

CORFE CASTLE PARISH COUNCIL
WEST STREET TOILET CLEANING CONTRACT
CONDITIONS OF CONTRACT

1. Definitions

In this Contract, save where the context otherwise requires, the following expressions shall have the meanings assigned to them:

- 1.1 “Commencement date” means the date agreed by the employer and the successful contractor upon award of contract.
- 1.2 “Conditions” means the Conditions, any supplementary conditions and any modification.
- 1.3 “The Contract” this Contract means the Articles of Agreement, These Conditions, any supplementary conditions and any modification, the Specification and the Form of Tender.
- 1.4 “Contract period” shall be construed in accordance with Clause 5
- 1.5 “Contract Sum” shall be the annual sum specified in the pricing Schedule but subject to Clause 22
- 1.6 “Default Notice” means a notice issued in accordance with Clause 21
- 1.7 “The Employer” means Corfe Castle Parish Council or any successor authority.
- 1.8 “Plant” means equipment, machinery and vehicles
- 1.9 “the Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 1.10 “Review” means the review of the Contract Sum to be undertaken on the Review Date.
- 1.11 “Review Date” means the first anniversary of the Commencement Date.
- 1.12 “The Services” means the services described in the Specification.

- 1.13 “The Specification” means the Specification of Works provided as part of this Tender.
- 1.14 “Clerk” means Ali Burnett or person fulfilling the like role.
- 1.15 “Transferring Employee” means those employees of the existing Contractor who immediately before the Commencement Date were engaged on the work comprised within the Services and will under the Contract be transferred to the Contractor.
- 1.16 “Undertaking” means the undertaking within the meaning of the Regulations which immediately before the commencement date comprise the work constituting the Services.
- 1.17 “Week” means 7 consecutive days starting on Monday and ending on the following Sunday.
- 1.18 Reference to any Act of Parliament and to any orders, regulations or rules made pursuant of that Act shall include reference to any modification, re-enactment or replacement.

2. Variation of Contract

- 2.1. Without prejudice to any other of the Conditions, no omission from, addition to or variation of this Contract shall be valid or of any effect unless it is agreed in writing and signed by the Clerk and by a duly authorised representative of the Contractor.
- 2.2. Save for an omission, addition or variation agreed pursuant to Clause 2.1 any provision inconsistent with the Conditions contained in any other document or in any oral agreement is agreed to be void and of no effect.

3. The Clerk

The functions rights and powers conferred by the contract upon the Employer shall be exercised by the Clerk on the instruction of and with the approval of the Parish Council.

4. Sufficiency of tender

The Contactor shall be deemed to have satisfied itself before submitting its tender as to the correctness and sufficiency of the rates and prices stated by it in the priced Pricing

Schedule which shall (except in so far as it is otherwise provided by the Contract) cover all its obligations under the Contract.

5. Contract Period

- 5.1. This contract shall extend for a period of 2 years from the Commencement date and shall not be terminated by either party within that period save in accordance with this contract.
- 5.2. The Employer may extend the period of this contract by 1 calendar year by giving not less than one month's written notice to the Contractor.

6. Performance of Services

- 6.1 During the Contract Period the Contractor shall perform the Services (and any modifications authorised by or under this Contract (in particular Clause 7) efficiently, effectively and safely and in a manner totally consistent with the terms of this Contract and to the entire satisfaction of the Clerk.
- 6.2 The Contractor shall at all times perform the Services in accordance with the Specification (and any modifications) authorised under this Contract.

7. Modification

- 7.1. At the instruction of the Council the Clerk shall be entitled to issue to the Contractor instructions in writing requiring the Contractor to do all or any of the following:
 - 7.1.1. To omit and to cease to perform any part of the Services for such a period as the Council may fix.
 - 7.1.2. To perform the Services or any part in such a manner as the Council may require.
 - 7.1.3. To perform such additional services outside the scope of the Services as the Council may require that such additional services shall be the same as or similar to the Services under this Contract, in which case rates shall be agreed between the Council and the Contractor based on the rates in the Contract.
 - 7.1.4. To vary the Specification and to perform the Services in accordance with the Specification as so varied and the Contractor shall immediately carry out all such instructions.

7.1.5. The Employer shall reimburse to the Contractor reasonable costs expended by the Contractor in carrying out any instructions under Clause 7 or the Contractor shall allow to the Employer savings arising (as the case may be).

7.2. Without prejudice to the generality of clause 7.1:

7.2.1. Where there is a short term temporarily closure of a toilet or part of a toilet (e.g. for repairs) and where cleaning is therefore not required there shall be no reduction in payment made to the Contractor.

