework Contractor during the reporting period; • Summary of any changes to the cost plan; • Update on spend profile; and • Planned activities for the forthcoming month. 	<input type="checkbox"/>	<input type="checkbox"/>
1.10	Attend fortnightly design/progress meetings with the PM and the Project Team.	<input type="checkbox"/>	<input type="checkbox"/>
1.11	Monitor the development of the scheme design against the cost plan and report any anticipated issues to the PM, including proposals for remedial actions to overcome those issues. Obtain the PM's instruction in sufficient time to allow	<input type="checkbox"/>	<input type="checkbox"/>

	corrective action to be taken. Develop the cost plan and submit a Formal Cost Plan 2 on the basis of the approved design and programme.		
2.0 DUTIES FROM AG2 TO AG3: Preparation of Invitation to Tender (ITT)			
2.1	Monitor the development of the scheme design against the cost plan up to tender stage and report any anticipated issues to the PM, including proposals for remedial actions to overcome those issues. Obtain the PM's instruction in sufficient time to allow corrective action to be taken.	<input type="checkbox"/>	<input type="checkbox"/>
2.2	Provide cost estimates for option appraisal/feasibility studies on alternative design and construction options. Ensure that final solutions adopted are within the overall approved cost.	<input type="checkbox"/>	<input type="checkbox"/>
2.3	Attend and contribute to value engineering exercises to ensure the design is developed within the approved budget.	<input type="checkbox"/>	<input type="checkbox"/>
2.4	Attend and contribute to early warning and risk reduction meetings.	<input type="checkbox"/>	<input type="checkbox"/>
2.5	Prepare a monthly progress report including the following information: <ul style="list-style-type: none"> Summary of key activities undertaken by the Framework Contractor during the reporting period; Summary of any changes to the cost plan; Update on spend profile; and Planned activities for the forthcoming month. 	<input type="checkbox"/>	<input type="checkbox"/>
2.6	Attend weekly design/progress meetings with the PM and the design team.	<input type="checkbox"/>	<input type="checkbox"/>
2.7	In liaison with the other members of the Project Team, contribute to the compilation of the ITT evaluation model (main criteria and sub-criteria) and their respective weightings and the evaluation methodology (i.e. the detailed methodology by which the Project Team will assess and score the tenders).	<input type="checkbox"/>	<input type="checkbox"/>
2.8	Obtain tender drawings, specifications and all other necessary information from the other members of the Project Team and prepare a pricing document for inclusion in tender documents. The pricing document shall be in sufficient detail to allow for detailed comparison and analysis of the tender submissions and to assist with the valuation of works in progress and valuation of variations etc.	<input type="checkbox"/>	<input type="checkbox"/>
2.9	Review the draft building contract conditions and advise the PM on construction related insurances, warranties/ third party rights, bonds for performance and other purposes etc.	<input type="checkbox"/>	<input type="checkbox"/>
2.10	In liaison with the other members of the Project Team, ensure that the pricing document and all other documents necessary for placing of contracts are completed and fully co-ordinated, are in accordance with the brief/format approved by the PM and are ready for issue by the programmed date.	<input type="checkbox"/>	<input type="checkbox"/>
2.11	Prepare a pre-tender estimate (Formal Cost Plan 3) based on the tender documentation.	<input type="checkbox"/>	<input type="checkbox"/>
3.0 DUTIES FROM AG3 TO AG4: Tender Evaluation and Contract Award			
Note: For pricing purposes assume that <u>five</u> prospective tenderers shall be taken forward to tender stage.			
3.1	During the tender period assist the PM in responding to tenderers' clarification requests or queries, relating to commercial issues and pricing document submission requirements.	<input type="checkbox"/>	<input type="checkbox"/>
3.2	Attend a bidder's forum as part of the Project team and assist the PM with providing clarification and/or answering any queries relating to commercial matters.	<input type="checkbox"/>	<input type="checkbox"/>
3.3	Check tender submissions for errors, omissions, exclusions, qualifications, inconsistencies between the tender documents and the tenders received etc. Submit recommendations on how to address any issues identified, to the PM for approval.	<input type="checkbox"/>	<input type="checkbox"/>

3.4	Prepare a detailed report on tenders including information on statement of tenders received; result of check for errors, omissions, exclusions, qualifications, inconsistencies between the tender documents and the tenders received; observations on pricing level; comparison of tenders; reconciliation against cost plan.	<input type="checkbox"/>	<input type="checkbox"/>
3.5	Advise the PM on any corrective action which may be required if the lowest tender is higher than the approved budget for the works.	<input type="checkbox"/>	<input type="checkbox"/>
3.6	Prior to contract acceptance, provide assistance and support to the PM in any discussions required with the successful tenderer, in order to finalise the level of the works contract sum.	<input type="checkbox"/>	<input type="checkbox"/>
3.7	Carry out a thorough and detailed analysis of the successful tenderer's proposed stage payment chart against their programme, in order to ensure the level and frequency of stage payments is an accurate reflection of the programme. Provide a report and recommendation to the PM on the stage payment chart.	<input type="checkbox"/>	<input type="checkbox"/>
3.8	Update the project spend profile identifying forecast spend on a month by month basis over the period of the project.	<input type="checkbox"/>	<input type="checkbox"/>
3.9	In liaison with the other members of the Project Team, provide the PM with all documentation necessary for entering into the works contract, including the final Schedule C pricing document, incorporating the agreed works contract sum and its breakdown to the appropriate level of detail and in the format required.	<input type="checkbox"/>	<input type="checkbox"/>
4.0 DUTIES FROM AG4–AG5: Mobilisation and Construction			
4.1	In collaboration with the other members of the Project Team, assist the PM in administering the terms of the works contract during operations on site and relating to the completion of the works .	<input type="checkbox"/>	<input type="checkbox"/>
4.2	Prepare and agree a Payment Schedule with the works contractor, detailing all key dates, in accordance with the provisions of the works contract.	<input type="checkbox"/>	<input type="checkbox"/>
4.3	Attend monthly site progress meetings with the works contractor and other Project Team members. Report on the cost position of the project relative to the overall approved budget for the works and make recommendations on any corrective action(s) which may be necessary.	<input type="checkbox"/>	<input type="checkbox"/>
4.4	In liaison with the other members of the Project Team, ensure that rigorous post works contract cost control procedures are established and followed, relative to any instructions which vary the works .	<input type="checkbox"/>	<input type="checkbox"/>
4.5	Advise on the cost of variations prior to the issue of instructions under the works Contract. Agree the cost of instructions (excluding loss and expense claims) issued under the works contract. Ensure that any prices submitted by the works contractor are reasonable in quantum and justifiable in relation to the contract requirements.	<input type="checkbox"/>	<input type="checkbox"/>
4.6	Agree a spend profile with the works contractor for each instruction issued under the works contract and update the overall project spend profile accordingly.	<input type="checkbox"/>	<input type="checkbox"/>
4.7	Visit the site at such intervals as are necessary in order to be fully aware of all matters which could affect the cost of the works and to assess the progress of the project for interim payment purposes.	<input type="checkbox"/>	<input type="checkbox"/>
4.8	Prepare a monthly cost report which shall provide an update on the current financial position of the project, including adjustment of any provisional sums expended; cost effect of any variations pending; instructions issued; payments made to the works contractor; forecast of the cost at completion; updated spend profile to completion and any other relevant issues. Cost reports shall be submitted using a template provided by the Framework Public Body.	<input type="checkbox"/>	<input type="checkbox"/>

