

## **SALISBURY DISTRICT COUNCIL**

### **FRAMEWORK AGREEMENT FOR THE PROVISION OF .....**

#### **Framework Agreements - Conditions**

##### **1. Contract documents**

The contract documents consist of these conditions, the Specification dated..... against which the Contractor tendered and the Tender dated..... which has been accepted by the Council.

##### **2. Definitions**

In this contract except where the context otherwise requires the following expressions shall have the meanings hereby assigned to them:

“The Council” means Salisbury District Council or any successor authority;

“The Contractor” means the person, persons or company whose tender is accepted;

‘You’ includes anyone you employ, anyone acting on your behalf, anyone associated with you & any subcontractor whether authorised by the Council or not.

A reference to an Act of Parliament or any Order, Regulation, Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same.

##### **3. Governing Law**

The construction, performance and validity of the contract shall in all respects be governed by English law.

##### **4. Calling off of goods and services**

The Council does not guarantee to call off any goods or services under the contract but ..... shall be the Council’s preferred supplier.

##### **5. Price**

- a The Contractor agrees to hold the price quoted in the Tender for the period of [the length of the contract] [one year] [3months] (*complete the appropriate period depending on the length of the contract*)
- b After the period referred to in paragraph 5.a. above the price shall be adjusted in accordance with [the RPI (*state which one*)] [the mechanism to be agreed between the parties after the successful tenderer has been chosen], provided that the Contractor shall have submitted a written request to [the Contract Manager]. Such requests must be made at least a month in advance of any such increase.
- c In the event that there is a major external influence on the price of the goods or services the subject of the contract and which is beyond the control of the parties, including the making, rescission or changing of any statutory regulations as specified in paragraph 19 below, they shall negotiate the price for the remainder of the contract term.

##### **6. Term**

- a The term of the contract is ....., commencing on .....
- b The Council has the option to extend the contract for a further period of one year on the same terms and conditions but subject to a review of the price in accordance with paragraph 5.b. above (*note this option to extend is only available if the contract is for a period of 1 or 2 years*)

## **7. Assignment**

- a The Contractor shall not assign, sub-let, sub-contract or purport to assign, sub-let or sub-contract any part of this contract or the benefit accruing to him thereunder to any person(s) whatsoever, unless he shall first have obtained the consent in writing of [the Contract Manager], such consent not to be unreasonably withheld.
- b The Contractor shall be responsible for the acts, defaults and omissions of its sub-contractors and/or assigns, whether approval has been given to their appointment under this clause or not, and any consent given under this clause shall not relieve the Contractor of its obligations under this contract.

## **8. Provision of Information**

- a The Contractor shall supply to the Council such information about his business and financial state in addition to any documentation relating to this contract as the Council may from time to time reasonably require.
- b The Contractor must be aware that, if called upon to do so, they will be required to permit the Local Government Ombudsman to interview staff and look at all papers in connection with any public complaint of maladministration arising from their service provision under this contract. In addition, the Contractor will be required to allow the Audit Commission and/or the Council's Internal Audit Team such access to the above staff and/or papers as they may reasonably require.

## **9. Technology/ Advances**

- a Where technological advances are implemented by the Council, the Contractor shall be receptive.
- b The Contractor will commit to keep invoicing levels to a minimum and accommodate advances to make this possible.

## **10. Use of this contract by other bodies**

- a In accordance with the government's National Procurement Strategy for Local Authorities the Council may make the use of this contract available to other local authorities or to other members of the South Wiltshire Strategic Alliance should it so wish
- b The Contractor agrees to provide the goods or services in accordance with the documents set out in paragraph 1 above to the bodies in paragraph 10.a above provided it does not materially alter the nature of the contract
- c Where the inclusion of another body would have a material effect on the contract the Council and the Contractor shall review the prices in accordance with paragraph 5.c above

## **11. Insurance**

The Contractor is required to have the following insurance in place throughout the term of the contract and to provide such evidence of the insurance as the Council shall require upon demand during the term of the contract:

- a Public liability insurance in the sum of (*check with Jan Carter in Financial Services how much this should be*)
- b Employees liability insurance (*again check with Jan Carter in Financial Services how much this should be*)

- c Professional indemnity insurance (*check with Legal or Internal Audit whether what is being offered is acceptable*) (*this will only be required where professional services, such as surveying, legal etc. are the subject of the contract*)

## **12. Order Policy**

- a All purchase orders for goods must contain the Order number (format to be specified) and/or Works/Contract number.
- b The Council will not pay for any goods without an Order Number and/or Works/Contract Number.
- c Multiple Order Numbers can and will be processed on one monthly invoice, unless otherwise specified by the Council.

