

EAST SIDE PROPERTY

**TENDER REFERENCE NO: ESP/Prop22
Property Support**

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PART 1: INSTRUCTIONS TO TENDERERS

1. Completion and Submission of Tender Documentation

- The documents completed as directed should be returned to David Cleland by email to david@eastsidepartnership.com
- The closing date for receipt of tenders is **12noon, Wednesday 23 February 2022**. Late tenders will not be considered.
- Tenders must be fully compliant with the requirements detailed in the tender documentation
- All prices entered in the pricing schedule or other documents must be exclusive of VAT and in pounds sterling. VAT is to be shown separately
- Tenders may be rejected if the required information is not given at the time of tendering

2. Economic and Financial Standing

Tenderers may be required to furnish information as to economic and financial standing prior to the acceptance of any tender.

3. Costs and Expenses

Tenderers will not be entitled to claim from EastSide Property (ESPr) any costs or expenses which may be incurred in preparing their tender whether or not it is successful.

4. Period of Validity

Tenderers are required to keep their tenders valid for acceptance for a period of ninety days from the closing date.

5. Confidentiality

Tenderers should treat the tender documents as private and confidential between the tenderer and EastSide Property. Tenderers should note that ESPr shall use the tender documents for the purposes of evaluating the bids and that the tender documents will be destroyed in line with the organisation's disposal schedule.

6. Official Amendments

Should it be necessary for ESPr to amend the tender documentation in any way, prior to receipt of tenders, all tenderers in receipt of documents will be notified simultaneously. If deemed appropriate, the deadline for receipt of tenders will be extended.

7. Canvassing

Any Tenderer who directly or indirectly canvasses ESPr concerning the award of contract or who directly or indirectly obtains or attempts to obtain information from such official concerning the proposed or any other tender will be disqualified. This should not, however deter any supplier seeking clarification in relation to the tender.

8. Assumptions

Tenderers must not make assumptions that ESPr has experience of their organisation or their service provision even if on a current or previous contract. Tenders will only be evaluated on the information provided in their response.

9. Compliance

Tenders must be submitted in accordance with these instructions. Failure to comply may result in a Tender being rejected by ESPr.

10. Conflict of Interest

Tenderers will be required at all times to adhere to high standards of propriety, including impartiality, integrity and objectivity. This means that any private, voluntary, charitable or political interest that might be material or relevant to the work of the project should be declared. Both real and perceived conflicts of interest must be declared, as the appearance of a conflict could be as damaging as the existence of an actual conflict.

It is important therefore that all potential conflicts of interest are declared at the beginning of the appointment process. All submissions will be assessed on merit and not treated more or less advantageously because of an actual or perceived conflict of interest.

11. Contact Details

The person to contact for further information is Tony Wilson.

Any questions or clarifications relating to this procurement should be communicated by email to david@eastsidepartnership.com. This will give you an audit trail of all discussions/clarifications. Any clarifications must be sought at least 5 days prior to the tender return date.

PART 2: TERMS OF REFERENCE

1. Client: EastSide Property Belfast (ESPr)

2. Location: East Belfast

3. Background Information

EastSide Property Belfast is a registered charity which has been in operation since 1998. The company is a not for profit property development company committed to making a positive difference in our community within greater east Belfast.

While committed to providing a professional quality service to clients, Eastside Property Belfast primary goals are social.

The company aims to make a difference by:

- Bringing back into use unused and derelict property;
- Providing high quality good value accommodation for organisations, individuals and companies making a positive contribution to the community;
- Generating income to invest in future community regeneration.

The company currently has a portfolio of 14 properties, with plans underway for 2 new developments.

The company is a wholly owned subsidiary of EastSide Partnership, which is a charitable organisation operating since 1995, and committed to the social, physical, economic and cultural regeneration of east Belfast. EastSide Partnership delivers a wide variety of projects with a clear mission 'to make east Belfast a better place' for residents and visitors.

4. Period of Contract

The contracted service will commence on **01 April 2022** for a period of 2 years, with an option of extending the contract (by a further 1 year).