	Submission dates for cost reports shall be to suit the Framework Public Bodies internal monthly financial reporting timetable and shall be agreed in advance between the Framework Contractor and the PM.		
4.9	Determine the value of work in progress including an adjustment for variations and prepare a monthly Valuation and draft Interim Payment Certificate.	<input type="checkbox"/>	<input type="checkbox"/>
4.10	Assess the impact of any changes in the works contractor's programme on the stage payment chart/ spend profile and advise the PM on any action required.	<input type="checkbox"/>	<input type="checkbox"/>
4.11	Alert the PM and the other members of the Project Team as to the possibility of receiving claims from the works contractor and, if such claims are submitted, keep the PM fully informed at all stages.	<input type="checkbox"/>	<input type="checkbox"/>
5.0 DUTIES FROM AG5–AG6: Post Construction and Completion			
5.1	Prepare the final account or similar financial statement. Facilitate agreement to the final account or similar financial statement from the parties to the works contract. For the purposes of this clause the final account or similar financial statement excludes the assessment of loss and expense claims. Provide the PM with regular updates on progress towards completion of the final account or similar financial statement.	<input type="checkbox"/>	<input type="checkbox"/>
5.2	Prepare recommendations for the payment of liquidated and ascertained damages.	<input type="checkbox"/>	<input type="checkbox"/>
5.3	Prepare monthly cost report updates until the final account is completed.	<input type="checkbox"/>	<input type="checkbox"/>
5.4	Provide a detailed cost analysis of the final account sum in an elemental and building by building/ functional format.	<input type="checkbox"/>	<input type="checkbox"/>
5.5	Provide the PM with project cost information to assist in the completion of forms required by the Assessor (for property rating purposes) and the District Valuer (for asset valuation purposes).	<input type="checkbox"/>	<input type="checkbox"/>
5.6	Make recommendations to the PM for final payment and prepare a draft Final Payment Certificate.	<input type="checkbox"/>	<input type="checkbox"/>
5.7	Participate along with the other members of the Project Team in a post-project review exercise, to identify lessons learned and recommendations for improving future performance.	<input type="checkbox"/>	<input type="checkbox"/>
6.0 SUPPLEMENTARY DUTIES			
	<u>General</u>		
6.1	Provide estimates of replacement costs for insurance purposes.	<input type="checkbox"/>	<input type="checkbox"/>
6.2	Provide services in connection with insurance claims.	<input type="checkbox"/>	<input type="checkbox"/>
6.3	Facilitate, set up and manage value engineering exercises.	<input type="checkbox"/>	<input type="checkbox"/>
6.4	Facilitate, set up and manage early warning and risk reduction meetings.	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Financial</u>		
6.5	Advise on the financial implications of developing different sites.	<input type="checkbox"/>	<input type="checkbox"/>
6.6	Advise on the preparation of development appraisals.	<input type="checkbox"/>	<input type="checkbox"/>
6.7	Advise on the cost implications of alternative development appraisals.	<input type="checkbox"/>	<input type="checkbox"/>
6.8	Advise on the cost implications of alternative development programmes.	<input type="checkbox"/>	<input type="checkbox"/>
6.9	Prepare sustainability cost studies.	<input type="checkbox"/>	<input type="checkbox"/>
6.10	Prepare life-cycle cost studies and estimates of annual running costs.	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Contractual</u>		

6.11	Provide specialist quantity surveying advice on the interpretation of contracts and contractual clauses.	<input type="checkbox"/>	<input type="checkbox"/>
6.12	Advise on the works contractor's entitlement to extensions of time. Analyse and report on the works contractor's application(s) for extensions of time. Prepare recommendations for the Framework Public Body's approval.	<input type="checkbox"/>	<input type="checkbox"/>
6.13	Advise on the cost and contractual consequences arising from an acceleration instruction.	<input type="checkbox"/>	<input type="checkbox"/>
6.14	Advise on the works contractor's entitlement to loss and expense. Analyse and report on the Contractor's loss and expense claim(s). Prepare recommendations for the Framework Public Bodies approval.	<input type="checkbox"/>	<input type="checkbox"/>
6.15	Prepare documentation and/or provide advice to support adjudication proceedings. Attend adjudication proceedings.	<input type="checkbox"/>	<input type="checkbox"/>
6.16	Prepare documentation and/or provide advice to support mediation proceedings. Attend mediation proceedings.	<input type="checkbox"/>	<input type="checkbox"/>
6.17	Prepare documentation and/or provide advice to support arbitration and/or litigation proceedings. Attend arbitration and/or litigation proceedings.	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Project-Specific Services</u>		

KEY DELIVERABLES

1.0 General

The following section (although not exhaustive) identifies the key deliverables required in the provision of the Services at the various stages of a project.

All documents produced shall clearly identify the following:

- Title;
- Revision number;
- Date of issue;
- Details of recipients;
- Prepared by;
- Checked by; and
- Authorised by.

All documents shall be issued electronically to the PM. All documents e-mailed from outside the Authority's secure e-mail network shall be encrypted in accordance with Authority's Estates Information Security procedures (Refer Part 7 of Schedule B) as may be amended from time to time.

2.0 Deliverables from AG1 to AG2

- Formal Cost Plan 1;
- Spend Profile;
- Monthly Progress Reports; and
- Formal Cost Plan 2.

3.0 Deliverables from AG2 – AG3

- Monthly Progress Reports;
- Pricing Document; and
- Formal Cost Plan 3.

4.0 Deliverables from AG3 to AG4

- Report on Tenders;
- Report on Stage Payments/Spend Profile; and
- Final Schedule C pricing document for incorporation in Call Off Contract.

5.0 Deliverables from AG4 to AG5

- Monthly Cost Reports;
- Valuations; and
- Interim Payment Certificates.

