

NEC4 - TERM SERVICE SHORT CONTRACT

DOCUMENT 2 OF 4 CONTRACT FORMS – CONTRACT DATA V1

CPD Works Template Version 1.4 February 2020

TENDER FOR FRAMEWORK FOR BUILDING MAINTENANCE, MINOR WORKS AND COMMUNITY AIDS & ADAPTATIONS PROJECT NO: SHSCT-01-2020

Department of Finance
Construction & Procurement Delivery
Clare House
303 Airport Road West
Belfast BT3 9ED
Northern Ireland

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Contract Data

The *Client's* Contract Data

- The *Client* is

Name: Southern Health & Social Care Trust

Address for communications: 68 Lurgan Road, Portadown, Craigavon, BT63 5QQ

Address for electronic communications: trevor.woods@southerntrust.hscni.net

- If the Client appoints a *Client's Agent*, the *Client's Agent* is

Name: not applicable

Address for communications: not applicable

Address for electronic communications: not applicable

- The authority of the *Client's Agent* is: not applicable
- The *service* is: the provision of Building Maintenance, Minor Building Works and Community Aids and Adaptations to the properties of the Southern Health and Social Care Trust
- The *starting date* is: 14 days after the *Client's* acceptance
- The *service period* is: 36 months with an option to extend for a further 12 months
- The *period for reply* is: two weeks
- The *assessment day* is the: 28th day of each month
- Are the rates and Prices in the contract adjusted for inflation?: **Yes**

If yes the *index* is: As per Table 1 below

TABLE 1: INDEXES TO BE USED FOR ANNUAL INFLATION ADJUSTMENTS			
PRICE LIST ELEMENT		INDEX TO BE USED	NOTE
PSA Schedule of Rates for Building Works (11 th Edition) 2015		BCIS BCE15: Measured Term Contract Updating % - B and CE	Contractor's % Adjustments on Schedule of Rates <u>not</u> adjusted for inflation annually
PSA Schedule of Rates for Mechanical Services (7 th Edition) 2016	Rate A	BCIS Mech16/1: Measured Term Contract Updating % - Mechanical (Rate A Items)	Contractor's % Adjustments on Schedule of Rates <u>not</u> adjusted for inflation annually
	Rate B, D and E	BCIS Mech16/2: Measured Term Contract Updating % - Mechanical (Rate B, D and E Items)	
	Rate C	BCIS Mech16/3: Measured Term Contract Updating % - Mechanical (Rate C Items)	
PSA Schedule of Rates for Electrical Services (7 th Edition) 2016	Rate A	BCIS Elect16/1: Measured Term Contract Updating % - Electrical (Rate A Items)	Contractor's % Adjustments on Schedule of Rates <u>not</u> adjusted for inflation annually
	Rate B, D and E	BCIS Elect16/2: Measured Term Contract Updating % - Electrical (Rate B, D and E Items)	
	Rate C	BCIS Elect16/3: Measured Term Contract Updating % - Electrical (Rate C Items)	
People Rates and Hired In Labour	Building Craftsperson	BCIS Indices for Daywork Rates - Building (Skilled)	

	Labour/General Operative	BCIS Indices for Daywork Rates - Building (Unskilled)	
	Building Apprentice (All Grades)	BCIS Indices for Daywork Rates - Building (Unskilled)	
	General Cleaner	BCIS Indices for Daywork Rates - Building (Unskilled)	
	General Operative working on Waste Transfer Station	BCIS Indices for Daywork Rates - Building (Unskilled)	
	Approved Electrician	BCIS Indices for Daywork Rates – Electrical (All Grades)	
	Electrician Apprentice	BCIS Indices for Daywork Rates – Electrical (All Grades)	
	Approved Plumber (Mechanical Services)	BCIS Indices for Daywork Rates – Plumbing (All Grades)	
	Approved Plumber (Heating & Ventilation)	BCIS Indices for Daywork Rates – Heating and Ventilating (All Grades)	
	Plumbing Apprentice (All Grades)	BCIS Indices for Daywork Rates – Plumbing (All Grades)	
Design Rates		BCIS Indices for Daywork Rates - Building (Skilled)	
Drainage & Flush		BCIS BCE15: Measured Term Contract Updating % - B and CE	