5. Specification of Services Required

- 5.1 On call professional property support for specific activities, projects and events as they arise, including but not confined to:
- Scoping of new property projects, to include site identification, appraisal of site options, meeting with potential tenants, and viability analysis;
 - Managing of build projects, being the client representative at site meetings, and liaising with design services team throughout the build;
 - Presenting options to EastSide Property board of directors for decision making;
 - Assessing existing property portfolio, and making recommendations accordingly.
- 5.2 We envisage that the minimum time commitment will be 20 days per annum, with the time commitment dependent upon activity levels and budget available.

This support will be at the agreed daily rate, and will be subject to the time required being agreed for each engagement.

6. Response Instructions

6.1 General Instructions

- Fully completed tenders must be received by **12noon, Wednesday 23 February 2022**
- Tenders to be submitted by email to david@eastsidepartnership.com
- Tenders received after the above deadline will not be valid
- Only tenders in English will be accepted.
- Secondment opportunities accepted
- The engagement is available to companies/individuals/partnerships. Key delivery staff must be named, and may only be changed with the express permission of EastSide Property after appointment.

6.2 Format of Response

Tenderers must submit a response which addresses the following:

- 6.2.1 Detailed information about the Lead Consultant who will be undertaking the work and any other staff directly involved in delivery. This should include details of relevant qualifications and experience (**Max 2 A4 pages per CV**)
- 6.2.2 Evidence of the proposed consultants' track record by providing relevant examples (**maximum 4 examples**) within the past 5 years (**Max 2 A4 pages in total**)
- 6.2.3 Consultant rates, both daily and hourly costs (please indicate if VAT is applicable) for Property Support Service. Please outline rates in the format below:

Name	Position	Hourly rate	Daily rate

Completed forms

The tenderer is required to complete and return the following forms which can be found at Part 4: Appendices

- 6.2.4 Completed Authorised Representative Form **Appendix B** (page 27)
- 6.2.5 Completed Acceptance of Terms & Condition Form **Appendix C** (page 28)

7 Evaluation of Tenders

Evaluation criteria that will be used to ensure best value for money in award of this contract are:

- Capability of staff to deliver the required services

- Track record and experience in similar projects
- Value for money

Criteria	Score
Fully completed response (6.2.1- 6.2.5)	Yes/No
Capability of staff	25%
Track record and experience in similar projects	30%
Value for money	45%
Total	100%

7.1 Award Criteria

Following receipt, submissions will be assessed against the above criteria. Applicants may be called for further clarification of the information provided.

The panel’s decision is final. All tenderers will be notified of the outcome of their tender following the completion of the tender evaluation.

PART 3: TERMS AND CONDITIONS OF CONTRACT

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1. Interpretation

1.1 In this Contract the following words shall have the following meanings except where the context otherwise requires:

a. Acceptance	Confirmation in writing by EastSide Property (ESPr) that a Service has been accepted by ESPr.
b. Amendments	The amendments (if any) to the Contract which may be agreed by the Contractor and ESPr.
c. Authorised Representative	The nominated representative of ESPr and the Contractor.
d. Contract	The tender completed by the Contractor (which incorporates the Terms of Reference), these Terms and Conditions of Contract; [the Specification or Operational Requirement; the Drawings, if any,] [the Schedule of Prices or Rates or Lump Sum as submitted by the Contractor,] the Letter of Acceptance issued by ESPr to the Contractor together with such correspondence, if any, between the Contractor and ESPr, as may be agreed by both parties to form part of the Contract.
e. Contractor	The person, firm or corporate body whose tender shall have been accepted by ESPr in the Acceptance and shall include the Contractor's personal representatives, successors, and permitted assigns.
f. Contractors Staff	Employees, sub-contractors employees and agents or representatives of both the Contractor and sub-contractor.
g. ESPr	EastSide Property Belfast
h. Equipment	All materials, plant, equipment, and consumables other to be used by the Contractor in the provision of the Services.
i. Premises	Land or buildings where the services are performed.
j. Services	The provision of the Services defined in the Contract.
k. Site	The area within the Premises in which the Services are performed.
l. Days	Calendar Days
m. Terms of Reference	The terms of reference submitted to the Contractor with ESPr's invitation to tender

1.2 Words importing the singular shall also include the plural, and importing the masculine shall also include the feminine and vice versa where the context requires.

1.3 A reference to any statute, enactment, order, regulations or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted.

2. Entire Agreement

- 2.1 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

3. Period of Contract

- 3.1 This Contract shall take effect from the date stated in the Acceptance and shall be for the term set out therein, unless it is otherwise terminated in accordance with the provisions of these Conditions.