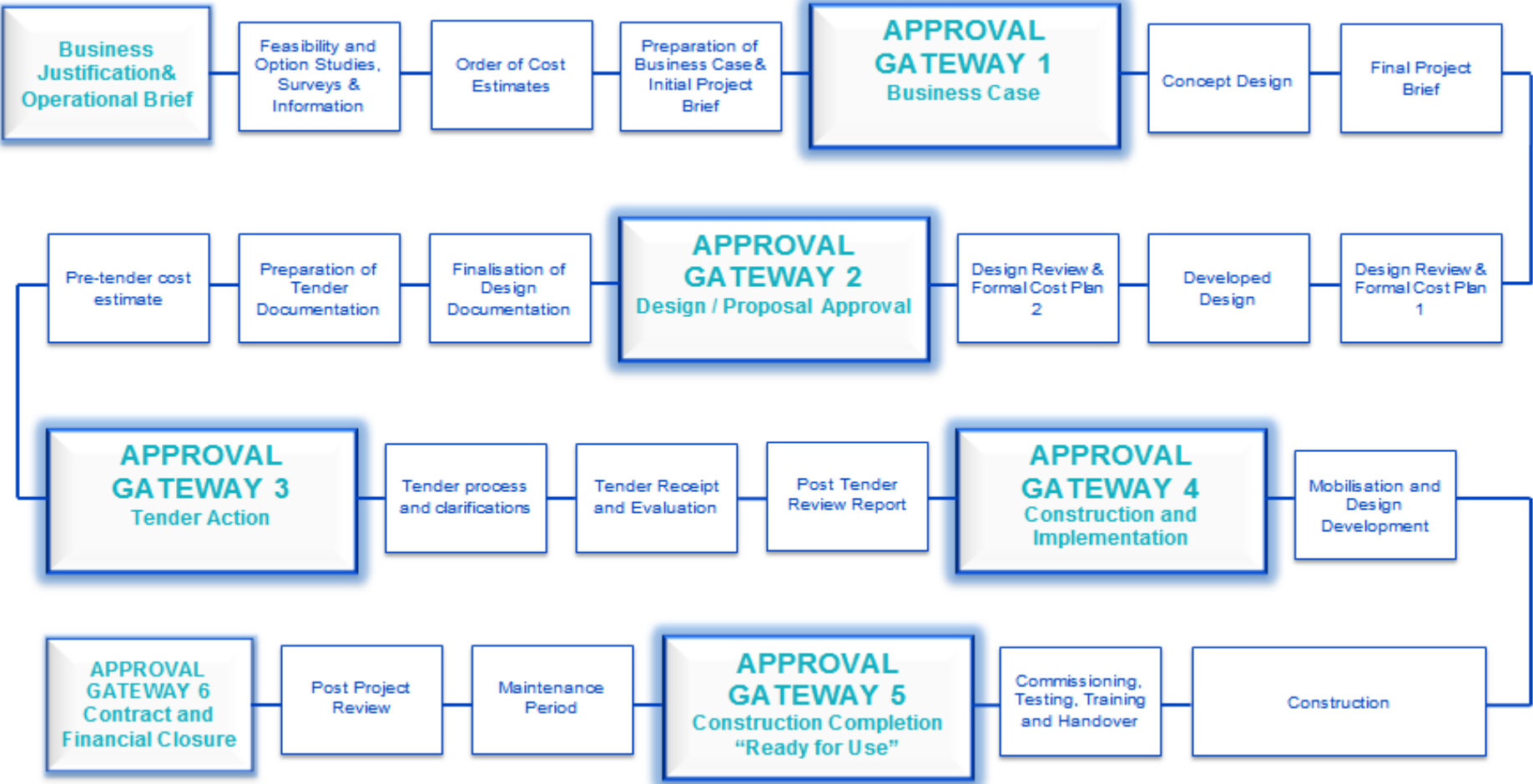
6.0 Deliverables from AG5 to AG6

- Monthly Cost Reports;
- Final Account/ Financial Statement;
- Cost Analysis; and
- Final Payment Certificate.

End of Part 3 of Schedule B

This is Part 4 of Schedule B of ITT number 01674 issued by the Scottish Ministers

PROJECT AND APPROVAL GATEWAY CYCLES



End of Part 4 of Schedule B

TERMS AND CONDITIONS FOR THE CALL OFF ARRANGEMENT

SGTC 2 (SPS) CONDITIONS OF CONTRACT FOR THE PURCHASE OF SERVICES

These Conditions may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed in writing by the Purchaser.

It should be noted that the following Terms and Conditions shall be used for Call off arrangements contracted under this Framework Agreement. For the avoidance of doubt, the following Terms and Conditions may be amended to suit the requirements of each Call off arrangement, however if there is a conflict between the Terms and Conditions for the Call off arrangement and the Framework Terms and Conditions or any specific terms which are not included in the Call off Terms and Conditions, then the Framework Terms and Conditions shall take precedence.

1. DEFINITIONS

In these Conditions:

“Baseline Personnel Security Standard” means the pre-employment controls for all civil servants, members of the Armed Forces, temporary staff and government contractors generally;

“Contract” means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these Conditions and other documents (or parts thereof) specified in the Purchase Order;

“Contract Commencement Date” means *[insert date]*;

“Contract Term” means *[insert contract term]*;

“Data Controller”, “Data Processor”, “Data Subject” and “Data Subject Access Request” have the meaning given in the Data Protection Laws;

“Data Processor” has the meaning given in the Data Protection Laws;

“Data Protection Laws” means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a party is subject including the Data Protection Act and any statutory modification or re-enactment thereof and the GDPR;

“Disclosure level” means *[Basic, Standard, or Enhanced including, where required, the Protection of Vulnerable Groups (PVG) verification]*;

“Expiry Date” means *[insert intended Contract expiry date]*;

“Extension Period” means *[insert extension period if required]*;

“GDPR” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

“Intellectual Property Rights” means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or developed as part of the Services by or on behalf of the Supplier;

“Personal Data” has the meaning given in the Data Protection Laws;

“Premises” means the location where the Services are to be performed, as specified in the Contract;

“Processing” has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

“Purchase Order” means the document setting out the Purchaser’s requirements under the Contract;

“Purchaser” or “Framework Public Body” *[insert contracting Framework Public Body]*;

“Services” means the services to be provided as specified in the Contract and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

“Supervisory Authority” has the meaning given in the Data Protection Laws;

“Supplier” or “Framework Contractor” means the person, firm or company to whom the Contract is issued; and

“Supplier Representatives” means all persons engaged by the Supplier in the performance of its obligations under the Contract including:

- its employees and workers (including persons employed by a third party but working for and under the control of the Supplier);
- its agents, suppliers and carriers; and
- any sub-contractors of the Supplier (whether approved under Condition 21 (Assignment and sub-contracting) or otherwise).