## **13. Payment**

Payments under this contract shall be upon a VAT invoice raised by the Contractor [on the ..... day of each calendar month] [for each piece of work or item called off] (*you should decide when letting the contract which is the most appropriate. It will depend on the amount and type of goods and services to be called off, e.g. a lot of small value items would be better paid on a monthly basis but the occasional large one off item would be better paid per item. If unsure ask Internal Audit for advice*)

### **OR**

Payments under this contract shall normally be upon monthly VAT invoices raised by the Contractor. However, the Council is keen to maximise the efficiency and effectiveness of its ordering and payment system and therefore would wish to negotiate a mutually beneficial ordering and invoicing system with the appointed Contractor.

All invoices submitted by the Contractor must contain the Council's contract number and/or the order number. The Council will not pay any invoice received without this information. The contract number will be supplied to the successful Contractor at the start of the contract.

The Council may set off anything you owe it, whether under this contract or some other basis, against any sum due to you. If so, it will give you a statement in writing that it is making a set off & how it is made up. This may include sums owed to it as a public body.

## **14. Performance**

The Council is relying on you to fulfil this order with the skill, experience & judgement of a person fully qualified & experienced in all areas of business required to do so. This includes reliance on your judgement in respect of health & safety & in the selection of anything that may be required.

You will perform the contract to the Council's satisfaction. Work will be done in a good, substantial & workmanlike manner. Anything supplied will be of satisfactory quality.

Work will be done & goods delivered in accordance with any timetable that was stipulated or formed part of your quotation before or at the time of the order. If there was no such timetable work will be done & goods delivered within a reasonable time. In such case, the Council may give a reasonable time limit within which the contract must be performed. If so, you will meet that timetable.

The Contractor is to provide the goods or services to the standard set out in the Specification. In particular: (*At this point please be specific about your performance expectations*)

## **15. Non Performance**

If the Contractor fails to provide the goods or services in accordance with the Specification the Council will not pay for them. (*Please also state how you will measure non-performance e.g. satisfaction surveys, response time etc*)

## **16. Health and Safety**

- a The Contractor, his employees, agents and sub-contractors will at all times comply with all health and safety requirements relating to the carrying out of the work under this contract. Such requirements include in addition to statutory laws and regulations any codes of practice or British Standards or their equivalent relating to health and safety which may be applicable to the performance of the contract.
- b When the Contractor, his employees, agents or sub-contractors are required to carry out work on the Council's premises they shall additionally comply with all the Council's rules and practices relating to safety and the conduct of persons working on the Council's premises.
- c The Contractor shall conform to all relevant environmental standards, guidelines and Codes of Practice and shall take all practical steps in the design of the work to be performed under this contract to minimise any risk to the environment.

## **17. Force Majeure**

- a For the purpose of this contract, Force Majeure is defined as:
  - i War and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition or embargo, rebellion, revolution, insurrection, military or usurped power or civil war
  - ii Riot, commotion, disorder or industrial dispute except where solely restricted to employees of the party claiming Force Majeure, their agents or sub-contractors.
  - iii Earthquake, flood, fire or other natural disasters except to the extent that any such disaster is caused by, or its effects contributed to, by the party claiming Force Majeure.
- b If either party considers that a circumstance of Force Majeure has occurred which may materially affect its ability to perform its obligations under this contract, they shall notify the other party in writing as soon as possible, and in any event not later than 20 working days from the occurrence of the Force Majeure event, giving full details of the circumstances giving rise to the Force Majeure event.
- c Neither party shall be considered to be in breach of its obligations under this contract if it can establish that the performance of such obligations is prevented by any circumstances of Force Majeure which arise after the date of the contract and which were not foreseeable at the date of the contract.
- d Should the circumstances of Force Majeure continue to prevent either party from performing its obligations under this contract for longer than three calendar months, this contract shall be considered to have been terminated by mutual consent, and neither party shall be liable to the other as a result of such termination.