7.2.2. If a toilet is closed for a period exceeding 7 days for any reason (but for the avoidance of doubt could include extensive repairs or renovation work) a reduction in the monthly contract sum shall be made. An amount commensurate with the period of closure shall be agreed in writing between the Clerk and the Contractor.

8. Method of Payment

Provided that the Contractor shall have performed the Services in accordance with this Contract the Employer shall in each year pay the Contractor in the manner provided below the Contract Sum by 12 equal monthly instalments in arrears subject to the additions and deductions provided below. Any additional services shall be paid for at the rates and prices agreed in Clause 7

9. Monthly statement

The Contractor shall submit to the Clerk after the end of each calendar month a statement showing:

9.1 Its valuation of the work undertaken in respect of each aspect of the Contract up to the end of that month and the amounts to which the Contractor considers itself entitled in connection with any variations or instructions for additional services duly authorised by the Supervising officer (Clerk).

10. Certification

Within 28 days of the date of delivery to the Clerk of the monthly statement by the Contractor, the Clerk shall certify and the Employer shall pay to the Contractor (after deducting any previous payment on account) the amount which in the opinion of the

Supervising Officer on the basis of the monthly statement is due to the Contractor including the sum (if any) to be added by way of VAT.

11. Additions and Deductions

At the instruction of the Council the Clerk shall have the power to amend any monthly statement in respect of any variation by addition or deduction of the value of any additional work or omission which has been duly authorised.

12. Assignment

- 12.1. The Employer shall be entitled to assign the benefit of the Contract or any part of the Contract to a statutory or other public body and shall give written notice of any assignment to the Contractor.
- 12.2. The Contractor shall not assign the Contract or any part of it or any benefit or interest in or under it without the written consent of the Employer.
- 12.3. The Contractor shall not sublet the whole or any part of the Services without written permission of the Supervising Officer and such consent shall not relieve the Contractor from any liability or obligation under the Contract and it shall be responsible for the acts, defaults and neglects of any subcontractor its agents or servants as fully as if they were the acts defaults or neglects of the Contractor, its agents or servant.

13. Plant

The Contractor shall at all times during the Contract Period provide and maintain all Plant as necessary for the proper performance of the Services

14. Contractors staff

- 14.1 The Contractor shall at all times during the Contract Period employ sufficient persons of sufficient abilities and skills for the proper performance of the Services.
- 14.2 The Contractor shall at all times during the Contract Period employ sufficient persons of sufficient abilities and skills to supervise and administer the performance of the Services.

- 14.3 The Contractor shall notify the Clerk of the name, address and telephone number of the person who will be in charge of the Contract at a local level.
- 14.4 The Contractor shall at all times take all such precautions as are necessary to protect the health and safety of all persons employed by him and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, regulations, orders or EC directives relating to the health and safety of employed persons.
- 14.5 The Clerk shall be entitled to recommend to the Contractor by notice in writing to remove from the performance of the Services or to discipline any employee of the Contractor specified in such notice. The Employer shall in no circumstances be liable either to the Contractor or to the employee in respect of any liability, loss or damage occasioned by such removal or disciplinary action and the Contractor shall indemnify the Employer against any claim by such employee.

15. Liability of Contractor

- 15.1 The Contractor shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings arising under any statute or at common law in respect of personal injury to or death of any person arising out of or in the course of or caused by the performance of the Services, except to the extent that the same is due to any act or neglect of the Employer or of any person for whom the Employer is responsible.
- 15.2 The Contractor shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings in respect of any loss of or injury or damage to any property, real or personal, in so far as such loss, injury or damage arises out of or in the course of or by reason of the performance of the Services and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor, its employees or agents or of any person employed or engaged by the Contractor upon or in connection with the performance of the Services or any part, its employees or agents.

16. Insurance

- 16.1 Without prejudice to clause 16 the Contractor shall at all times maintain in force such policies of insurance with reputable insurers or underwriters approved by the Employer and shall fully insure and indemnify the Contractor against liability.

16.1.1. To the Employer and to any employee of the Employer

16.1.2. To the employees of the Contractor

16.1.3. To any other person

16.1.4. In the sum of at least £5,000,000 in respect of each claim.

17. Bribery and corruption and collusion

17.1 The Employer shall be entitled to immediately terminate this Contractor and to recover from the Contractor the amount of any loss resulting from such termination if:

17.1.1. The Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to this Contract or any other contract with the Employer.