2. CHANGE TO CONTRACT REQUIREMENTS

- 2.1 The Purchaser may order any variation to any part of the Services that for any other reason shall in the Purchaser's opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.
- 2.2 Save as otherwise provided herein, no variation of the Services as provided for in Condition 2.1 hereof shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within 2 working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 2.3 Where any such variation of the Services made in accordance with Condition 2.1 and 2.2 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the Service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in the Purchaser's opinion, appropriate and reasonable in the circumstances.

3. INSPECTION OF PREMISES AND NATURE OF SERVICES

- 3.1 The Supplier is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and Premises.
- 3.2 The Purchaser shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.

4. SECURITY AND ACCESS TO THE PURCHASER'S PREMISES

- 4.1 The Supplier shall comply with the rules, regulations, policies, procedures and requirements in force at the Purchaser's Premises including those rules of which the Supplier has been notified, or should have known through signage or other publically displayed notices in the Premises, or through general practices and standards applicable to all parties working within the secure environment of the Premises.
- 4.2 Any access to, or occupation of, the Purchaser's Premises which the Purchaser may grant the Supplier from time to time is on a non-exclusive licence basis free of charge. The Supplier must use the Purchaser's Premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's Premises to such individuals as are necessary for that purpose.
- 4.3 The Supplier must comply with the Purchaser's policies concerning Baseline Personnel Security Standard and Disclosure Scotland checks and such modifications to those policies or replacement policies as are notified to the Supplier from time to time.
- 4.4 The Supplier must ensure that any individual Supplier Representative entering Purchaser Premises has completed the process for obtaining Baseline Personnel Security Standard clearance and also obtained a Disclosure Scotland certificate. The Supplier acknowledges that the Purchaser has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard

clearance and who is unable to evidence a current, valid Disclosure Scotland certificate at the Disclosure Level indicated in this Contract.

The Supplier shall instruct and ensure that their staff carry their Disclosure Scotland certificate and a valid form of identification (such as a photo-card driving licence or similar) when seeking entry to the Premises.

- 4.5 The Supplier must notify the Purchaser of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance or the validity of a Disclosure Scotland certificate for any persons or personnel engaged by it who are performing activities under the Contract in the Purchaser's Premises. In the case of persons or personnel whose activities require them to enter Purchaser Premises, the Supplier shall ensure that, following any adverse issue, the person concerned does not act in the performance of the Contract until the Purchaser has confirmed approval.
- 4.6 At the Purchaser's written request, the Supplier must provide a list of the names and addresses of all persons who may require admission to the Purchaser's Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Purchaser may reasonably request.
- 4.7 In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser's Premises may be granted to individual Supplier Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.
- 4.8 The Purchaser may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Supplier Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.
- 4.9 **Prohibited Items.** The Supplier acknowledges that a range of items are prohibited within the Purchaser's Premises and that it is a criminal offence to introduce or to attempt to introduce such items to the Purchaser's Premises (*or to remove them from the Purchaser's Premises*). All such items in the possession of a person or in a vehicle seeking entry to or exit from the secure perimeter of the Purchaser's Premises must be declared to the Purchaser's security staff and be left out-with the Premises precincts or at the Premises reception
- 4.9.1 Prohibited Items include: Personal communication devices (PCDs) including PDAs, Laptops, tablets, mobile phones (including any part of a mobile phone such as a charger), handheld cameras and devices capable of video or audio recording; and any other device that allows connection to the internet or phone networks; Memory devices (such as USB devices or mobile phone SIM card); Offensive weapons such as knives and blades, firearms or explosives, or any item which is sharply pointed; Smoking materials such as tobacco, cigarettes, e-cigarettes, vaping devices, lighters and matches; Drugs including prescribed medication; E-Book readers; and Alcohol. Satellite navigation devices are not in themselves prohibited but may contain a removable memory card which is an article that should be declared.
- 4.9.2 The Purchaser recognises the legitimate use of **vehicle on-board cameras** for security of the vehicle & load, incident accident recording and insurance purposes. Use of vehicle on-board cameras should be declared but is permissible within the secure perimeter of the Premises for the intended purposes subject to the following provisions:
 - The Purchaser has a presumption that recorded images will be automatically overwritten after a period of operation. The Supplier should ensure that any downloaded images are held securely and only for as long as necessary to support a legitimate business need.
 - The Supplier (and its appointed sub-contractors) shall ensure that it maintains appropriate processes in accordance with the GDPR to restrict access to named persons to any imagery that the Supplier (and its appointed sub-contractors) may record or hold, including any recorded within the Premises, from which individual persons can be identified or which indicates Premises security processes.
 - Unauthorised release of images recorded within the Premises into the public domain would be considered a breach of the Contract.
 - The Supplier (and its appointed sub-contractors) has a duty to cooperate with any access request from the Purchaser to view images recorded in the Premises and to support any investigation into the inappropriate release of such material.
- 4.9.3 Where use of a PCD such as a laptop or computer or the use of an electronic device or tool listed in Condition 4.9.1 is material to performance of the Contract, the Supplier will require to obtain prior written consent from the Purchaser (through the Premises Governor) before bringing onto and using such devices within the Purchaser's premises. The Supplier remains wholly responsible for the controlled use and security of such items within the Purchaser's Premises

- 4.10 Security passes (where issued by the Purchaser) shall remain the property of the Purchaser and shall be surrendered on demand or following the termination or expiry of the Contract.
- 4.11 All decisions of the Purchaser under this Condition are final and conclusive.
- 4.12 Breach of this Condition by the Supplier is a material breach for the purposes of Condition 19.2 (Termination).

5. SUPPLIER'S STATUS

In carrying out the Services the Supplier shall be acting as principal and not as the agent of the Purchaser. Accordingly:

- (a) the Supplier shall not (and shall procure that the Supplier's agents and servants do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Purchaser, and
- (b) nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, or the Purchaser's staff or agents.

6. SUPPLIER'S PERSONNEL

- 6.1 The Supplier shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Purchaser the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 6.2 The decision of the Purchaser shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by this Condition.
- 6.3 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

7. MANNER OF CARRYING OUT THE SERVICES

- 7.1 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.
- 7.2 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the Supplier to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Purchaser may reasonably require.
- 7.3 The Purchaser shall have the power at any time during the progress of the Services to order in writing:
- (a) the removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract; and/or
 - (b) the substitution of proper and suitable materials; and/or
 - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship is not in the opinion of the Purchaser in accordance with the Contract.
- 7.4 The Supplier shall forthwith comply with any order made under Condition 7.3.
- 7.5 On completion of the Services the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

8. HEALTH AND SAFETY

The Supplier shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Purchaser, whether specifically or

generally. The Supplier shall indemnify the Purchaser and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.