4. Services

- 4.1 The Contract is for work to be undertaken by the Contractor in accordance with the provisions of the Contract.
- 4.2 Requests to provide the Services may be transmitted in writing by post, fax or other electronic means as may be agreed by both parties. In cases of urgency verbal instructions may be given pending written confirmation.

5. Conditions Affecting Provision of Services

- 5.1 The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Services, the means of communication with and access to the Site, the supply of and conditions affecting labour, the suitability of the Premises and the equipment necessary for the performance of the Services, subject to all such matters being discoverable by the Contractor.

6. Contractor Status

- 6.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between ESPr and the Contractor.

7. ESP Property

- 7.1 All ESPr's property shall remain the property of the ESPr for unlimited use.

8. Equipment

- 8.1 The Contractor shall provide all the equipment necessary for the provision of the Services.
- 8.2 The Contractor shall maintain all items of equipment in good and serviceable condition.
- 8.3 All equipment shall be at the risk of the Contractor and ESPr shall have no liability for any loss of or damage to any equipment unless the Contractor is

able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of ESPr.

9. Staff

- 9.1 The Contractor warrants and represents that all staff assigned to the performance of the Contract shall possess such skill and experience as is necessary for the proper performance of the Contract.
- 9.2 Where the Contract provides that the work shall be done by named staff the Contractor undertakes to take all reasonable steps to ensure that his staff remain for the full period of this Contract. Unavoidable changes in the Contractor's staff proposed by the Contractor and agreed by the Authorised Representative shall be subject to not less than one month's written notice.
- 9.3 If for any other reasons changes in the Contractor's staff become necessary in the opinion of the Authorised Representative such changes shall be subject to 1 week's written notice by the Authorised Representative to the Contractor.
- 9.4 In the event that the Contractor is unable to provide replacement staff acceptable to the Authorised Representative within sufficient time to enable the Contractor to complete the work on time then ESPr may obtain replacement staff from other sources or terminate the Contract at its discretion.

10. Co-ordination

- 10.1 The Contractor shall co-ordinate his activities in the provision of the Services with those of ESPr and other contractors engaged by ESPr.

11. Manner of Providing the Services

- 11.1 The Contractor shall perform the Services with all due care, skill and diligence, and in accordance with good industry practice. Timely provision of the Services is of the essence of the Contract.
- 11.2 The Services shall be performed only on approved sites.
- 11.3 The signing by the Authorised Representative of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.

12. Standards

- 12.1 Materials and processes used in connection with the provision of the Services shall be in accordance with the standards and quality specified.
- 12.2 At the request of the Authorised Representative, the Contractor shall provide proof to ESPr's satisfaction that the materials and processes used or proposed to be used, conform to those standards.

- 12.3 The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior approval.

13. Progress Reports

- 13.1 Where progress reports are required to be submitted under the Contract, the Contractor shall render those reports at such time and in such form as may be specified or as otherwise agreed between the parties.
- 13.2 The submission and receipt of progress reports shall not prejudice the rights of either party under the Contract.

14. Payment

ESP shall pay the Contractor for work completed at the rates or prices contained in the pricing schedule or other interest documentation. Where payment is based upon daily rates the Contractor and his staff will be expected to work 7½ hours per day, exclusive of meal breaks, unless alternative arrangements are agreed with ESPr.

Payment shall be due within thirty (30) days of receipt by ESPr of a correct application for payment or invoice or as otherwise specified in the Contract.

ESPr reserves the right to withhold payment against any invoice which is not submitted in accordance with the Contract or which covers or purports to relate to services which have not been provided in accordance with the Contract and shall forthwith notify the Contractor accordingly in writing.

15. Value Added Tax

- 15.1 ESP shall pay to the Contractor, in addition to the charges due for the work performed under the Contract, a sum equal to the value added tax as may be properly chargeable on the value of the supply of goods and services provided in accordance with the contract. Please see cost schedule.
- 15.2 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Value Added Tax Act 1994.
- 15.3 The Contractor shall, if so requested by ESPr, furnish such information as may reasonably be required by ESPr as to the amount of value added tax chargeable on the value of goods and services supplied in accordance with the Contract and payable by ESPr to the Contractor in addition to the charges for work. Any over payment by ESPr to the Contractor shall be a sum of money recoverable from the Contractor.
- 15.4 If the costs of the Contract are increased or decreased any monies thereby payable shall have added to them a sum equal to any appropriate adjustment in respect of value added tax due on the final value of the work.