## **18. Bankruptcy of the Contractor**

- a The Council shall be entitled to terminate this contract with immediate effect by giving written notice to the Contractor, if the Contractor: suffers an execution to be levied on its goods; has a receiver or a receiver and manager appointed; or is the subject of a resolution or order for winding up.
- b Upon such termination the Contractor shall return to the Council all papers and instructions either belonging to or received from the Council in respect of those cases not completed at the date of termination.
- c The Council shall be entitled to retain in its hands any payment which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Council all sums due under this contract or to deduct therefrom all sums due from the Contractor under this contract.

## **19. Statutory Regulations**

Both parties shall in all circumstances relating to the performance of the contract comply with all Acts of Parliament and with all orders, regulations and bye-laws made with statutory authority by Government Departments or by local or other authorities. The cost to each party of meeting the requirements of this clause shall be borne by that party.

## **20. Obligations**

Throughout the duration of this Agreement the Contractor shall, and in addition shall ensure that its sub-contractors shall: - discharge their obligations under this Agreement and (supply the Works and perform Services) in accordance with their responsibilities under the provisions of the Sex Discrimination Act 1975, Race Relations Act 1976 (Amended 2000) and the Disability Discrimination Act 1995, 2004 and 2005, Anti-discrimination in employment legislation 2003, covering religion, beliefs, sexual orientation and age, Codes of Practice issued by the European Commission for Combating Discrimination, Equal Opportunities Commission, and the Commission for Racial Equality, and the Disability Rights Commission, and shall in addition discharge its obligations under this Agreement and provide the services in a manner consistent with Council policies on equal opportunities.

## **21. Illegality and Negligence**

- a The Contractor shall provide the goods or services to the standard expected of a competent, experienced .....
- b The Contractor shall not commit any breach of English law in carrying out its duties under this contract.
- c The Council shall have the right to terminate this contract immediately if the Contractor acts in breach of English law or commits an act of gross professional negligence.

## **22. Breach**

The Council may reject goods or work which in its opinion do not meet the Contract Standards, are not what it ordered or which have not been provided in accordance with instructions or with what you have agreed with the Council.

On receiving notice of such rejection you will at your own expense remove any rejected goods &/or complete the rejected work to the standard required. If you do not remove rejected goods within three days of such notice the Council may remove them & you will reimburse the cost of doing so. The Council may dispose of such removed goods in whatever way it thinks fit including sale or destruction.

If the Council rejects goods or work & you do not replace them in accordance with the Contract or if you do not perform the Contract in accordance with its terms or at all, the Council may purchase other goods or work elsewhere as near as practicable as circumstances permit to what you should have provided.

Instead of rejecting unsatisfactory goods or work, the Council may choose to pay you a reduced price for them/it. The reduced price will be whichever is the lower of the actual market value of the goods or work in their unsatisfactory condition or the contract price less whatever the Council would need to spend to make the goods or work up to the Contract Standard.

## **23. Remedies for Breach**

You will indemnify the Council in full in respect of any loss or expense of any kind & whether direct or indirect which it may suffer as a result of any breach of this contract by you or anyone for whom you are answerable. For the avoidance of doubt, this indemnity will include;

the cost of any remedial measures & any steps the Council may take to recover anything from you or any third party;

the excess over what the Council would have paid you if it purchases alternative goods or work from someone else in place of what you should have provided;

anything the Council pays anyone else as a result of such breach whether or not as a result of litigation by that person unless it was manifestly unreasonable that the Council should have agreed to make such payment;

the costs of any delay;

any costs to which the Council is put as a result of terminating this contract; &  
any intellectual property claims.

You may withhold delivery of goods or work if the Council does not pay you, but only after a written notice to the Council which allows it a reasonable time to pay you, & not in respect of sums that are disputed.

The Council may terminate this Contract if :-

you do not perform it;

you break its terms significantly;

you offer, give or agree to give anyone any gift, bribe, inducement or consideration for doing or not doing anything in relation to this or any other contract with the Council or any other local authority or public body or commit any offence under the Prevention of Corruption Acts 1889 to 1916 or give any fee or reward the receipt of which is an offence under Section 117(2) Local Government Act 1972 or any re-enactment of them; or

You cease trading, become bankrupt, make any sort of arrangement with your creditors, winding up (other than for purposes of reconstruction), have a liquidator, receiver, administrator or manager appointed or have steps taken by anyone to enforce any sort of charge against you;

If the Council terminates this contract it shall not owe you anything beyond what it owes you for goods or work that it has received.