9. TIME OF PERFORMANCE

The Supplier shall begin performing the Services on the date stated in the Contract or any Purchase Order and shall complete the Services by the date stated in the Contract or any Purchase Order or continue to perform them for the period stated in the Contract or Purchase Order (whichever is applicable). Time is of the essence of the Contract. The Purchaser may by written notice require the Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.

10. PAYMENT

- 10.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.
- 10.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 10.3 Notwithstanding Condition 21 (Assignment and Sub-contracting) of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 20 (Recovery of Sums Due) of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary the arrangements for payment of the price or for handling invoices.
- 10.4 The Supplier is requested to address complaints regarding late payment of the Purchaser's invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Scottish Prison Service, Finance Department (Room G34), Calton House, 5 Redheughs Rigg, Edinburgh EH12 9HW. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers' legal rights.

11. FREE-ISSUE MATERIALS

Where the Purchaser for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the Purchaser. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall dispose of them as the Purchaser may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of the Supplier's servants, agents or sub-Contractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Purchaser, the Supplier shall deliver up such materials whether processed or not to the Purchaser on demand.

12. AUDIT

- 12.1 The Supplier shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Contract.
- 12.2 The provisions of this Condition 12 shall apply during the continuance of this Contract and after its termination howsoever arising.

13. CORRUPT GIFTS OR PAYMENTS

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs which are created or developed by the Supplier on behalf of the Purchaser for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract are hereby assigned to and shall vest in the Crown absolutely.

- 14.2 Except as may expressly be provided for in the Contract, neither party acquires any interest in or license to use the other party's Intellectual Property Rights owned or developed prior to or independently of the Contract.
- 14.3 The Supplier must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract. The Supplier shall indemnify the Purchaser against all actions, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 14.3.
- 14.4 The provisions of this Condition 14 shall apply during the continuance of this Contract and after its termination howsoever arising.

15. INDEMNITY AND INSURANCE

- 15.1 Without prejudice to any rights or remedies of the Purchaser the Supplier shall indemnify the Purchaser and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Supplier.
- 15.2 The Purchaser shall indemnify the Supplier in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Supplier acting in accordance with the Purchaser's specific written instructions. This indemnity provision shall not apply if the Supplier:
- (a) acts on the Purchaser's specific written instructions but fails to notify the Purchaser in accordance with Condition 26.11(c) (Data Protection) of this Contract; or
 - (b) fails to comply with any other obligation under the Contract.
- 15.3 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the indemnity in Condition 15.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Purchaser, the Crown or any servant or agent of the Crown) the indemnity contained in Condition 15.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Purchaser, the Crown or any servant or agent of the Crown.
- 15.4 The Supplier shall have in force and shall require any sub-contractor to have in force:
- (a) employer's liability insurance in accordance with any legal requirements for the time being in force, and
 - (b) professional indemnity amount shall be £1 million. Professional indemnity insurance in the sum of not less than the Professional Indemnity Amount for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing.
 - (c) public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £1 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing.
- 15.5 The policy or policies of insurance referred to in Condition 15.4 shall be shown to the Purchaser whenever the Purchaser requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder.

16. DISCRIMINATION

The Supplier must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Purchaser.

17. BLACKLISTING

The Supplier must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Condition is a material default which shall entitle the Purchaser to terminate the Contract.

18. OFFICIAL SECRETS ACT, CONFIDENTIALITY, AND ACCESS TO GOVERNMENT INFORMATION

- 18.1 The Supplier undertakes to abide and procure that the Supplier's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.
- 18.2 The Supplier shall keep secret and not disclose and shall procure that the Supplier's employees keep secret and do not disclose any information of a confidential nature obtained by the Supplier by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
- 18.3 All information related to the Contract will be treated as commercial in confidence by the parties except that:
- (a) The Supplier may disclose any information as required by law or judicial order to be disclosed; and/or
 - (b) The Purchaser may disclose any information as required by law or judicial order to be disclosed. Further, the Purchaser may disclose all information obtained by the Purchaser by virtue of the Contract to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Purchaser shall if the Purchaser sees fit disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament, (MSPs) or Members of the United Kingdom Parliament (MPs). Such disclosure shall not be treated as a breach of this Contract.
- 18.4 The provisions of this Condition 18 shall apply during the continuance of this Contract and after its termination howsoever arising.

19. TERMINATION

- 19.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:
- (a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier's affairs; or
 - (b) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or
 - (c) where the Supplier is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 19.2 On the occurrence of any of the events described in Condition 19.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Purchaser in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect.
- 19.3 The Purchaser may terminate the Contract in the event that:
- (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
 - (b) the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or

- (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

- 19.4 The Purchaser may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social and employment law.
- 19.5 In addition to the Purchaser's rights of termination under Condition 19.2, 19.3 and 19.4, the Purchaser shall be entitled to terminate this Contract by giving to the Supplier not less than 30 days notice to that effect.
- 19.6 Termination under Condition 19.2, 19.3, 19.4 or 19.5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 12(Audit), 14 (Intellectual Property Rights), 18 (Official Secrets Acts, etc.), 25 (TUPE) and 26 (Data Protection).

20. RECOVERY OF SUMS DUE

Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Contract or under any other agreement or contract with the Purchaser or with any department, agency or authority of the Crown.

21. ASSIGNATION AND SUB-CONTRACTING

- 21.1 The Supplier shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract or these Conditions.
- 21.2 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Purchaser immediately it is issued.
- 21.3 Where the Supplier enters into a sub-contract it must ensure that a provision is included which:
- 21.3.1 requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Supplier in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;
 - 21.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser; and
 - 21.3.3 in the same terms as that set out in this Condition 21.3 (including for the avoidance of doubt this Condition 21.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.
- 21.4 The Supplier shall also include in every sub-contract:
- 21.4.1 a right for the Supplier to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in Condition 19.3 occur; and
 - 21.4.2 a requirement that the sub-contractor includes a provision having the same effect as 21.4.1 above in any sub-contract which it awards.

In this Condition 21.4, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Purchaser in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

22. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown in the Contract, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

23. COMPLIANCE WITH THE LAW ETC.

In providing the Services and otherwise when performing the Contract, the Supplier must comply in all respects with:

- 23.1 all applicable laws;
- 23.2 any applicable requirements of regulatory bodies; and
- 23.3 Good Industry Practice.

In this condition, 'Good Industry Practice' means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Supplier under the same or similar circumstances.

24. DISPUTE RESOLUTION

- 24.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.
- 24.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.
- 24.3 Any arbitration under 24.2 is subject to the Arbitration (Scotland) Act 2010.