16. Recovery of Sums Due

- 16.1 Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to ESPr in respect of any breach of this Contract), ESPr may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under this Contract or under any other contract with ESPr.
- 16.2 ESPr shall give at least 21 days' notice to the Contractor of its intention to make a deduction under Condition 16.1 giving particulars of the sum to be recovered and the contract under which the payment arises from which the deduction is to be made.
- 16.3 Any overpayment by ESPr to the Contractor, whether of the contract price or of value added tax, shall be a sum of money recoverable by ESPr from the Contractor.

17. Price Adjustments

- 17.1 [Prices quoted shall remain firm for the initial contract period set out in the Acceptance.]
- 17.2 In the event that the contract period is extended a price review shall take place and any increases or decreases shall be agreed by both parties and recorded as a Variation in line with Condition 33.

18 Intellectual Property Rights – Assignment and Indemnity

- 18.1 The Contractor hereby assigns to ESPr all Intellectual Property Rights owned by the Contractor in any material which is generated by the Contractor and delivered to ESPr in the performance of the Services and shall waive all moral rights relating to such material. The Contractor shall not reproduce, publish or supply any such material to any person other than ESPr without prior approval.
- 18.2 In performing the Services the Contractor shall obtain approval before utilising any material which is or may be subject to any Intellectual Property Rights other than those referred to in Condition 21.1.
- 18.3 Subject to Condition 18.4, the Contractor shall indemnify ESPr against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, or the use by ESPr following delivery by the Contractor, of any material which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.
- 18.4 The provisions of Condition 18.3 shall not apply in respect of any material which ESPr has supplied to the Contractor or which ESPr has specified for use by the Contractor or for delivery to ESPr.

- 18.5 ESPr shall indemnify the Contractor against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, of any material referred to in Condition 18.4 which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.
- 18.6 Where any claim is made by a third party in respect of any material referred to in Condition 18.3 or 18.5, the party which is required to provide an indemnity under those provisions shall have the right to conduct, or take over the conduct of, the defence to the claim and to any proceedings or action brought by the third party.

19. Security

- 19.1 The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security which may be applicable to the Contractor in the performance of the Services.
- 19.2 The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that staff have notice that all provisions referred to in Condition 19.1 will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.

20. Confidentiality

- 20.1 Each Party: -
- a. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
 - b. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.
- 20.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from ESPr under or in connection with the Contract:-
- a. is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
 - b. Is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

- 20.3 The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor's Confidentiality obligations under this Contract.
- 20.4 The Contractor shall not use any Confidential Information it receives from ESP otherwise than for the purposes of the Contract.
- 20.5 The provisions of Clauses 20.1 to 20.4 shall not apply to any Confidential Information received by one Party from the other:-
- a. which is or becomes public knowledge (otherwise than by breach of this Condition);
 - b. which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - c. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - d. is independently developed without access to the Confidential Information; or
 - e. Which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to Condition 24.3 (Freedom of Information).
- 20.6 Nothing in this Condition shall prevent the Department: -
- A. disclosing any Confidential Information for the purpose of:-
 - i. the examination and certification of the Client's accounts; or
 - ii. Any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which ESP has used its resources; or
- 20.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 20.8 In the event that the Contractor fails to comply with this Condition 20, ESP reserves the right to terminate the Contract by notice in writing with immediate effect.
- 20.9 The provisions under this Condition are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

21. Freedom of Information

21.1 The Contractor acknowledges that ESPr and project funders may be subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department (at the Contractor's expense) to enable the Client to comply with these Information disclosure requirements.

22. Publicity

22.1 The Contractor shall not make any public statement relating to the existence or performance of the Contract without prior approval, which shall not be unreasonably withheld.

23. Right of Audit

23.1 The Contractor shall keep secure and maintain until two years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the parties, full and accurate records of the Services, all expenditure reimbursed by ESPr and all payments made by ESPr.

23.2 The Contractor shall grant to ESPr or its authorised agents, such access to those records as they may reasonably require in compliance with the Contract.

