

## Appendix B: Construction purchasing system agreement

This **CONSTRUCTION PURCHASING SYSTEM AGREEMENT** is made on

The parties to this agreement are:

- (1) '**EMH**', East Midlands Housing Group Limited (IP030476), Memorial House, Whitwick Business Park, Stenson Road, Coalville, LE67 4JP
- (2) [insert name], [insert address], ([insert company number]), the '**Supplier**'

The supplier is appointed to:

- ▶ Lot 1: Construction dynamic purchasing system (above threshold contracts)
- ▶ Lot 2: Construction low value purchasing system (below threshold contracts)

This agreement is based on:

- ▶ The requirements of the purchasing systems described in the letter 'Construction purchasing systems' dated 11 November 2024 and advertised via FTS notice reference [insert]
- ▶ The supplier's application to join the **above threshold dynamic purchasing system** and **below threshold low value purchasing system** dated [date]
- ▶ The terms and conditions (commencing on the following page)

Agreed and signed on behalf of **EMH**

Name

Position

Signature

Date

Agreed and signed on behalf of the **Supplier**

Name

Position

Signature

Date

## 1. Background

- 1.1 Following an advertisement in the UK Find a Tender Service dated [TBA], reference [TBA] (the "Contract Notice") and a procurement process undertaken in accordance with the Public Contracts Regulations 2015, EMH has established a "Purchasing System".
- 1.2 This consists of two lots; Lot 1 is a Dynamic Purchasing System as described within the regulations for the award of works contracts above the regulatory thresholds, and Lot 2 a low value purchasing system for the award of works contracts below the regulatory thresholds with a lower entry standard (EMH's minimum requirement). These terms apply to both lots unless where specifically stated.
- 1.3 EMH has established the Purchasing System to enable EMH and other named customers of the framework to enter into Contracts with Suppliers for the provision of a range of construction works as and when required during the Purchasing System Term.
- 1.4 EMH does not guarantee that Suppliers will be awarded Contracts for any particular value or type of works under the Purchasing System. EMH is not obliged to enter into any Contracts with the Supplier under the Purchasing System during the Term and, for the avoidance of doubt, EMH shall not be liable for any loss of profits, loss of contracts or other costs or losses suffered or incurred by the Supplier as a result of not being awarded one or more Contracts under the Purchasing System.

## 2. Term

- 2.1 The term of the Agreement shall be from the date of this agreement until 23 February 2029 unless the Supplier:
  - 2.1.1 commits a material breach of the terms of these Terms and Conditions or any Contract awarded from the Purchasing System; or
  - 2.1.2 ceases to carry on its business, becomes insolvent, or has a liquidator, trustee in bankruptcy, receiver, manager, administrator, or administrative receiver appointed in respect of its assets or (where the Supplier is a partnership) those of any partner of the firm, or suffers any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident, in which case

EMH may terminate the appointment of the Supplier under one or more Lots by notice in writing having immediate effect.
- 2.2 Without affecting any other right or remedy available to it, EMH may terminate the Supplier's appointment under one or more Lots at any time, by giving written notice of termination to the Supplier, that termination taking effect on the date of receipt of notice by the Supplier or any later date as may be specified in the notice, if:
  - 2.2.1 the Purchasing System and/or these Terms and Conditions has been subject to a substantial modification for the purposes of regulation 72 of the Public Contracts Regulations 2015 (the "PCR 2015") which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR 2015; or
  - 2.2.2 the Supplier has at the date of its appointment to the Purchasing System, been in one of the situations referred to in regulation 57(1) of the PCR 2015, including as a result of the application of regulation 57(2) of the PCR 2015, and should therefore have been excluded from the procurement procedure for the Purchasing System.

- 2.3 The Supplier may terminate its appointment under one more Lots following any material breach of these Terms and Conditions by EMH which is notified in writing to EMH by the Supplier and is not remedied by EMH within fifteen (15) Working Days of such notice, or in the event of EMH ceasing to carry on its business.
- 2.4 Any Contract entered into during the Term shall continue in full force and effect until its respective termination date, notwithstanding the termination or expiry of the Purchasing System.