## **24. Termination for Breach**

- a Either party may terminate this contract forthwith by 30 days' written notice to the other effective from the date of service of such notice if:
  - i There is a breach by the other party of any provision of this contract which expressly entitles the party not in breach to terminate the contract
  - ii There is a material or persistent breach by the other party of any other term of the contract, which is not remediable, or if it is remediable has not been remedied within 30 days of the service of written notice to the defaulting party specifying the breach and requiring it to be remedied.
- b Following termination all obligations between the parties other than those stated in this sub-clause shall cease. The following terms shall remain in full force and effect:
  - i Confidentiality
  - ii Publicity
  - iii Copyright
  - iv Indemnity
  - v Waiver
  - vi Law
- c The exercise by the Council of its right of termination under this or any other clause in this contract, shall be without prejudice to any rights to damages or any other remedies which the Council may have.

## **25. Re-negotiation of terms**

The Contractor can call for the terms of the contract to be re-negotiated if the Council does not call off the value of goods and services indicated prior to entering into the contract (*therefore if a value is given it is essential that it is not too optimistic*)

Should re-negotiation be unsuccessful the Contractor shall have the right to terminate the contract on giving three months' written notice to [the Contract Manager].

## **26. Waiver**

Any failure by the Council to insist at any time upon the performance of any of the terms, provisions or undertakings of the Contractor contained in this contract or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof or a relinquishment of the Council's rights to require the future performance of such a term, provision or undertaking but the obligation of the Contractor with regard to the same shall continue in full force and effect.

## **27. Arbitration**

- a All disputes between the parties arising out of or connected with this contract or the performance of the services under it by the Contractor, and which cannot be resolved between the parties shall be referred to an arbitrator to be agreed between the parties. If within 14 days of a request for arbitration the parties have not agreed the Arbitrator will be appointed by the President for the time being of the Chartered Institute of Arbitrators.
- b The arbitrator shall be entitled to make such decision or award as he or she thinks just and equitable having regard to the circumstances then existing the cost of such arbitration to follow the event or in the event of neither party succeeding to be apportioned between the parties by the arbitrator as he or she in his or her absolute discretion thinks fit.

## **28. Confidentiality**

The Contractor shall treat as confidential any information about the Council's business or its employees or customers that it shall acquire during this contract and which is not within the public domain.

Whistle blowing policy: Our policy applies to all employees and also to those contractors working for the council on council premises including agency staff. It also covers suppliers and those providing services under a contract with the council in their own premises, for example stationery suppliers. For non-employees, replace employee(s) to read worker(s) in this policy.

The policy can be accessed on our website at: <http://www.salisbury.gov.uk/council/doing-business-with-the-council/business-with-sdc.htm>

## **29. Publicity**

- a Neither party shall without the written consent of the other advertise, publicly announce or provide to any other person information relating to the existence or details of this contract, except to the extent that such disclosure is required by law.
- b Neither party shall use the other party's name in any format for any promotion, publicity, marketing or advertising purposes without that party's written consent.

## **30. Copyright**

The owner of the copyright to any documents or software produced during the course of the contract shall be determined in accordance with the provisions agreed between the parties at the time of the award of the contract. (*You should negotiate with the contractor who is to own what*)

## **31. Indemnity**

The Contractor shall indemnify the Council in respect of any loss or damage, including any

claim against the Council by a third party, arising from the negligence or any act or omission by the Contractor or its employees or agents.

The Contractor shall indemnify the Council in respect of any damage caused to any land, building or chattel in ownership, occupation or possession of the Council by the Contractor, its employees or agents (whether such damage be caused by negligence or in any way whatsoever).

**32. Notices**

- a Any notice or other communication which either party is required by the contract to serve on the other party shall be sufficiently served if sent to the other party at its registered address, a) by hand or b) by registered or first class post or recorded delivery.
- b Notices are deemed to have been served as follows: delivered by hand; on the day when they are actually received, sent by post, registered post or recorded delivery; two working days after posting.

**33. Contacts**

- a Every call off under this contract by the Council shall be made by (*insert job title of post holder*) or whoever he or she shall nominate in writing and the Contractor shall not act on a call off received from anyone else.
- b The Contractor shall provide the name and contact details of a member of their staff who will be managing the Council's contract. All instructions to the Contractor will thereafter be given to that person or whoever he or she shall nominate in writing.

Signed.....

Date.....

Signed.....(Salisbury District Council)

Date.....