24 Data Protection Act 1998

24.1 The Contractor shall not disclose or allow access to any personal data provided by ESPr or acquired by the Contractor during the course of tendering for or executing the contract, other than to a person employed or engaged by the Contractor or any sub-contractor, agent or other person concerned with the same.

24.2 Any disclosure of or access to personal data allowed under Condition 24.1 shall be made in confidence and shall extend only so far as that which is specifically necessary for the purpose of the Contract.

25. Indemnity and Insurance

25.1 The Contractor shall indemnify ESPr to a limit of £100,000 in respect of any one incident or series of incidents arising out of his performance of the Contract against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any loss of or damage to property which is caused directly or indirectly by any act or omission of the Contractor. Indemnity in respect of death or personal injury shall be unlimited. This condition 25.1 shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage, was not caused or contributed to by his negligence or default, or the negligence or default of his Staff or sub-contractors, or by any circumstances within his or their control.

25.2 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, in respect of death or personal

injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

- 25.3 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.
- 25.4 The Contractor shall produce to the Authorised Representative, on request, copies of all insurance policies referred to in this Condition or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 25.5 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in this Condition.

26. Statutory and Other Regulations

- 26.1 The Contractor shall be deemed to have acquainted himself with any and all Acts of Parliament, Statutory Regulations, or other such laws, recommendations, guidance or practices as may affect the provision of the service(s) specified under the Contract.
- 26.2 The Contractor shall be deemed to have acquainted himself with British/European Standards, Codes of Practice as may be relevant to this Contract.
- 26.3 The Contractor shall adequately train, instruct and supervise staff to ensure that so far as is reasonably practical the standards and codes of practice are observed.

27. Equality of Opportunity

- 27.1 The Contractor shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular: -

Equal Pay Act (Northern Ireland) 1970;
Sex Discrimination (Northern Ireland) Order 1976 (as amended);
Health and Safety at Work (Northern Ireland) Order 1978;
Disability Discrimination Act 1995 and the Disability Discrimination (Northern Ireland) Order 2006 (as amended);
Employment Rights (NI) Order 1996;
Race Relations (Northern Ireland) Order 1997;
Fair Employment and Treatment (NI) Order 1998 (as amended);
Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000;
Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002;

Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003;
The Employment (Northern Ireland) Order 2003
The Employment Relations (Northern Ireland) Order 2004;
Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006;
Employment Equality (Age) Regulations (Northern Ireland) 2006;
The Work and Families (Northern Ireland) Order 2006.

and shall use his best endeavours to ensure that in his employment policies and practices and in the delivery of the services required of the Contractor under this agreement he has due regard to the need to promote equality of treatment and opportunity between: -

- a. Persons of different religious beliefs or political opinions.
- b. Men and women or married and unmarried persons.
- c. Persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave).
- d. Persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997).
- e. Persons with and without a disability (within the meaning of the Disability Discrimination Act 1995).
- f. Persons of different ages; and
- g. Persons of differing sexual orientation

27.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of the above clause (27.1) by all servants, agents, employees, consultants and sub-contractors of the Contractor.

28. Health and Safety

The Contractor's attention is drawn to the provision of the Health and Safety at Work (Amendment) (Northern Ireland) Order 1998 and in particular to Article 4 "General Duties of Employers to their Employees".

29. Conflict of Interest

29.1 Provided that there shall be no conflict of interest and the Contractor shall fulfil his obligations to the Department the Contractor shall be at liberty to enter into agreement with other public sector organisations elsewhere in the United Kingdom for the provision of services.

29.2 The Contractor warrants that he is not at the date hereof retained by any interest that could be in conflict with the work of ESPr and that for the duration of this Contract he will not accept instructions from any such interest either directly or indirectly nor do any other act which may give rise to conflict of interest.

30. Transfer, Sub-Contracting and Assignment

30.1 The Contractor shall not transfer or assign this Contract or a part thereof and shall not sub-contract any part of the provision of the services without the prior written consent of ESPr.