17.1.2. The like acts shall have been done by any person employed by the contractor or acting on its behalf (whether with or without the knowledge of the Contractor);

17.1.3. in relation to any contract with the Employer the Contractor or person employed by the Contractor or acting on its behalf shall have committed any offence under the Bribery Act 2010 or have given any fee or reward, the receipt of which is an offence under the Local Government Act 1972 Section 117

17.1.4. The Contractor when tendering fixed or adjusted the amount of the Tender under or in accordance with any agreement or arrangement with any other person or before the hours specified for the return of the tenders:

17.1.4.1. Communicated to a person other than the Employer the amount or the approximate amount of its Tender (except where the disclosure in confidence of the approximate amount of its Tender was essential to obtain insurance premium quotations required for the preparation of its Tender)

17.1.4.2. Entered into an agreement with any other person whereby that other person would refrain from tendering or as to the amount of any tender to be submitted.

17.1.4.3. Offered or paid or gave or agreed to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender any act or thing of the sort described above

18. Gratuities

The Contractor shall not, whether by itself or by any person employed by it to perform the Services, solicit any gratuity or tip or any other form of money taking or reward, collection or charge for any of the Services.

19. Liability of Employer

The Employer shall not be liable for any loss or damage howsoever arising except for loss or damage directly arising from negligent acts or omissions of the Employer, its servants or agents. Damages arising from such negligent acts or omissions shall be limited to direct and unavoidable losses and the Contractor shall take all reasonable steps to mitigate such losses.

20. Default in Performance

- 20.1. Upon inspection by the Clerk, failure to perform the Services shall be deemed to be a default in performance and the at the instruction of the Council the Clerk shall be entitled to instruct the Contractor to remedy the failure in writing in order to comply fully with this Contract within such reasonable period as the Council may determine.
- 20.2. If the Contractor fails to comply with an instruction of the Clerk issued under 21.1 or persistently fails to perform any part of the Contract the Clerk shall be entitled to record in writing a Default Notice which shall be sent to the Contractor.
- 20.3. Where 4 or more Default Notices have been issued by the Clerk in any rolling 1 year period the Council may terminate the Contract.
- 20.4. Where the Clerk issues an instruction under Clause 20.1 the Contractor shall be liable for any liquidated damages incurred by the Employer in remedying the failure to perform the Services.

21. Method of review

- 21.1. From the Review Date the Contract Sum shall be increased or decreased in accordance with the change in the General Index of Consumer Prices.
- 21.2. For the purposes of this Clause 21 the Base Index Figure from which any changes in the Consumer Price Index shall be calculated shall be the appropriate Index Figure applicable on the Commencement Date.

22. Termination

- 22.1. Without prejudice to any other remedy the Employer shall be entitled forthwith upon the happening of any of the following events to terminate this Contract.
 - 22.1.1. The Contractor having failed to complete the Services for a period of 2 weeks
 - 22.1.2. Where 4 or more Default Notices have been issued in respect of any rolling year.
 - 22.1.3. Any breach by the Contractor of any other provision of the Contract.
 - 22.1.4. The Contractors suffering an execution to be levied on its goods or if the Contractor consists of one or more individuals any such individual dying, entering into a composition or arrangement for the benefit of its creditors or having received an order in bankruptcy made against him, or if the Contractor consists of a body corporate, The Contractor's having a receiver or administrator appointed or being the subject of a resolution or order for winding up provided that an amalgamation or reconstruction of a limited company shall be deemed not to be in breach of this Clause .
- 22.2. Upon such termination, in addition to such consequences as are set out in the other provisions of this Contract:
 - 22.2.1. The Contractor shall immediately cease to perform the Services.
 - 22.2.2. The Contractor shall fully indemnify the Employer in respect of the cost of causing to be performed such Services as would have been performed by the Contractor during the remainder of this Contract Period to the extent that such costs exceeds the sum as would have been lawfully payable to the Contractor for performing such Services. The Employer shall be at liberty to have such Service performed by any persons (whether or not employees) of the Employer) as the Employer shall in its discretion think fit and shall be under no obligation to employ the least expensive method of having the Services performed.

22.2.3. The Employer shall be under no obligation to make any further payment to the Contractor and 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 Employer all sums due under the Contract or to be deducted from such sum any sum due from the Contractor to the Employer under this Contract.

23. Rights and duties reserved

Nothing in this Contract shall prejudice or fetter the proper exercise of any function of the Employer or its officers.

24. Stamp duty and legal fees

Each party shall bear its own legal and other fees in relation to the preparation and submission of the Tender documents and this Contract.

25. Whole contract

This Contract constitutes the whole agreement and understanding of the parties as to the subject matter in this Contract and there are no prior or contemporaneous agreements between parties.

26. Waiver

Failure by the Employer at any time to enforce any provision of this Contract or to require performance by the Contractor or any of the provisions of this Contract shall not be construed as a waiver of any such provisions and shall not affect the validity of this Contract or any part of it or the right of the employer to enforce provision in accordance with its terms.

27. Severance

If any provision of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

28. Inconsistency

In the event of a conflict between any provision of the Conditions and any provision of the Specification the provision of the Conditions shall prevail.