### **3. Competitions and award of call-off contracts**

- 3.1 The Parties acknowledge that where EMH wishes to award a Contract under the Purchasing System the selection of a Supplier from a Lot shall be made by EMH by way of a competition conducted in accordance with the provisions of this Clause.
- 3.2 EMH shall identify the Lot it wishes to award a Contract under and shall invite all DPS Suppliers appointed to that Lot to take part in the Competition for the Contract. Under Lot 2 of the Purchasing System a contract may be awarded without competition.
- 3.3 The invitation to take part in the Competition shall:
- 3.3.1 be issued in writing electronically;
  - 3.3.2 specify a deadline for responding to the invitation to take part in the Competition, such deadline to be no less than ten (10) days from the date of issue of the invitation;
  - 3.3.3 set out the evaluation criteria on which tenders submitted pursuant to the Competition will be assessed (which may be a combination of price and qualitative criteria, or price criteria only); and
  - 3.3.4 contain a copy of any Form of Contract to be entered into with the successful Supplier.
- 3.4 When invited by EMH to take part in a Competition, the Supplier may either submit a written proposal or decline the invitation to take part.
- 3.5 The Supplier shall be responsible for any costs it incurs in participating in a Competition and acknowledges and agrees that EMH shall not have any liability for such costs under any circumstances.
- 3.6 EMH shall evaluate all proposals received on the basis of the evaluation criteria set out in the invitation and will inform all Suppliers invited to take part in the Competition of the outcome of that evaluation.
- 3.7 If the Supplier is selected to carry out a Contract may issue a Contract to the DPS Supplier for acceptance. If the DPS Supplier does not confirm its acceptance of the Contract within three (3) Working Days of receipt of the same (or within such longer period as EMH may specify) the Supplier shall be deemed to have declined the offer to enter into the Contract and EMH may (in its absolute discretion):
- 3.7.1 offer the Contract to the next highest scoring Supplier in the Competition;
  - 3.7.2 recommence the Competition for the Contract; or
  - 3.7.3 abandon the award of the Contract altogether.
- 3.8 The Supplier must not commence or complete any services until an official purchase order or works order for those specific services has been received from EMH.

### **4. Applicable law and severance**

- 4.1 Any Clause or provision of these Terms and Conditions which is held to be illegal or unenforceable (in whole or in part) under any enactment or rule of law shall no longer form part of these Terms and Conditions.
- 4.2 In the event that a Clause or provision (or part of a Clause or part of a provision) is excluded under Clause 22.1 above the validity and enforceability of the remainder of these Terms and Conditions shall not be affected.
- 4.3 These Terms and Conditions shall be governed by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.
- 4.4 Save for any right conferred by these Terms and Conditions, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms and Conditions and accordingly the Parties do not intend any third party (other than another part of EMH) to have any right in respect of these Terms and Conditions by virtue of that Act.

## **5. Confirmation of admittance criteria**

- 5.1 In accordance with Regulation 34(25) of the Public Contracts Regulations 2015 EMH may, at any time during the Term, request the Supplier to confirm that it continues to satisfy the Admittance Criteria for the Lot(s) of the Purchasing System to which it is appointed.
- 5.2 The Supplier shall provide EMH with a written response to any request made by EMH within ten (10) Working Days of the date of the request.
- 5.3 If the Supplier fails to provide EMH with written confirmation that it continues to satisfy the Admittance Criteria for one or more of the Lots of the Purchasing System to which it is appointed within the ten (10) Working Day timescale referred to EMH may either, at its absolute discretion:
- 5.3.1 terminate the Supplier's appointment to the Lot(s) in question by notice in writing having immediate effect; or
  - 5.3.2 issue the Supplier with a notice specifying that the Supplier shall be suspended from participating in any Competitions under the Lot(s) in question until such time as the DPS Supplier has provided EMH with confirmation that it satisfies the Admittance Criteria for such Lot(s), and the Supplier shall be so suspended.