- 30.2 It is a condition of such consent that the sub-contractor must undertake directly to perform the terms of the Contract in respect of the sub-contracted services as if he were the contractor.
- 30.3 Any consent to sub-contract will not release the Contractor from any liability to ESPr in respect of the sub-contracted section and the contractors shall be responsible for the acts, defaults or neglect of any sub-contractor or their agents or employees in all respects as they were the acts, defaults or neglect of the contractor or their agents, or employees.
- 30.4 Where the Contractor enters a sub-contract with a contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.
- 30.5 ESPr may assign or in any other way dispose of its rights and obligations under this Contract or any part of it to any Department, Office or Agency of the Crown or any other body provided that any such assignment or other disposal shall not increase the burden of the Contractors obligations under this Contract.

31. Severability

- 31.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

32. Waiver

- 32.1 The failure of either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 32.2 No waiver shall be effective unless it is communicated to the other party in writing.
- 32.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

33. Variations

- 33.1 The Contract shall not be varied unless such variation is made in writing by means of a Variation to Contract Form as set out at Appendix A.

- 33.2 In the event of an emergency ESPr shall have the right to vary the Contract by oral instructions given by ESPr's Authorised Representative, which shall be confirmed by the issue of a Variation to Contract Form within 7 days.
- 33.3 ESPr shall have the right to vary the Services at any time, subject to the Variation being related in nature to the Services being provided, and no such Variation shall vitiate the Contract.
- 33.4 The Contractor may request a Variation provided that:
- a. the Contractor shall notify ESPr's Authorised Representative in writing of any additional or changed requirement which it considers should give rise to a Variation within 7 days of such occurrence first becoming known to the Contractor;
 - b. Any proposed Variation shall be fully supported by a quotation as detailed in Condition 33.5
- 33.5 The Contractor, within 14 days of being requested by ESPr's Authorised Representative or where requesting a Variation pursuant to Condition 33.4, shall submit a quotation to ESPr, such quotation to contain at least the following information:
- a. A description of the work together with the reason for the propose Variation;
 - b. The price, where applicable;
 - c. Details of the impact, if any, on other aspects of the Contract.
- 33.6 The price for any Variation shall, unless otherwise agreed between the Parties, be calculated in the following order of precedence:
- a. Using the Prices or Rates;
 - b. Prices pro-rata to the Prices or Rates;
 - c. Prices based on the Prices or Rates.
- 33.7 ESPr shall either approve or reject any Variation proposed by the Contractor.
- 33.8 In the event that the Contractor disputes any decision by ESPr to reject a proposed Variation or contends that a proposed Variation is outstanding or continues to be required, the Contractor shall update the information contained in his quotation for the proposed Variation every Month and shall send the updated information to ESPr.

34. Performance Monitoring

- 34.1 The performance of the Contractor will be subject to monitoring and review against agreed quality aspects.

34.2 Where applicable performance and or price indices may be applied by ESPr to measure the performance of the Contractor.

34.3 The Contractor shall ensure that information, records, and documentation necessary to monitor effectively the performance of the Contract are maintained and are available at all times to the Authorised Representative.

35. Force Majeure

35.1 Neither party shall be liable to the other party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where there is no practicable means available to the party concerned to avoid such failure or delay.

35.2 If either party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other party of the period for which it estimates that the failure or delay will continue.

35.3 For the purposes of this Condition, "Force Majeure" means any event or occurrence which is outside the control of the party concerned and which is not attributable to any act or failure to take preventive action by the party concerned, but shall not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

35.4 Any failure or delay by the Contractor in performing his obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with an obligation to the Contractor by Force Majeure.

36. Bankruptcy

36.1 In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a winding up order made or (except for the purpose of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking duly appointed, or possession taken, by or on behalf of the holders or any debentures secured by a floating charge of any property comprised in or subject to the floating charge, ESP may at its discretion forthwith determine the Contract. The Contract may be reinstated and continued by ESPr and the Contractor, if his trustee in bankruptcy, liquidator, receiver or manager, as the case may be, so agree.

37. Termination on Default

37.1 ESPr may terminate the Contract, or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:

- a. the Contractor has not remedied the default to the satisfaction of ESP within 30 days, or such other period as may be specified by ESP, after service of written notice specifying the default and requiring it to be remedied; or
- b. The default is not capable of remedy; or
- c. The default is a fundamental breach of the Contract.