25. TUPE

Not Used

26. DATA PROTECTION

- 26.1 The Supplier acknowledges that Personal Data described in the scope of the Schedule (Data Protection) will be Processed in connection with the Services under this Contract. For the purposes of any such Processing, both parties agree that the Supplier acts as the Data Processor and the Purchaser acts as the Data Controller.
- 26.2 Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Condition 26 are without prejudice to any obligations and duties imposed directly on the Supplier under Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.
- 26.4 The Supplier will, in conjunction with the Purchaser and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 26.4 The Supplier will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 26.5 The Supplier must:
 - 26.5.1 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Supplier is subject; in which case the Supplier must inform the Purchaser of that legal requirement before processing unless prohibited by that law the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier's obligations under this Contract or as is required by the Law;

- 26.5.2 subject to Condition 26.5.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Purchaser's prior written consent;
- 26.5.3 take all reasonable steps to ensure the reliability and integrity of any Supplier Representatives who have access to the Personal Data and ensure that the Supplier Representative:
- (a) are aware of and comply with the Supplier's duties under this Condition;
 - (b) are subject to appropriate confidentiality undertakings with the Supplier or the relevant sub-contractor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 26.5.4 implement appropriate technical and organisational measures including those set out in the Schedule (Data Protection) and in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 26.6 The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Supplier must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.
- 26.7 If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Supplier must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.
- 26.8 The Supplier must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23. The Supplier must notify the Purchaser if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Laws;
 - (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;
- and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.
- 26.9 Taking into account the nature of the Processing and the information available, the Supplier must assist the Purchaser in complying with the Purchaser's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events;
 - (b) notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;

- (c) assisting the Purchaser with communication of a personal data breach to a Data Subject;
 - (d) supporting the Purchaser with preparation of a data protection impact assessment; and
 - (e) supporting the Purchaser with regard to prior consultation of the Supervisory Authority.
- 26.10 At the end of the provision of Services relating to Processing the Supplier must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.
- 26.11 The Supplier must:
- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Supplier's compliance with this Condition 26;
 - (b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Condition 26 and contribute as is reasonable to those audits and inspections; and
 - (c) inform the Purchaser if in its opinion an instruction from the Purchaser infringes any obligation under the Data Protection Laws.
- 26.12 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 26.14 with minimum disruption to the Supplier's day to day business.
- 26.13 The Supplier must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Purchaser containing the information set out in Article 30(2) of the GDPR.
- 26.14 If requested, the Supplier must make such records referred to Condition 26.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

27. HEADINGS

The headings to Conditions shall not affect their interpretation.

28. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

29. PERIOD OF CONTRACT

- 29.1 The Contract will commence on the Commencement Date and will continue for the Contract Term unless extended or terminated in accordance with this Contract.
- 29.2 This Contract may be extended at the sole discretion of the Purchaser in any number of periods up to the term of Extension Period, provided a notice of extension has been served on the Supplier no later than one month prior to the Expiry Date. The provisions of the Contract will apply throughout any such period of extension subject to any variation of price pursuant to this Contract.

End of Part 5 of Schedule B

This is Part 6 of Schedule B of ITT number 01674 issued by the Scottish Ministers

AWARD PROCEDURES FOR CALL-OFF CONTRACTS

1.1 If the Framework Public Body decides to source Services through this Framework Agreement, then they will award the Services in accordance with the procedure in this Ordering Procedure and the requirements of the Framework Agreement.

1.2 There are four routes under which Services can be awarded:

- Estimated fee value **greater than £7,500.00*** (Excluding VAT):
 - (1) mini-competition (1.5) - via an Invitation To Quote (ITQ); or
 - (2) variation instruction (1.6).
- Estimated fee not exceeding £7,500.00 (Excluding VAT):
 - (3) direct award (1.7); or
 - (4) rolling award (1.8).

* In certain circumstances, the Framework Public Body may choose to mini-compete the Service requirements under £7,500.00. In this instance, the mini-competition process detailed in 1.5 will generally be followed.

* In some instances, particularly where the construction value of a project is in excess of £5m, the Framework Public Body reserves the right to undertake a totally separate procurement activity for the required Services.

1.3 Framework Contractor's Obligations

- Submitting a formal written quote on-time that fully meets the requirements set out in the ITQ;
(Only in exceptional instances is it anticipated that a Framework Contractor would not submit a quote);
- Ensure their unitary rates are no greater than those stated in the Framework Agreement with the Authority;
- Provide a fixed lump sum Price, wherever possible; and
- Any quote remains valid for at least 60 days and can be extended by mutual agreement.

1.4 Framework Public Body's Obligations

Each of the Framework Public Bodies:

- Can accept or reject a formal written quote received from a Framework Contractor; no obligation to award a Contract(s);
- Is directly responsible and shall manage any performance and / or any non-performance issue(s) with any Contract(s) they award; and
- Is directly responsible for maintaining the process of rolling awards (1.8).

1.5 Mini-Competition

The Authority envisages that majority of contracts will have a value greater than £7,500.00 (excluding VAT) and, in this case, a **mini-competition** will be undertaken. It should be noted that a Contract for QS Services may consist of services to be provided on a single works project or may be for services on a package of several works projects.

The Framework Public Body shall prepare its Invitation to Quote (ITQ), which shall include:

- The specific basic Services required – based on Part 3 of Schedule B;
- Any bespoke requirements and / or outputs (if required);

- Any specific service levels (if required);
- The Terms and Conditions for the Call Off Agreement that shall apply, e.g. standard call arrangement terms as detailed in Part 5 Schedule B (with amendments / variations);
- A pricing table – to be completed by the Framework Contractors;
 - This shall include the proposed payment mechanism to be used;
- The award criteria (see below);
- A reasonable timescale to allow Framework Contractors to formally respond by the stated date, time and recipient's name;
 - It is generally anticipated that Framework Contractors will have around ten working days to submit their quote (this may be reduced in certain circumstances); and
- A named contact (and contact details) for any queries.

Award Criteria

- The evaluation criteria can range (in percentage terms), as follows:
 - Quality: 30% (minimum) to 70% (maximum); and
 - Price: 30% (minimum) to 70% (maximum);
- Subject to adding-up to 100%;
 - The actual range deployed will be based on the needs of the contract; and
 - i.e., the technically more challenging contracts are like to have a higher qualitative weighting;
- Should there be any sub-criteria and related weightings, this must be disclosed in the ITQ.

1.6 Variation Instruction (to a specific Framework Contractor)

Where a contract has been awarded through a **mini-competition** process the Framework Public Body reserves the right to award additional individual appointments for Services or for projects of similar scope and nature to those within an existing contract under a variation instruction process. The value of any single variation instruction will have a value no greater than 50% of the original Contract value (Excluding VAT).

- It is generally anticipated that Framework Contractors will have two working days to submit their quotation for services (this may be reduced in certain circumstances); and
- The Framework Public Body may verbally discuss their requirement with a Framework Contractor (rather than providing an ITQ) but the Framework Contractor must provide the Framework Public Body with a formal written quotation, which they can either accept or reject. This appointment shall be made by issue of a Variation Instruction.

1.7 Direct Award (to a specific Framework Contractor)

For Services with an estimated fee value not exceeding £7,500.00 (Excluding VAT), the Framework Public Body may choose to direct award to a specific Framework Contractor, without the need to undertake a mini-competition.

- The process for a mini-competition should be broadly followed to a Framework Contractor;
- The primary exception being no requirement for award criteria;
- In addition, the timescales for the Framework Contractor formally responding can be significantly reduced (but need to be reasonable). It is generally anticipated that the Framework Contractor will have two working days to submit their quote (this may be reduced in certain circumstances); and
- The Framework Public Body may verbally discuss its requirement with a Framework Contractor (rather than providing an ITQ) but the Framework Contractor must provide the Framework Public Body with a formal written quotation, which they can either accept or reject. This appointment shall be made by issue of an Order to Undertake Services.

Below are some examples of criteria that may warrant the direct award of a specific Framework Contractor:

- The Framework Contractor is currently undertaking a service in the location or connected with the requirement;
- The Framework Contractor has had recent (specific) knowledge and experience of the work type that is directly relevant to the requirement; and
- The Framework Contractor has a particular specialism that is required.

1.8 Rolling Award

For Services with an estimated fee value not exceeding £7,500.00 (Excluding VAT), if there is no rationale for a direct award, then the Framework Public Body will award to the Framework Contractors on a rotational basis.

The starting-point for this type of award shall be based on the overall outcome of the Framework evaluation.

The Framework Contractor who scored the highest overall (Firm 1) would be approached to provide a written formal quote, which the Framework Public Body may accept or reject. Should a further project (Project 2) arise, then (Firm 2) would then be approached; the Framework Public Body may accept or reject their quote. This process shall continue until the list of Framework Contractors has been exhausted, when it shall revert to Firm 1.

The table below illustrates – solely for an example – how the Rolling Award may be awarded.

SERVICES	
Firm 1	Project 1
Firm 2	Project 2
Firm 3	Project 3

- The process for a mini-competition should be broadly followed to a Framework Contractor;
- The primary exception being no requirement for award criteria;
- In addition, the timescales for the Framework Contractors formally responding can be significantly reduced (but need to be reasonable). It is generally anticipated that Framework Contractors will have two working days to submit their quote (this may be reduced in certain circumstances); and
- The Framework Public Body may verbally discuss their requirement with a Framework Contractor (rather than providing an ITQ) but the Framework Contractors must provide the Framework Public Body with a formal written quotation, which they can either accept or reject. This appointment shall be made by issue of an Order to Undertake Services.

1.9 Contract Sign-off / Award

- This can take place with a formal bound contract being agreed and signed by the Framework Contractor and the Framework Public Body;
- A Letter of Appointment being agreed and signed by the Service Provider and the Framework Public Body; or
- An offer by the Framework Contractor and an acceptance by the Framework Public Body by means of an Order or Instruction.

Any instruction, verbal or written, issued by the Framework Public Body will not be binding unless the criteria as detailed in one of the three bullets points directly above has been met.

1.10 No Award

Notwithstanding that the Framework Public Bodies have followed a process as set out above, the Framework Public Bodies shall be entitled, at all times, to decline to make an award for its Service requirements. Nothing in this Framework Agreement shall oblige any Framework Public Body to award a contract for any of the Services.

End of Part 6 of Schedule B

MANAGEMENT ARRANGEMENTS

1.0 Contract Management

The Framework Public Body shall be responsible for the management of the Framework Agreement. The Framework Contractors shall be expected to work proactively with the Framework Public Body to implement and contribute to the contract management of the Framework Agreement.

2.0 Roles & Responsibilities

Key roles and responsibilities and activities required to be undertaken of the various Framework Agreement parties are detailed below.

	Key Roles & Responsibilities
The Authority	Undertake contract management including: <ul style="list-style-type: none"> • Monitoring Framework Contractor's performance; • Co-ordinating management information from the Framework Contractors and Framework Public Bodies; • Managing performance reviews with the Framework Contractors; • Managing major performance issues; • Managing Framework Agreement variations, and disseminating outcomes; • Managing the extension of any optional framework extension periods; and • Facilitating and promoting continuous improvement.
Framework Contractors	Contribute to the contract management process by: <ul style="list-style-type: none"> • Delivering Framework contractual obligations and Services through individual Call off Contracts; • Minimising turnaround timescales for issue of all tendering and contract administration documentation to meet the programme requirements stipulated within individual Call off Contracts and to satisfy the Project Manager's requirements. • Ensuring that sufficient resources are available to meet required programme delivery timescales. • Endeavouring to comply with the Authority's aspiration to conclude the Commercial Tender Evaluation and reporting process on all tendering exercises solely containing clean/unqualified offers within 10 Working Days of receipt of tenders. • Providing management information and in a timely fashion to the Authority (and as requested on an ad hoc basis by Framework Public Bodies); • Preparing and submitting an annual performance review report; • Attending performance review meetings; • Providing an effective account management and customer services role to both the Authority and Framework Public Bodies; and Contributing to continuous improvement and innovation leading to improved value for money and process efficiencies.
Framework Public Bodies	Contribution to the contract management of the Framework Agreement process including: <ul style="list-style-type: none"> • Issuing ITQ's and calling off from the Framework Agreement in accordance with the terms and conditions; • Ensuring the Framework Contractors are paid in accordance with the terms of the Framework Agreement; • Undertaking contract management of their own Call-off Contracts against any performance indicators, including management of any variations and day to day queries arising from service delivery and liaison with the Framework Contractors;

	<ul style="list-style-type: none"> • Contributing to the contract management review meetings; • Contributing to the identification of continuous improvement leading to increased value for money and process efficiencies; and • Referring any Framework Contractor performance issues or recurring minor issues to the Authority.
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3.0 Performance Measurement

The Authority shall appoint a Framework Manager for the Quantity Surveying Service, who shall have the main responsibility for the management of the Services under the Framework Agreement and provide the day to day liaison point for the Framework Contractor's Framework Manager.

To ensure that delivery of the Framework Agreement is maintained at a satisfactory level the Authority, the Framework Public Bodies and the Framework Contractors shall hold performance reviews on an annual basis (commencing not earlier than 1 year after the Commencement Date of the Framework Agreement). These reviews are intended to allow two-way dialogue and provide feedback on inhibitors, successes and overall performance.

Whilst the Framework Agreement shall not have any defined minimum service levels, each Framework Contractor will be monitored by the Authority and the Framework Public Bodies on its performance against Construction Consultant Benchmark Scoring (*1) broadly in each of the areas detailed below:

- Communication and customer interface;
- Service delivery;
- Service quality;
- Invoicing;
- Production of management information; and
- Customer satisfaction.

To aid this monitoring process a series of Key Performance Indicators (KPI's) has been developed to allow measurement of factors that are considered by the Authority as critical to the overall success of the Framework Agreement.

List of Client Feedback KPI's (which may be utilised to measure supplier performance under this Framework Agreement)

- 1) Value for Money
- 2) Quality of Service
- 3) Timely Delivery
- 4) Effective Communication
- 5) Advice received
- 6) Knowledge and Experience
- 7) Quality of Management Information at project level
- 8) Quality of Management Information at Framework Level (reviewed by Framework Manager)
- 9) Accuracy of Fee Claims and Invoicing (reviewed by Framework Manager)

3.1 Typical Components of the Annual Performance Review Process

3.1.1 Framework Contractor Tendering Activity Reports

Following commencement of the Framework Agreement, the Framework Contractor shall provide a summary performance report to the Authority on an annual basis (commencing not earlier than 1 year after the Commencement Date of the Framework Agreement) confirming all the mini-competitions the Framework Contractor has been invited to tender for and the mini-competitions they have participated in under the Framework Agreement (including their success rate, the mini-competition description and level of bid made).

3.1.2 Framework Contractor Feedback Report

Following commencement of the Framework Agreement, the Framework Contractor shall provide a report to the Authority on an annual basis (commencing not earlier than 1 year after the Commencement Date of the Framework Agreement) which details any feedback on inhibitors, successes and overall performance which they consider appropriate, relevant and beneficial to the process of continuous improvement in the operation of the Framework Agreement. Factors which should be considered in the report may be related to communication and customer interface; quality of Framework Management processes; quality of project specific information; efficacy of invoicing and payment mechanisms.

Reports shall be submitted by email to the Authority's nominated contact(s) upon request within 10 working days after the end of each reporting period.

3.1.3 Framework Manager Performance Review Report

Following receipt of all the information requested or required under this Framework Agreement an annual performance review and a performance report (commencing not earlier than 1 year after the Commencement Date of the Framework Agreement) shall be prepared and issued by the Framework Manager in respect of each of the Framework Contractors performance (measured against the Framework Agreement's KPI's during the period under review. This report shall include Contractor Tendering Activity and Feedback Reports.

3.1.4 Performance Review (KPI) Questionnaire

The performance reviews may utilise Performance Management Questionnaires as part of the information gathering process. Each respective Framework Public Bodies Framework Manager may issue performance management (KPI) questionnaires to the Framework Public Body's main point/s of contact (Project Manager's or other designated staff) in order to obtain client Feedback on the quality of services provided by the Framework Contractors during the period under review.

A template Performance Review (KPI) Questionnaire with associated guidance notes is attached (as an embedded file) below :



KPI - Client Satisfaction Indicators

Objective - To determine the overall level of client satisfaction with the Framework Contractor in the various activities.

Scoring Mechanism - All Client Satisfaction KPIs use a 1-10 scale where:

- 1 = Totally Dissatisfied.
- 5/6 = Neither Satisfied nor Dissatisfied.
- 10 = Totally Satisfied.

3.2 Performance Review Meetings

The Framework Contractor shall, on an annual basis (commencing not earlier than 1 year after the Commencement Date of the Framework Agreement), or as otherwise required and instructed by the Authority attend a meeting at Calton House, EH12 9EH to discuss their performance under the Framework Agreement.

3.3 Improvement Notice

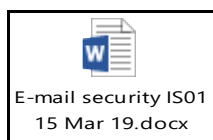
3.3.1 If the Framework Contractor fails to provide the Services or any part of the Services in accordance with the Framework Agreement or fails to comply with any other obligation under the Framework Agreement, the Authority may serve an improvement notice on the Framework Contractor, specifying the failure and requiring it to:

- Immediately enact remedial measures to the satisfaction of the Authority within 10 calendar days or such other period as may be specified by the Authority; or
- In the case of more complex issues, to submit a timebound action plan to inform the Authority of the measures which will be taken by the Framework Contractor and the management supervision arrangements to address the issue(s) indicated in the improvement notice, correct any failure and to prevent or avoid its recurrence. The Parties shall monitor progress against the action plan in terms of addressing the issue indicated in the improvement notice.

- 3.3.2 If the Framework Contractor fails to comply with the requirements of an improvement notice or is otherwise in Default of any obligation under the Contract, the Authority may serve a Default notice on the Framework Contractor in accordance with Clause 42 of the Framework Agreement.
- 3.3.3 Clause 3.3.1 shall not prevent the Authority serving a Default notice under Clause 42 of the Framework Agreement without first serving an improvement notice in any circumstances where the Framework Contractor is in default of any obligation under the Contract.

4.0 Authority or Framework Public Bodies Information Security procedures

Whilst each Framework Public Body may have differing requirements for the secure delivery and receipt of sensitive information delivered through electronic means, The following (embedded file) provide an indication of a typical process which the Authority considers may be representative of the type of procedures which the Framework Contractor would be expected to be complied with.



5.0 Meetings

The Framework Contractor shall adhere to the specific Framework Public Bodies meeting requirements which will be detailed in each Call-off Contract.

6.0 Disclosure Scotland at Basic level

The Framework Contractor shall provide evidence to the Framework Manager for all persons or personnel engaged by it to provide Services under this Contract at or within Authority or Framework Public Bodies premises are in possession of a current, valid **Disclosure Scotland** certificate at the Disclosure Level indicated in this Contract which is dated not more than 12 months prior to the date when the person wants to access the Authority's premises and/or are subject to pre-employment checks of background, identity, and eligibility to work in the United Kingdom by the Contractor which are equivalent to the **Baseline Personnel Security Standard (BPSS)** (as enacted in Scotland).

(*1) – [2003 collaborative Report "Performance Indicators for Construction Consultants - A report and benchmarking guide" prepared by the Association of Consulting Engineers; Royal Institute of British Architects; Royal Institution of Chartered Surveyors; Department of Trade and Industry and the Institution of Civil Engineers. A benchmark score of 8 out of a possible 10 has been identified as the acceptable guide level set for general consultant performance on this framework. Scores for KPI criteria which fall significantly below this will be highlighted for corrective action.]

End of Schedule B