## **6. General obligations & warranties**

- 6.1 The Supplier warrants and undertakes to EMH that:
- 6.1.1 it has full power and authority and all necessary consents to enter into and to perform its obligations under these Terms and Conditions and any other agreements to which it is a party, and which are to be entered into under or in connection with the Purchasing System or these Terms and Conditions;
  - 6.1.2 no litigation, arbitration, adjudication, dispute, or administrative proceeding has been commenced, is pending or to its knowledge is threatened against the Supplier, and no judgment or award has been given or made or is pending against it, which:
    - 1. in any way questions its power or authority to enter into or perform its obligations under these Terms and Conditions or any other agreements to which it is a party, and which are to be entered into under or in connection with the Purchasing System or these Terms and Conditions; or
    - 2. may have a material adverse effect on its ability to perform its obligations under these Terms and Conditions or any other agreements to which it is a party, and which are to be entered into under or in connection with the Purchasing System or these Terms and Conditions;

- 6.1.3 all information, representations and other matters of fact communicated in writing to EMH or to its agents, advisers or employees, by or on behalf of the Supplier, in its selection questionnaire, or otherwise in respect of the Purchasing System, were when given and remain, as at the date of the Supplier's appointment to the Purchasing System, true, complete and accurate in all material respects; and
- 6.1.4 every consent, authorisation, certificate, licence, or approval of, or registration with, or declaration to, any Relevant Authority required to authorise, or required in connection with the execution, delivery, validity, enforceability or admissibility in evidence of, these Terms and Conditions or the performance by the Supplier of its obligations under these Terms and Conditions has been or will within any applicable period be obtained or made and is, or will when obtained be, in full force and effect, and there has been no material default in the observance of the conditions or restrictions (if any) imposed in, or in connection with, any of them.
- 6.2 The rights and remedies of EMH in relation to any misrepresentation or breach of warranty (or other provision of these Terms and Conditions) on the part of the Supplier shall not be prejudiced by any investigation by or on behalf of EMH into the affairs of the Supplier, by the performance of these Terms and Conditions or by any other act or thing which may be done or omitted to be done by EMH under these Terms and Conditions and which would or might prejudice such rights and remedies.

## 7. General data protection regulations (GDPR)

The GDPR applies to both 'Controllers' and 'Processors'. A **Controller** is the person/ organisation which, solely or with others, determines the purposes and means of processing personal data. A **Processor** is the person/organisation which processes the personal data on behalf of the Controller.

In any contracts awarded from these purchasing systems, EMH is the Controller, and the supplier is the Processor. Personal data will only consist of contact details of residents for whom arrangements need to be made with for the completion of any remedial work.

The Information Commissioners Office can supply more details about processors' obligations. Visit their website: [www.ico.org.uk](http://www.ico.org.uk).

The supplier confirms that it will:

- 7.1 Act only on written instructions from EMH (unless otherwise required by law).
- 7.2 Ensure any processing of personal information is limited to the processing set out in the contract or EMH's written instruction.
- 7.3 On the end date of this agreement, or upon completion of any remedial work (whichever is later) delete or return all personal information to EMH when the Supplier ceases to provide the relevant services.
- 7.4 Ensure that any individuals processing the data are subject to a duty of confidentiality and comply with the Supplier's obligations under the GDPR and DPA.
- 7.5 Take appropriate technical and organisational security measures to ensure compliance with the GDPR and DPA.
- 7.6 Only use a sub-processor with the prior written consent of EMH and will then ensure that such sub-processor shall comply with these GDPR requirements.
- 7.7 Assist EMH to meet its obligations under the GDPR and DPA in relation to allowing data subjects to exercise their rights under the legislation.
- 7.8 Be able to demonstrate (including through records, inspections, audits) to EMH at any point compliance with the GDPR and DPA and will maintain a record of all data processing carried out on EMH's behalf.

- 7.9 Report data breaches to EMH as data controller without undue delay.
- 7.10 Appoint a Data Protection Officer if the Supplier undertakes large-scale data processing.
- 7.11 Only transfer personal data to third countries with EMH's prior written consent and in compliance with the GDPR.
- 7.12 Notify EMH immediately if it considers that any of EMH's instructions infringe the GDPR and DPA.
- 7.13 Notify EMH immediately if it receives a request from an individual to access the personal data held on them, or if an individual asks to exercise its rights under the GDPR, and provide EMH with relevant assistance.
- 7.14 Cooperate with the ICO, as necessary.

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