Addendum Schedule of Rates	Building	BCIS BCE15: Measured Term Contract Updating % - B and CE	
	Electrical	BCIS Elect16/1: Measured Term Contract Updating % - Electrical (Rate A Items)	
	Mechanical	BCIS Mech16/1: Measured Term Contract Updating % - Mechanical (Rate A Items)	
OT Community		BCIS BCE15: Measured Term Contract Updating % - B and CE	Contractor's % Adjustments on Schedule of Rates <u>not</u> adjusted for inflation annually
Compensation Events	Compensation events are assessed using the rates and Prices current at the date they were notified by one Party to the other Party (Clause 52.5)	N/A	Contractor's Fee % Adjustments on Compensation Events <u>not</u> adjusted for inflation annually

- Provided by: Building Cost Information Service (BICS)

The Construction Contracts (Northern Ireland) Order 1997 as amended by the Construction Contracts (Amendment) Act (Northern Ireland) 2011 does apply

- The *Adjudicator* is

Name: President or Vice President of the Royal Institute of Chartered Surveyors

Address for communications: 12 Great Georges Street, London, SW1P 3AD

Address for electronic communications: contactrics@rics.org

- The interest rate on late payment is statutory interest (the annual statutory interest is 8% plus the Bank of England base rate per annum) per complete week of delay

- For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client's* property is limited to: £10 M
- The *Client* provides this insurance N/A
- The minimum amount of cover for the second insurance stated in the Insurance Table is, for any one event £10 M
- The minimum amount of cover for the third insurance stated in the Insurance Table is, for any one event £10 M
- The *adjudicator* nominating body is: President or Vice President of the Royal Institute of Chartered Surveyors
- The *tribunal* is litigation.

The conditions of the contract are the NEC4 Term Service Short Contract June 2017 and the following additional conditions: -

The additional *conditions of contract* are

Z1: Additional Conditions of Contract

Z1.1 The additional conditions of contract stated in the Contract Data are part of this contract.

Z1.1.2: On page 18 of the TSSC, delete the words "(if the United Kingdom Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act (The Act) applies)" and replace with:

"(if the Construction Contracts (Northern Ireland) Order 1997 as amended by the Construction Contracts (Amendment) Act (Northern Ireland) 2011 applies)".

Z2: Identified and Defined Terms

Add Clauses:

11.2(16) A Contracting Authority is a contracting authority as defined in the UK Public Contract Regulations, or relevant succeeding rules. Contracting Authorities include Departments of the Northern Ireland Civil service.

11.2(17) A Department is a body subject to Northern Ireland Public Procurement Policy including Northern Ireland Civil Service Departments, their Agencies, Non-Departmental Public Bodies and Public Corporations.

11.2(18) FOIA is the Freedom of Information Act 2000.

- 11.2(19) Fraud is any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
- 11.2(20) Staff are all persons employed by the *Contractor* to perform its obligations under the contract together with the *Contractor's* servants, agents, suppliers and Subcontractors used in the performance of its obligations under the contract.
- 11.2(21) Good Industry Practice is standards, practices, methods and procedures conforming to the Law 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 under the same or similar circumstances.
- 11.2(22) An Occasion of Tax Non-Compliance is:
- any tax return of the *Contractor*, submitted to a Relevant Tax Authority on or after 1 October 2012, found on or after 1 April 2013 to be incorrect as a result of:
 - a Relevant Tax Authority successfully challenging the *Contractor* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - the failure of an avoidance scheme which the *Contractor* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime.
 - any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 giving rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion.
- 11.2(23) DOTAS is the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.
- 11.2(24) General Anti-Abuse Rule is the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax

advantages arising from abusive arrangements to avoid national insurance contributions.

11.2(25) Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and others.

11.2(26) Relevant Tax Authority is HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Contractor* is established.

11.2(27) A Leaseholder is a person having or acquiring a leasehold interest in the works or any part of them.

11.2(28) A Freeholder is a person having or acquiring a freehold interest in the *works* or any part of them.

11.2(29) A Funder is a person providing finance for the *works* or any part of them.

11.2(30) A Person is any firm and any entity having legal capacity.

11.2(31) Intellectual Property Rights are all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other Intellectual Property Rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

11.2(32) Confidential Information is designated as such by the *Client*. It shall include all material non-public information, written or oral, disclosed directly or indirectly, through any means of communication or observation by the *Client* or any of its affiliates or representatives to or for the benefit of the

11.2(33) The Information Sharing Agreement is an agreement that sets out the basis for the use and sharing of Confidential Information as designated by the *Client*.

Z3: The *Client's* Contract Data

Z3.1 On page one of the *Client's* Contract Data, delete the words "The United Kingdom Housing Grant's Construction and Regeneration Act (1996)" and replace with the words "The Construction Contracts (Northern Ireland) Order 1997 as amended by the Construction Contracts (Amendment) Act (Northern Ireland) 2011".

Z4 Information and Data

Add new clause Z4

Confidentiality, Transparency and Publicity

Z4.1 Subject to clause Z4.2, each Party shall:

- treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the contract.

Z4.2 Notwithstanding clause Z4.1, a Party may disclose Confidential Information which it receives from the other Party:

- where disclosure is required by applicable law or by a court of competent jurisdiction;
- to its auditors or for the purposes of regulatory requirements;
- on a confidential basis, to its professional advisers;
- to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- where the receiving Party is the *Contractor*, to the Staff on a need to know basis to enable performance of the *Contractor's* obligations under the contract provided that the *Contractor* shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause shall observe the *Contractor's* confidentiality obligations under the contract; and
- where the receiving Party is the *Client*:
 - on a confidential basis to the employees, agents, consultants and *Contractors* of the *Client*;
 - on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the *Client* transfers or proposes to transfer all or any part of its business;
 - to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

-
- in accordance with clause Z4.5,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under clauses Z4.2 and Z4.3.

Z4.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the contract is not Confidential Information and the *Contractor* hereby gives its consent for the *Client* to publish this contract in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the contract agreed from time to time. The *Client* may consult with the *Contractor* to inform its decision regarding any redactions, but shall have the final decision in its absolute discretion whether any of the content of the contract is exempt from disclosure in accordance with the provisions of the FOIA.

Z4.4 The *Contractor* shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the contract or any part of the contract in any way, except with the prior written consent of the *Client*.

Freedom of Information

Z4.5 The *Contractor* acknowledges that the *Client* is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- provide all necessary assistance and cooperation as reasonably requested by the *Client* to enable the *Client* to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- transfer to the *Client* all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- provide the *Client* with a copy of all Information belonging to the *Client* requested in the Request for Information which is in its possession or control in the form that the *Client* requires within 5 Working Days (or such other period as the *Client* may reasonably specify) of the *Client's* request for such Information; and
- not respond directly to a Request for Information unless authorised in writing to do so by the *Client*.

Z4.6 The *Contractor* acknowledges that the *Client* may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the *Contractor* or the Services (including commercially sensitive information) without consulting or obtaining consent from the *Contractor*. In

these circumstances the *Client* shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the *Contractor* advance notice, or failing that, to draw the disclosure to the *Contractor's* attention after any such disclosure.

Z4.7 Notwithstanding any other provision in the Agreement, the *Client* shall be responsible for determining in its absolute discretion whether any Information relating to the *Contractor* or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

Protection of Personal Data and Security of Data

Z4.8 The *Contractor* shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.

Z4.9 Notwithstanding the general obligation in clause Z10.8, where the *Contractor* is processing Personal Data for the *Client* as a data processor (as defined by the DPA) the *Contractor* shall:

- ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;
- provide the *Client* with such information as the *Client* may reasonably request to satisfy itself that the *Contractor* is complying with its obligations under the DPA;
- promptly notify the *Client* of:
 - any breach of the security requirements of the *Client* as referred to in clause Z4.10; and
 - any request for personal data; and

ensure that it does not knowingly or negligently do or omit to do anything which places the *Client* in breach of the *Client's* obligations under the DPA.

Z4.10 When handling *Client* data (whether or not Personal Data), the *Contractor* shall ensure the security of the data is maintained in line with the security requirements of the *Client* as notified to the *Contractor* from time to time.

Information Sharing Agreements

Z4.11 Where information is to be exchanged or shared between the *Contractor* and the *Client* an Information Sharing Agreement will be required. The Agreement

will clearly define what Information is to be shared and by whom, including which party owns/controls the information and which party processes that information.

- Z4.12 When necessary the Information Sharing Agreement will stipulate the levels of control, access, procedures, and IT systems required to process or transfer the information securely. At all times sensitive information must be protected against inappropriate use or disclosure. This may involve defining the levels of security required for transfer of information between the *Contractor* and the *Client*. This will include electronic and internet security controls. The level of security will be proportionate to the type of information being exchanged. It must take into account the damage that could result from a breach of it.

Z5: Application to Northern Ireland

Add new clause Z5

- Z5.1 Where this contract refers to an Act of Parliament and/or a regulation which does not extend to Northern Ireland, the clause is amended to refer to the relevant Northern Ireland legislation and/or regulation.

Z8: Risks and insurance

Z8.1: Add after the words "Plant and Materials" in line 12 of clause 80.1:

"other than loss of or damage which gives rise to a claim for compensation under the Criminal Damage (Compensation) (Northern Ireland) Order 1977 (as the same may be amended from time to time) or any scheme for the time being in force for the compensation of criminal damage to property in Northern Ireland"

Z9 The Contracts (Rights of Third Parties) Act 1999

- Z9.1: Subject to the express rights of any person under any *collateral warranty arrangement* granted under the provisions of this contract, this contract does not create any right under the Contracts (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to it."

Z10: The *Contractor's* Performance

Z10.1: Add new clause 20.2 to 20.6 as follows:

Key Performance Indicators

- 20.2 From the *starting date* until the end of the *service period*, the *Contractor* reports to the *Client* its performance against each of the Key Performance Indicators. A Key Performance Indicator is an aspect of performance by the *Contractor* for which a target is stated in Appendix C of this contract.
- Reports are provided monthly from the *starting date* and include the *Contractor's* forecast measurement of satisfaction against each indicator. If the *Contractor's* forecast of the overall measurement of satisfaction is less than 70% or, the forecast for an individual indicator is less than 5 on the scale of satisfaction, the *Contractor* includes within its report proposals for improving performance. If the *Client* and the *Contractor* agree the proposals, the *Contractor's* puts them into effect immediately.
- 20.3 The *Client* scores the scale of satisfaction in accordance with Appendix C following receipt of the *Contractor's* report, if no report is received the *Client* scores the scale of satisfaction within one week of the expected submission date.
- 20.4 If the *Client's* score demonstrates either poor or unsatisfactory performance the *Client* may either agree corrective actions with the Contractor or, suspend the *Contractor's* obligation to Provide the Service for a period of three months and employ a reserve contractor from the Framework Contract to Provide the Service in its stead for the period of any suspension.
- The *Client* may lift any suspension after giving the *Contractor* one week notice of its intention to do so.
- 20.5 Where the *Contractor's* obligation to Provide the Service is suspended by the *Client* the *Contractor* proposes corrective actions and demonstrates to the *Client* how those actions will improve performance. If the *Client* agrees to the proposals, the *Contractor's* puts them into effect immediately upon the lifting of the suspension by the *Client*.
- 20.6 Continued or repeated poor or unsatisfactory performance may result in termination of the contract.

The *Contractor's* Contract Data

The Contract will be populated with this information at award stage

- The *Contractor* is

Name: **insert Contractor's name**

Address for communications: **insert address**

Address for electronic communications: **insert email address**

The *fee percentage* is: as stated in the Price List

The *people rates* are: as stated in the Price List

The *published list of Equipment* is: as stated in the Price List

The *percentage for adjustment of Equipment* is: as stated in the Price List

The *Contractor's* Offer and *Client's* Acceptance

The Contractor offers to Provide the Service in accordance with these conditions of contract for an amount to be determined in accordance with these *conditions of contract*.

The offered total of the Prices for part of the service in Part 1 of the Price List is:

N/A

The offered total of the Prices for part of the service in Part 2 of the Price List is:

insert from Price List

Enter the total of the Prices from the Price List

insert from Price List

Signed on behalf of the *Contractor*

Name: To be completed at award stage

Position: To be completed at award stage

Signature: To be completed at award stage

Date: To be completed at award stage

The *Client* accepts the *Contractor's* Offer to Provide the Service

Signed on behalf of the *Client*

Name: To be completed at award stage

Position: To be completed at award stage

Signature: To be completed at award stage

Date: To be completed at award stage