38. Break

- 38.1 ESPr shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving 1 Months' written notice to the Contractor. ESPr may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

39. Consequences of Termination

- 39.1 If ESPr terminates the Contract under Condition 37.1, or terminates the provision of any part of the Services under that Condition, and then makes other arrangements for the provision of the Services, ESPr shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by ESPr throughout the remainder of the Contract Period. Where the Contract is terminated under Condition 37.1, no further payments shall be payable by ESPr until ESP has established the final cost of making those other arrangements.
- 39.2 If ESPr terminates the Contract, or terminates the provision of any part of the Services, under Condition [38.1], ESPr shall reimburse the Contractor in respect of any loss, not including loss of profit, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor takes immediate and reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce equipment and labour costs as appropriate.
- 39.3 For the purposes of Condition 39.2 the Contractor shall submit to the Authorised Representative, within 14 working days after service of the notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the Services, to be updated only in respect of ongoing costs each week until the Contract is terminated.
- 39.4 ESPr shall not be liable under Condition 39.2 to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the provision of the Services had been completed in accordance with the Contract.

40. Arbitration

40.1 All disputes, differences or questions between the parties to the Contract with respect to any matter arising out of or relating to the Contract, other than a matter of things as to which the decision of ESPr is under the Contract to be final and conclusive, shall after written notice by either party to the Contract to the other be referred to a single arbitrator agreed for that purpose or in default of such agreement within twenty-one (21) days, appointed at the request of either party by the President of the Law Society of Northern Ireland. The decision of such arbiter shall be final and binding on the parties of the Contract.

40.2 The provision of the Arbitration Act 1996 shall apply to any arbitration under this contract and such arbitration shall be conducted solely within Northern Ireland.

41. Law

41.1 This Contract shall in all respects be governed by and construed in accordance with the laws of Northern Ireland and the parties hereby agree that the Courts of Northern Ireland shall have exclusive jurisdiction to hear and determine any dispute arising out of or in connection with this Contract.

PART 4: APPENDICES

Appendix A: Variation to Contract Form

Appendix B: Authorised Representatives Form

Appendix C: Acceptance of Terms & Conditions Form

Appendix A

(See Condition 33.1)

VARIATION TO CONTRACT FORM

CONTRACT TITLE: _____

CONTRACT REF: _____ VARIATION NO: _____ DATE: _____

BETWEEN:

The Contract is varied as follows:

Words and expressions in this Variation shall have the meaning/s given to them in the Contract.

The Contract, including any previous Variation(s), shall remain effective and unaltered except as amended by this Variation.

SIGNED:

For: ESP

For: The Contractor

By: _____

By: _____

Full Name: _____

Full Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix B

(See Condition 1.1C)

AUTHORISED REPRESENTATIVES

The Authorised Representative of ESP for the purposes of the Contract is:

Name: _____

Email: _____

Telephone: _____

Mobile: _____

The Authorised Representative of the Contractor for the purpose of the Contract is:

Name: _____

Email: _____

Telephone: _____

Mobile: _____

Appendix C

**EASTSIDE PROPERTY (ESP)
ACCEPTANCE OF TERMS & CONDITIONS**

PROPERTY SUPPORT TENDER (REFERENCE NO: ESP/Prop21)

I/We the undersigned hereby tender for the above contract in accordance with the Terms of Reference at the prices quoted in the schedule forming part of my/our tender response ("the Tender").

I/We agree that the Tender together with your written acceptance thereof shall constitute a binding contract between us and ESP in relation to the whole or such part of the Tender as may be specified in your written acceptance.

I/We have read, accept and agree to abide by the attached Terms and Conditions of Contract which take precedence over any terms, conditions, stipulations or provisos which may appear on or be annexed to any correspondence submitted by me/us in connection with this Contract.

I/We understand that ESP does not bind itself to accept the lowest or any tender submitted in response to this enquiry and may accept the whole or part of any tender.

To the best of our belief this submission complies fully with the requirements of the terms of reference. The details and information contained within the submission are true and accurate and best endeavours have been used so as not to mislead the assessors.

I/We agree that all decisions made by the ESP relating to the assessment of the submissions will be final.

I/We understand ESP reserves the right to discontinue the award procedure in the event of irregular tenders or in the absence of appropriate tenders and in such circumstances may use the negotiated procedure without a further call for competition.

I/We warrant that I/we have all the requisite corporate authority to sign the Tender.

Date: _____

Signed by or on behalf of the Tenderer: _____

Printed: _____

Name of Tenderer: _____

Registered Address:

