



**Ministry of Public Works
Department of Works and Engineering**

**Request for Proposals
For
Provision of Excavation and Reinstatement services on an as needed basis**

Request for Proposals No.: **50/600/2023 excavation**

Issued: **Friday January 13, 2023**

Submission Deadline: **Monday February 6, 2023 04:00:00 PM Bermuda Local Time**

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PART 1 – INVITATION AND SUBMISSION INSTRUCTIONS

1.1 Invitation to Proponents

This Request for Proposals (the “RFP”) is an invitation by the Government of Bermuda (the “Government”) to prospective proponents to submit proposals for **Provision of Excavation and Reinstatement services on an as needed basis** as further described in Section A of the RFP Particulars (Appendix D) (the “Deliverables”).

The work will involve the provision of mechanical digging equipment to excavate and expose water supply mains to be repaired by Ministry of Public Works (MPW) personnel. Once repaired the contractor shall supply all materials, labour and equipment to backfill and reinstate the excavation. The work is to be undertaken on an as needed basis and the contractor shall respond to a request no later than 24hrs following notification

1.2 RFP Contact

For the purposes of this procurement process, the “RFP Contact” will be:

Mr. J. Tarik Christopher at email tjchristopher@gov.bm

Proponents and their representatives are not permitted to contact any employees, officers, agents, elected or appointed officials or other representatives of the Government, other than the RFP Contact, concerning matters regarding this RFP. Failure to adhere to this rule may result in the disqualification of the proponent and the rejection of the proponent’s proposal.

Prior to the Submission Deadline noted in the RFP timetable below, proponents that download this file and intend to respond to this RFP are required to register their interest with the RFP contact by emailing their company name and contact information to

Mr. J. Tarik Christopher at email tjchristopher@gov.bm

Amendment/addenda (if any) will be posted at <https://www.gov.bm/procurement-notices>. Proponents should visit the Government Portal on a regular basis during the procurement process.

1.3 Type of Contract for Deliverables

The selected proponent will be requested to enter into direct contract negotiations to finalize an agreement with the Government for the provision of the Deliverables. The terms and conditions found in the Form of Agreement (Appendix A) are to form the basis for commencing negotiations between the Government and the selected proponent. It is the Government’s intention to enter into an agreement with only one (1) legal entity.

The term of the agreement is to be for a period of 1 year, with an option in favour of the Government to extend the agreement terms and conditions acceptable to the Government and the selected proponent for an additional term of up to 1 year. An Agreement is subject to change until fully executed.

Joint submissions are acceptable however, if a joint submission is made, the submission must clearly indicate which party will act as the prime contractor.

1.4 RFP Timetable

1.4.1 Key Dates

Issue Date of RFP	Friday January 13, 2023
No Pre-Bid / Site Meeting	NA
Deadline for Questions	Monday January 30, 2023
Deadline for Issuing Addenda	Wednesday February 1, 2023
Submission Deadline	Monday February 6, 2023 04:00:00 PM
Rectification Period	5 business days
Anticipated Ranking of Proponents	Monday February 20, 2023
Contract Negotiation Period	30 calendar days
Anticipated Execution of Agreement	Monday April 03, 2023

All times listed are Bermuda local time. The RFP timetable is tentative only and may be changed by the Government at any time. For greater clarity, business days means all days that the Government is open for business.

1.4.2 Site Visit / Pre-Bid Meeting

Not Required

1.5 Submission of Proposals

1.5.1 Proposals to be Submitted at Prescribed Location

Proposals must be submitted to:

Tender Box at the Ministry of Public Works,
Located on the 3rd Floor, General Post Office Building,
56, Church Street, Hamilton, HM12, Bermuda.

Electronic mail (E-Mail) submissions are accepted at water@gov.bm.
If documents are larger than ten (10) MB please send them within a zip file.
In the subject line of the email, please state the RFP title. Please ensure to send a copy of your proposal in Adobe PDF format.

1.5.2 Proposals to be Submitted on Time

Proposals must be submitted at the location set out above on or before the Submission Deadline. Proposals submitted after the deadline will be rejected.

1.5.3 Proposals to be Submitted in Prescribed Format

Proponents shall submit either two (2) original signed hard copies of their quotation or one (1) electronic copy (e-copy) in Adobe PDF format. If both a hard copy and e-copy of the proposal is submitted and there is a conflict or inconsistency between the hard copy and the e-copy of the proposal, the hard copy of the proposal will prevail.

Proponents can submit one (1) electronic copy (e-copy) in Adobe PDF format.

The original and all copies of the proposal shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Proponent. This authorization shall consist of a written authorization and shall be attached to the Submission Form included in (Appendix B). The name and position held by each person signing the authorization must be typed or printed below the signature. An Electronic Record of Signature will be accepted in the submission only in accordance with the requirements laid out in the Electronic Transactions Act 1999. Any interlineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the proposal.

Proposals should be submitted in a sealed package and prominently marked with the RFP title and number (see RFP cover) and do not be opened until Monday February 6, 2023 04:00:00 PM. The full legal name and return address of the proponent should be marked on the package as well.

1.5.4 Amendment of Proposals

Proponents may amend their proposals prior to the Submission Deadline by submitting the amendment in a sealed package prominently marked with the RFP title and number and the full legal name and return address of the proponent to the location set out above. Any amendment should clearly indicate which part of the proposal the amendment is intended to amend or replace.

1.5.5 Withdrawal of Proposals

At any time throughout the RFP process until the execution of a written agreement for the provision of the Deliverables, a proponent may withdraw a submitted proposal. To withdraw a proposal, a notice of withdrawal must be sent to the RFP Contact and must be signed by an authorized representative of the proponent. The Government is under no obligation to return withdrawn proposals.

[End of Part 1]

PART 2 – EVALUATION, NEGOTIATION AND AWARD

2.1 Stages of Evaluation and Negotiation

The Government will conduct the evaluation of proposals and negotiations in the following stages:

2.2 Stage I – Mandatory Submission Requirements

Stage I will consist of a review to determine which proposals comply with all of the mandatory submission requirements. If a proposal fails to satisfy all of the mandatory submission requirements, the Government will issue the proponent a rectification notice identifying the deficiencies and providing the proponent an opportunity to rectify the deficiencies. If the proponent fails to satisfy the mandatory submission requirements within the Rectification Period, its proposal will be rejected. The Rectification Period will begin to run from the date and time that the Government issues a rectification notice to the proponent. The mandatory submission requirements are set out in Section C of the RFP Particulars (Appendix D).

2.3 Stage II – Evaluation

Stage II will consist of the following two sub-stages:

2.3.1 Mandatory Technical Requirements

The Government will review the proposals to determine whether the mandatory technical requirements, as set out in Section D of the RFP Particulars (Appendix D), have been met. Questions or queries on the part of the Government as to whether a proposal has met the mandatory technical requirements will be subject to the verification and clarification process set out in Part 3.

2.3.2 Rated Criteria

The Government will evaluate each qualified proposal on the basis of the non-price rated criteria as set out in Section F of the RFP Particulars (Appendix D).

2.4 Stage III – Pricing

Stage III will consist of a scoring of the submitted pricing of each qualified proposal in accordance with the price evaluation method set out in Pricing (Appendix C). The evaluation of the price will be undertaken after the evaluation of mandatory requirements, and rated criteria has been completed.

2.5 Stage IV – Ranking and Contract Negotiations

2.5.1 Ranking of Proponents

After the completion of Stage III, all scores from Stage II and Stage III will be added together, and the proponents will be ranked based on their total scores. The top-ranked proponent will receive a written invitation to enter into direct contract negotiations to finalize the agreement with the Government. In the event of a tie, the selected proponent will be the proponent selected by way of the lowest price.

2.5.2 Contract Negotiation Process

Any negotiations will be subject to the process rules contained in the Terms and Conditions of the RFP Process (Part 3) and will not constitute a legally binding offer to enter into a contract on the part of the Government or the proponent and there will be no legally binding relationship created with any proponent prior to the execution of a written agreement. The terms and conditions found in the Form of Agreement (Appendix A) intended to provide the proponent advance notice of some of the key contractual provisions including indemnities, limitation of liabilities, service requirements, etc. that would be contained in the form of contract and are to form the basis for commencing negotiations between the Government and the selected proponent. Negotiations may include requests by the Government for supplementary information from the proponent to verify, clarify or supplement the information provided in its proposal or to confirm the conclusions reached in the evaluation, and may include requests by the Government for improved pricing or performance terms from the proponent.

2.5.3 Time Period for Negotiations

The Government intends to conclude negotiations and finalize the agreement with the top-ranked proponent during the Contract Negotiation Period, commencing from the date the Government invites the top-ranked proponent to enter negotiations. A proponent invited to enter into direct contract negotiations should therefore be prepared to satisfy the pre-conditions of award listed in Section E of the RFP Particulars (Appendix D), provide requested information in a timely fashion and conduct its negotiations expeditiously.

2.5.4 Failure to Enter into Agreement

If the pre-conditions of award listed in Section E of the RFP Particulars (Appendix D) are not satisfied or if the parties cannot conclude negotiations and finalize the agreement for the Deliverables within the Contract Negotiation Period, the Government may discontinue negotiations with the top-ranked proponent and may invite the next-best-ranked proponent to enter into negotiations. This process will continue until an agreement is finalized, until there are no more proponents remaining that are eligible for negotiations or until the Government elects to cancel the RFP process.

2.5.5 Notification of Negotiation Status

Other proponents that may become eligible for contract negotiations may be notified at the commencement of the negotiation process with the top-ranked proponent.

[End of Part 2]

PART 3 – TERMS AND CONDITIONS OF THE RFP PROCESS

3.1 General Information and Instructions

3.1.1 Proponents to Follow Instructions

Proponents should structure their proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable section numbers of this RFP.

3.1.2 Proposals in English

All proposals must be written in the English language only.

3.1.3 No Incorporation by Reference

The entire content of the proponent's proposal should be submitted in a fixed form, and the content of websites or other external documents referred to in the proponent's proposal but not attached will not be considered to form part of its proposal.

3.1.4 References and Past Performance

In the evaluation process, the Government may include information provided by the proponent's referees and may also consider the proponent's past performance or conduct on previous contracts with the Government or other institutions.

3.1.5 Information in RFP Only an Estimate

The Government and its advisers make no representation, warranty or guarantee as to the accuracy of the information or empirical data contained in this RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only, and are for the sole purpose of indicating to proponents the general scale and scope of the Deliverables. It is the proponent's responsibility to obtain all the information necessary to prepare a proposal in response to this RFP.

3.1.6 Proponents to Bear Their Own Costs

The proponent will bear all costs associated with or incurred in the preparation and presentation of its proposal, including, if applicable, costs incurred for interviews, travel or demonstrations.

3.1.7 Proposal to be Retained by the Government

The Government will not return the proposal or any accompanying documentation submitted by a proponent.

3.1.8 No Guarantee of Volume of Work or Exclusivity of Contract

The Government makes no guarantee of the value or volume of work to be assigned to the successful proponent. The agreement to be negotiated with the selected proponent will not be an exclusive contract for the provision of the described Deliverables. The Government may contract

with others for goods and services the same as or similar to the Deliverables or may obtain such goods and services internally.

3.1.9 Equivalency

When proprietary names, brands, catalogues or reference numbers are specified in the Deliverables, they are intended to set a minimum standard, and preference for any particular material or equipment is not intended. The proponent may offer material or equipment of similar characteristics, type, quality, appearance, finish, method of construction and performance and if doing so must disclose any difference in the characteristics, type, quality, appearance, finish, method of construction or performance of the material or equipment.

3.2 Communication after Issuance of RFP

3.2.1 Proponents to Review RFP

Proponents should promptly examine all of the documents comprising this RFP, and may direct questions or seek additional information in writing by email to the RFP Contact on or before the Deadline for Questions. No such communications are to be directed to anyone other than the RFP Contact. The Government is under no obligation to provide additional information, and the Government is not responsible for any information provided by or obtained from any source other than the RFP Contact. It is the responsibility of the proponent to seek clarification from the RFP Contact on any matter it considers to be unclear. The Government is not responsible for any misunderstanding on the part of the proponent concerning this RFP or its process.

3.2.2 All New Information to Proponents by Way of Addenda

This RFP may be amended only by addendum in accordance with this section. If the Government, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all proponents by addendum. All addenda will be published online at <https://www.gov.bm/procurement-notices>. Each addendum forms an integral part of this RFP and may contain important information, including significant changes to this RFP. Proponents are responsible for obtaining all addenda issued by the Government. In the Submission Form (Appendix B), proponents must confirm their receipt of all addenda by setting out the number of each addendum in the space provided.

3.2.3 Post-Deadline Addenda and Extension of Submission Deadline

If the Government determines that it is necessary to issue an addendum after the Deadline for Issuing Addenda, the Government may extend the Submission Deadline.

3.2.4 Verify, Clarify and Supplement

When evaluating proposals, the Government may request further information from the proponent or third parties in order to verify, clarify or supplement the information provided in the proponent's proposal. The information may include, without limitation, clarification with respect to whether a proposal meets the mandatory technical requirements set out in Section D of the RFP Particulars (Appendix D). The Government may revisit, re-evaluate and rescore the proponent's response or ranking on the basis of any such information.

3.3 Notification and Debriefing

3.3.1 Notification to Other Proponents

Once the Agreement is executed by the Government and a proponent, the other proponents may be notified directly in writing of the outcome of the procurement process.

3.3.2 Debriefing

Proponents may request a debriefing after receipt of a notification of the outcome of the procurement process. All requests must be in writing to the RFP Contact and must be made within sixty (60) days of such notification.

3.3.3 Procurement Protest Procedure

If a proponent wishes to challenge the RFP process, it should provide written notice to the RFP Contact in accordance with the Government's Complaints and Disputes procedures. The notice must provide a detailed explanation of the proponent's concern with the procurement process or its outcome.

3.4 Conflict of Interest and Prohibited Conduct

3.4.1 Conflict of Interest

For the purposes of this RFP, the term "Conflict of Interest" includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFP process, the proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of the Government in the preparation of its proposal that is not available to other proponents, (ii) communicating with any person with a view to influencing preferred treatment in the RFP process (including but not limited to the lobbying of decision makers involved in the RFP process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive RFP process or render that process non-competitive or unfair; or
- (b) in relation to the performance of its contractual obligations under a contract for the Deliverables, the proponent's other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

3.4.2 Disqualification for Conflict of Interest

The Government may disqualify a proponent for any conduct, situation or circumstances, determined by the Government, in its sole and absolute discretion, to constitute a Conflict of Interest as defined above.

3.4.3 Disqualification for Prohibited Conduct

The Government may disqualify a proponent, rescind an invitation to negotiate or terminate a contract subsequently entered into if the Government determines that the proponent has engaged in any conduct prohibited by this RFP.

3.4.4 Prohibited Proponent Communications

Proponents must not engage in any communications that could constitute a Conflict of Interest and should take note of the Conflict of Interest declaration set out in the Submission Form (Appendix B).

3.4.5 Proponent Not to Communicate with Media

Proponents must not at any time directly or indirectly communicate with the media in relation to this RFP or any agreement entered into pursuant to this RFP without first obtaining the written permission of the RFP Contact.

3.4.6 No Lobbying

Proponents shall not in relation to this RFP or the evaluation and selection process, engage directly or indirectly in any form of political action or other activity whatsoever to influence or attempt to influence Parliament, the Government, or to influence or attempt to influence any legislative or regulatory action, in the selection or evaluation of any proponent.

3.4.7 Illegal or Unethical Conduct

The proponent represents, warrants, and covenants that, in connection with activities performed under this Agreement or on behalf of the Government, the proponent has not and will not offer, promise, authorise, pay, or act in furtherance of an offer, promise, authorization, or payment of anything of value, directly or indirectly, to a Government Official (as hereinafter defined), political party or party official, candidate for political office, or official of a public international organisation, in order to obtain or retain business, to secure an improper advantage or benefit of any kind or nature to person(s) related, associated or linked to the Government Official, or to secure or influence discretionary action, inaction or a decision of a Government Official(s). For purposes of this proposal, the term "Government Official" shall mean and include any official, public officer or employee of the Government, as well as an official or employee in the judicial, legislative, or military, anyone acting in an official capacity for the Government, or any immediate family member of such persons. The proponent represents, warrants, and covenants that it has complied and will comply with *The Bribery Act 2016* and all other applicable laws of any relevant jurisdiction in connection with the performance of this Agreement. Without limiting the generality of the foregoing, the proponent represents, warrants, and covenants that it has not and will not take any action that would cause the Government or anyone acting on their behalf to violate or be subjected to penalties under *The Bribery Act 2016*, or the applicable anti-corruption laws of other countries.

The proponent acknowledges and agrees that in the event that the Government believes, in good faith, that the proponent has breached this section, the Government shall have the right to immediately withdraw and terminate this opportunity and terminate any or all other agreements with the proponent.

3.4.8 Past Performance or Past Conduct

The Government may prohibit a supplier from participating in a procurement process based on past performance or based on inappropriate conduct in a prior procurement process, including but not limited to the following:

- (a) illegal or unethical conduct as described above;
- (b) the refusal of the supplier to honour its submitted pricing or other commitments; or
- (c) any conduct, situation or circumstance determined by the Government, in its sole and absolute discretion, to have constituted an undisclosed Conflict of Interest.

3.4.9 No Collusion

Proponents must not engage in any collusion and must sign the certificate as set out in the Certificate of Confirmation of Non-Collusion (Appendix E).

3.5 Confidential Information

3.5.1 Confidential Information of the Government

All information provided by or obtained from the Government in any form in connection with this RFP either before or after the issuance of this RFP

- (a) is the sole property of the Government and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFP and the performance of any subsequent contract for the Deliverables;
- (c) must not be disclosed without prior written authorization from the Government; and
- (d) must be returned by the proponent to the Government immediately upon the request of the Government.

3.5.2 Confidential Information of Proponent

- (a) A proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the Government. The confidentiality of such information will be maintained by the Government, except as otherwise required by the Public Access to Information Act 2010 or by order of a court or tribunal.
- (b) Proponents are advised that their proposals will, as necessary, be disclosed, on a confidential basis, to advisers retained by the Government to advise or assist with the RFP process, including the evaluation of proposals. If a proponent has any questions about the collection and use of personal information pursuant to this RFP, questions are to be submitted to the RFP Contact.
- (c) The Proponent is responsible to ensure that they comply with the *Personal Information Protection Act 2016* ("PIPA"), related to any information in the proponent's custody, care or control.

3.6 Procurement Process Non-Binding

3.6.1 No Process Contract and No Claims

This RFP is a request for proposals only and participation in this RFP is not intended to create legal obligations between the Government and any of the proponents or their representatives. For greater certainty and without limitation:

- (a) Participation in this RFP will not give rise to any preliminary contract or collateral contract;
- (b) No proponent shall have any claim for any compensation of any kind whatsoever (whether in contract, tort, law, equity or otherwise), as a result of participating in this RFP, and by submitting a proposal each proponent shall be deemed to have agreed that it has no claim against the Government;
- (c) The decision to award or not to award a contract to any proponent is at the discretion of the Government. The Government shall have no liability to any proponent with respect to the awarding of a contract or the failure to award a contract to any proponent. Proponents acknowledge that the proponent that submits the proposal with the lowest price might not be awarded a contract.

3.6.2 No Contract until Execution of Written Agreement

This RFP process is intended to identify prospective suppliers for the purposes of negotiating potential agreements. No legal relationship or obligation regarding the procurement of any good or service will be created between the proponent and the Government by this RFP process until the successful negotiation and execution of a written agreement for the acquisition of such goods and/or services.

3.6.3 Non-Binding Price Estimates

While the pricing information provided in proposals will be non-binding prior to the execution of a written agreement, such information will be assessed during the evaluation of the proposals and the ranking of the proponents. Any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation or ranking or the decision of the Government to enter into an agreement for the Deliverables.

3.6.4 Cancellation

The Government may cancel or amend the RFP process without liability at any time. Cancellation may occur, for example, if:

- (a) no qualitatively or financially worthwhile offer has been received or there has been no valid response at all;
- (b) the economic or technical parameters of the project have changed fundamentally;
- (c) exceptional circumstances or force majeure render normal implementation of the project impossible;
- (d) all offers exceed the financial resources available, or are otherwise inconsistent with the principles of economy, efficiency and effectiveness; or
- (e) irregularities require cancellation in the interest of fairness.

The publication of a procurement notice does not commit the Government to implement the programme or project announced.

3.7 Governing Law and Interpretation

These Terms and Conditions of the RFP Process (Part 3):

- (f) are intended to be interpreted broadly and independently (with no particular provision intended to limit the scope of any other provision);
- (g) are non-exhaustive and will not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations; and
- (h) are to be governed by and construed in accordance with the laws of Bermuda applicable therein.

[End of Part 3]

APPENDIX A - FORM OF AGREEMENT

The terms and conditions found in the Form of Agreement (Appendix A) are intended to provide advance notice of some of the key contractual provisions of the Agreement, including indemnities, limitation of liabilities, service requirements, etc. that form the basis for commencing Agreement between the Government and the selected proponent.

See Annex A - Sample Form of Agreement

APPENDIX B – SUBMISSION FORM

1. Proponent Information

<p>Please fill out the following form, naming one person to be the proponent’s contact for the RFP process and for any clarifications or communication that might be necessary.</p> <p>If the company is incorporated and registered, then a Certificate of Incorporation and a Certificate of Incumbency is required and must be submitted with the Submission Form.</p> <p><u>Declaration of Interest:</u> The proponent shall provide details of its ownership and/or managerial structure upon request from the Government. The proponent shall also provide a statement of whether or not it has any relevant and material interest relevant to the provision of the Goods and Services. Such statement shall be provided at least annually or if there is any change in the interest of the proponent.</p>	
Full Legal Name of Proponent or Personal/Given Name:	
Representative Name (Person with Signing Authority) / Title:	
Any Other Relevant Name under which Proponent Carries on Business:	
Street Address:	
City, Province/State:	
Country:	
Postal Code:	
Phone Number:	
Proponent’s Social Insurance Number issued by the Government of Bermuda:	
Proponent’s Tax Payroll Number issued by the Government of Bermuda:	
Proponent’s Registration Number issued by the Bermuda Registrar of Companies (if incorporated):	
Company Website (if any):	
Proponent Contact Name and Title:	
Proponent Contact Phone:	
Proponent Contact Fax:	
Proponent Contact Email:	

2. Acknowledgment of Non-Binding Procurement Process

The proponent acknowledges that the RFP process will be governed by the terms and conditions of the RFP, and that, among other things, such terms and conditions confirm that this procurement process does not constitute a formal, legally binding bidding process (and for greater certainty, does not give rise to a Process Contract bidding process), and that no legal relationship or obligation regarding the procurement of any good or service will be created between the Government and the proponent unless and until the Government and the proponent execute a written agreement for the Deliverables.

3. Ability to Provide Deliverables

The proponent has carefully examined the RFP documents and has a clear and comprehensive knowledge of the Deliverables required. The proponent represents and warrants its ability to provide the Deliverables in accordance with the requirements of the RFP for the rates set out in its proposal.

4. Non-Binding Pricing

The proponent has submitted its pricing in accordance with the instructions in the RFP and in Pricing (Appendix C) in particular. The proponent confirms that the pricing information provided is accurate. The proponent acknowledges that any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact the acceptance of its proposal or its eligibility for future work.

5. Addenda

The proponent is requested to confirm that it has received all addenda by listing the addenda numbers, _____ to _____ (if applicable) issued by the Government, or if no addenda were issued by the Government write the word "None". The onus is on proponents to make any necessary amendments to their proposals based on the addenda. The proponent confirms it has read, received and complied with these addenda. Proponents who fail to complete this section will be deemed to have received all posted addenda.

6. No Prohibited Conduct

The proponent declares that it has not engaged in any conduct prohibited by this RFP.

7. Conflict of Interest

Proponents must declare all potential Conflicts of Interest, as defined in section 3.4.1 of the RFP. This includes disclosing the names and all pertinent details of all individuals (employees, advisers, or individuals acting in any other capacity) who (a) participated in the preparation of the proposal; **AND** (b) were employees of the Government within twelve (12) months prior to the Submission Deadline.

If the box below is left blank, the proponent will be deemed to declare that (a) there was no Conflict of Interest in preparing its proposal; and (b) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the RFP.

Otherwise, if the statement below applies, check the box.

- The proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its proposal, and/or the proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

If the proponent declares an actual or potential Conflict of Interest by marking the box above, the proponent must set out below details of the actual or potential Conflict of Interest:

8. Disclosure of Information

Any information collected or used by or on behalf of the Government under this solicitation document is subject to the Public Access to Information Act 2010 (“Act”). The information belongs to a class of information that might be made available to the general public unless it is contained in a record that is exempt from disclosure under the Act. Any questions regarding the collection, use, or disclosure of the information should be directed to the public authority that issued this solicitation document.

Signature of Witness

Signature of Proponent Representative

Name of Witness

Name of Proponent Representative

Title of Proponent Representative

Date

I have the authority to bind the proponent.

End of Appendix B

SAMPLE CERTIFICATE OF INCUMBENCY

The undersigned being the Secretary of the company as named below (the "Company"), a company duly organised and existing under the laws of the Islands of Bermuda and having its registered office as set out below **DO HEREBY CERTIFY** that the following is a true and correct listing of the Directors and Officers of the Company in full force and effect as of the date hereof.

DIRECTORS _____

List

ALTERNATE DIRECTORS

List

OFFICERS

List

IN WITNESS WHEREOF I have hereunto set my signature in accordance with the Bye-Laws of the Company.

Company Name:

Date:

Secretary/Director

APPENDIX C – PRICING

1. Instructions on How to Provide Pricing

- (a) Proponents should provide the information requested under section 3 below (“Required Pricing Information”) by reproducing and completing the table below in their proposals, or, if there is no table below, by completing the attached form and including it in their proposals.
- (b) Pricing must be provided in Bermuda funds, inclusive of all applicable duties and taxes, which should be itemized separately.
- (c) Pricing quoted by the proponent must be all-inclusive and must include all labour and material costs, all travel and carriage costs, all insurance costs, all costs of delivery, all costs of installation and set-up, including any pre-delivery inspection charges, and all other overhead, including any fees or other charges required by law.

2. Evaluation of Pricing

Pricing is worth 40 points of the total score.

Pricing will be scored based on the formula below. Each respondent will receive points of the total possible points allocated to price for the particular category it has bid on, which will be calculated by the following formula.

2.1 Price (include all cost) 5 = lowest bid, 4 = next lowest, etc. until 0 = most expensive

2.2 The respondent is in a stable financial position

Following financial checks, i.e., checking a bank reference, the following scores should be awarded. 5 = all financial checks sound, 3 = minor financial concerns, 1 = major financial concerns, 0 = no evidence provided / evidence of severe financial instability.

2.3 The respondent has no outstanding Government debt

Following financial checks with Social Insurance, the Accountant General's Department's Debt Collection Section, and the Tax Commissioner, the following scores should be awarded: 5 = all financial checks sound, 3 = minor financial concerns, 1 = major financial concerns, 0 = no evidence provided / evidence of severe financial instability.

In addition to any rectification processes, or rights to verify, clarify and supplement,

- (a) The Government will examine the responses to determine whether they are complete, whether any computational errors have been made, whether the documents have been properly signed, and whether the bids are generally in order.
- (b) Arithmetical errors will be rectified on the following basis:
 - (i) Where there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected. If the Proponent does not accept the correction of

errors, its Bid will be rejected. If there is a discrepancy between words and figures the amount in words will prevail;

- (ii) Where there is a discrepancy between the amounts in figures and in words, the amounts in words will govern; and
- (iii) Where there is a discrepancy between the individual lump sums and the total amounts derived for the sum of the individual lump sum, the individual lump sum as quoted will govern, and the total amount will be corrected.

3. Required Pricing Information

See Annex B - Pricing Schedule

APPENDIX D – RFP PARTICULARS

A. THE DELIVERABLES

Supply of excavating equipment inclusive of mobilization

The contractor shall price for the supply of a mini excavator with a licensed operator. The digger shall have a digging depth of up to 10ft and dig reach of at least 15ft. The machine shall have rubber tracks to protect existing undisturbed surfaces. The machine shall have full 360 degree swing capability. The machine shall have minimal oil leaks and the contractor will be responsible for repairing any damage arising from fluid leaks emanating from the machine. The machine shall have the capability of utilizing bucket widths from 6ins to 12ins with the option of fitting a hydraulic hammer to break up hard materials (Concrete etc). All rates given shall include for mobilization and transportation of machine to and from the excavation site.

In the event that the trenching machine cannot remove harder than normal rock during excavations then, after notification to, and by agreement with, the Employer's Representative this rock shall be removed by hammering. The rates for hammering shall be charged on an hourly basis as per the prices described in Schedule of Rates.

The normal working hours shall be 7am to 4pm Monday to Saturday. Where works are unavoidable outside these normal hours or necessary for saving life or property or for the safety of the Works an enhanced rate may be agreed by Ministry management personnel.

Works will mainly be carried out on public roads which may cause interruption to the Works during peak traffic times.

Prior to commencing work on site the Contractor will be responsible for contacting all utility companies to have any existing utility services marked on site.

The Contractor shall be fully responsible for any damage to services that were clearly marked at the surface caused by the Contractors work and shall fully indemnify the Employer from any liability arising from any such damages.

When approaching underground services, the Contractor shall cease mechanical digging when machinery is within three (3) feet of the service location or when digging indicates that a service is present.

All workers under the employ of the Contractor, including any sub contractors it may employ shall comply with the Health and Safety at Work Act 1982 and at a minimum wear at all times.

1. A Hard Hat
2. Metal toe Safety Boots
3. Reflective vests

Supply of Traffic control for excavation in highways

All Works in highways shall be conducted in accordance with the Health and Safety at Work Act 1982. No work is to commence in a public highway prior to the Contractor notifying the Highway Authority of an agreed start date and time. The Contractor in conjunction with Ministry personnel

shall erect appropriate traffic warning signs and safety barriers. Safe access must be maintained to all public and private properties at all times.

The Contractor shall at all times maintain at least one (1) lane of the carriage way open to the public and free of any excavation materials. The contractor shall provide a rate for the provision of personnel to operate a stop and go board traffic control system to maintain traffic flows.

The Contractor shall comply with all traffic management requirements of the Trenching License and any other governmental authority requirements of Applicable Law.

In the event that temporary traffic control signals are required the contract shall include in a daily hire rate all mobilization and transportation of the equipment to and from the excavation site. The contractor is required to provide full maintenance and repair service for the equipment within the hour of a reported breakdown. The contractor shall provide an emergency contact telephone number to respond to all breakdowns of the equipment.

Supply of Back fill material inclusive of delivery

When sufficient satisfactory soil materials are not available from excavations the contractor shall supply material from off site, specified as follows:

Naturally or artificially graded mixture of natural or crushed gravel, crushed stone, and natural or crushed sand; ASTM D 2940; except with 100 percent passing a 1-inch sieve and not more than 8 percent passing a No. 200 sieve.

Backfill and compact excavation

Place and compact bedding course on trench bottoms and where instructed. Shape bedding course to provide continuous support for bells, joints, and barrels of pipes and for joints, and fittings.

Place and compact initial backfill material, free of particles larger than 1 inch in any dimension, to a height of 12 inches over the utility pipe. Carefully compact initial backfill under pipe haunches and compact evenly up on both sides and along the full length of utility piping to avoid damage or displacement of piping. Coordinate backfilling with utilities testing. The backfilling is to be compacted in layers of not more than 10 ins applying water as required to obtain a minimum compaction ration of 95% shall be attained. Any surplus excavated material shall be removed from site and disposed in accordance with Government waste Regulations.

Reinstate excavation with 5" asphalt

Restore appearance, quality, and condition of finished surfacing to match adjacent work, and eliminate

evidence of restoration to greatest extent possible. Temporary reinstatement to be completed immediately upon completion of backfill. In asphalt paved areas the trench edges are to be saw cut prior to asphaltting to provide a uniform edge. A minimum of 5" of compacted asphalt shall be laid to finish flush with adjacent surfaces.

Subsequent permanent re-instatement will be carried out by others.

Reinstate excavation with 5" concrete

Restore appearance, quality, and condition of finished surfacing to match adjacent work, and eliminate evidence of restoration to greatest extent possible. Reinstatement to be completed immediately upon completion of backfill.

In concrete paved areas the trench edges are to be saw cut prior to concreting to provide a uniform edge. A minimum of 5" of 1500psi concrete shall be laid to finish flush with adjacent surfaces.

Reinstate excavation with 5" soil

Restore appearance, quality, and condition of finished surfacing to match adjacent work, and eliminate evidence of restoration to greatest extent possible. Reinstatement to be completed immediately upon completion of backfill. A minimum of 5" of compacted topsoil shall be laid to finish flush with adjacent surfaces and then seeded with grasses to match existing.

Excavate and backfill existing valve and cover

The Contractor shall price for the excavation of an existing valve inclusive of backfill and installation of a valve access shaft to a level to match the final grade of the surrounding materials which could be asphalt or concrete. The works shall include for any 1500 psi concrete required to set the access shaft for the valve.

Provision of Camera Survey

The contractor shall price for the provision of a camera survey of existing pipelines with diameters ranging from 2" diameter to 8" diameter. Equipment for the survey used inside a potable water pipe must not have been used in non-potable environs.

The survey is to be undertaken under the supervision of Ministry staff and no survey work is to be undertaken prior to the Contractor notifying Ministry staff of an agreed start date and time.

A copy of the video recording shall be made available to Ministry staff upon request.

B. MATERIAL DISCLOSURES

Contractor Response Requirements

The contractor is expected to respond to a request from MPW representatives for service provision within 24hrs. The normal working hours shall be 7am to 4pm Monday to Saturday. Where works are unavoidable outside these normal hours or necessary for saving life or property or for the safety of the Works an enhanced rate is payable as per the Schedule of rates as agreed by Ministry management personnel.

C. MANDATORY SUBMISSION REQUIREMENTS

1. Submission Form (Appendix B)

Each proposal must include a Submission Form (Appendix B) completed and signed by an authorized representative of the proponent.

2. Pricing (Appendix C)

Each proposal must include pricing information that complies with the instructions contained in Pricing (Appendix C).

3. Certificate of Confirmation of Non-Collusion (Appendix E)

Each proposal must include a Certificate of Confirmation of Non-Collusion Form (Appendix E) completed and signed by an authorized representative of the Proponent.

4. Company Certificate of Incorporation

A signed copy of the Certificate of Incorporation must be included for proponents that are companies/corporations.

5. Other Mandatory Submission Requirements

Certificate of Confirmation of Non-Collusion

Each Proposal must include a signed copy of the Certificate of Confirmation of Non-Collusion form.

Local Benefit

Each Proposal must include the completed Local Benefit Form - Social, Economic, and Environmental

Each proponent should provide the following in its proposal

- a) Percentage of Bermudians employed by the bidder
- b) Number of Bermudians employed by the bidder
- c) Is the bidder a Specified Business?
- d) Will the bidder use a Specified Business(es) in their supply chain?
- e) Will the bidder use a Specified Business(es) as a subcontractor(s)?
- f) Does the bidder offer evidence of (i) providing mentoring, apprenticeships or training opportunities for Bermudians, or (ii) being willing to offer them?
- g) Does the bidder have (i) a safety and health policy; (ii) a sustainable goods and/or services policy; and (iii) an environmental policy?
- f) Is the Business Bermudian owned ?

Project Personnel, Projects and References

Each proposal must include a completed copy of the Project Personnel Qualifications and References form.

Company Certificate of Incorporation

A signed copy of the Certificate of Incorporation must be included for proponents that are companies/corporations.

Sub-Contractor Information

See Annex for submission Form

Pricing

See Annex for Pricing Form

D. MANDATORY TECHNICAL REQUIREMENTS

Response Time

The successful proponent will be required to mobilize on site within 24 hours from an instruction given by the Water Section Superintendent or other designated Water Section employee. In the event that the successful proponent fails to respond within the 24 hour time frame the Water Section may refer the work to the next highest submission and you will become liable for any increased costs.

E. PRE-CONDITIONS OF AWARD

1. Financial Checks

Prior to awarding a contract to the selected proponent, the contracting department will perform financial checks to confirm whether the proponent is delinquent in making payments to the Government for Social Insurance contributions, Payroll Tax or any other debt recorded by the Accountant General's Debt Collection Section, and will perform a check with the Bermuda Registrar of Companies to confirm whether the proponent is a proper legal entity that is in good standing.

Proof of Insurance

The successful proponent shall furnish the Government with certificates showing the type, amount, class of operations covered, effective dates, and date of expiration of policies as may be expected. Such certificates shall also contain substantially the following statement: The insurance covered by this certificate will not be canceled or materially altered, except after thirty (30) calendar days written notice has been received by the Government. (Endorsements to the Policy that name the Government as an Additional insured and establishment of cancellation notice are required).

Certificates should be submitted within 10 calendar days after award of contract and before any work begins at the site.

F. RATED CRITERIA

The following sets out the categories, weightings and descriptions of the rated criteria of the RFP. Proponents who do not meet a minimum threshold score for a category will not proceed to the next stage of the evaluation process.

#	Category	Weighting (%)	Threshold
1	Pricing	40	N/A
2	Experience, Management & Financial Stability	30	N/A
3	Local Benefits	30	N/A
Total Points		100	

1. Pricing

See Appendix C - Pricing

2. Experience, Management & Financial Stability

The ability of the firm to provide specified services. Details are to be submitted using the form in Annex E

3. Local Benefits

The local benefit considerations will be given to each of the following factors when proposals are evaluated:

- Bermuda Owned Business (lead entity if Joint venture)
- Number of Bermudians employed by the bidder (lead entity if Joint venture);
- If the bidder is a specified business?;
- Engagement of Bermudian employee (%) during the project;
- Use of specified businesses in the proponent's supply chain;
- Use of specified business as subcontractors (if applicable);
- Environmental considerations and policy (each proponent to provide a copy)

APPENDIX E – CERTIFICATE OF CONFIRMATION OF NON-COLLUSION

Notes for the proponents

The essence of Open Tendering is that the Government of Bermuda shall receive bona fide competitive proposals from suitably qualified persons or entities. In recognition of this principle, each person or entity that submits a proposal will be required, by way of the signature of a duly authorized representative of the company, to confirm that the proposal has been submitted without any form of collusion.

All proponents must complete and sign a Certificate of Confirmation of Non-Collusion. Any proposals submitted which do not include a signed copy of the Certificate will be wholly rejected and will not be included in the evaluation process.

If it is later found that the undertakings made below have been breached at any stage of the procurement process, then the proponent will be expelled from the process immediately. In the event that this is discovered after a contract award, legal action may be taken against the proponent and/or any party involved in the matter.

Any proponent that submits false information in response to this Request for Proposals (RFP), and any other person or entity involved in collusion, may be excluded from competing for future contracts tendered by the Government of Bermuda.

Confirmation of non-collusion

I/We certify that this is a bona fide proposal, intended to be competitive and that I/We have abided by the terms and conditions related to this proposal and that I/We have not fixed or adjusted the amount of the proposal or the rates and prices quoted by or under or in accordance with any agreement or arrangement with any other person.

I/We confirm that we have not received any information, other than that contained within the RFP pack, or supplementary information provided to all proponents.

I/We also certify that I/We have not done and undertake that I/We will not do at any time any of the following acts:

- (a) communicating to a person other than the RFP Contact the amount or approximate amount of my/our proposed proposal (other than in confidence in order to obtain quotations necessary for the preparation of the proposal for insurance);
- (b) entering into any agreement or arrangement with any other person that he shall refrain from competing or as to the amount of any proposal to be submitted; or
- (c) offering or agreeing to pay or give or paying any sum of money, inducement, gift /hospitality or valuable consideration directly or indirectly to any person in relation to this procurement.

By signing this document, I/we have read and agree to its terms and conditions.

(1) _____ Title _____ Date _____

(2) _____ Title _____ Date _____

for and on behalf of _____

ANNEX A – SAMPLE FORM OF AGREEMENT

THIS SERVICES AGREEMENT (“**Agreement**”) is made the _____ 2022 (the “**Effective Date**”)

BY AND BETWEEN:

- (1) The Government of Bermuda as described in Schedule 1 (hereinafter referred to as the “**Government**”)
- (2) The supplier of services under this Agreement (whose name and contact details are fully set out in Schedule 1 to this Agreement and is hereinafter referred to as “**Supplier**” or “**you**”).

The Government and you are individually referred to as a “**party**” and collectively as the “**parties**”.

This Agreement, which consists of the General Terms and Conditions, Schedule 1 and Appendices 1 & 2, sets out the terms and conditions upon which you will provide services to the Government.

GENERAL TERMS AND CONDITIONS

IN CONSIDERATION of the premises and mutual promises in this Agreement the parties, intending to be legally bound, agree as follows:

That in this Agreement, capitalized terms have the respective meanings referred to in this Agreement, words by their context importing the plural shall include the singular and vice versa, references to either gender includes any other gender or a neutral entity where appropriate, and a reference to any statute or regulation or law means as amended from time to time and include any successor legislation, regulations or laws. Where the contexts requires, the word “**Supplier**” shall include the word “**you**” and vice versa.

1 Definitions

In this Agreement unless the context otherwise requires, the expressions set forth below have the following meanings in the Schedule or the Appendices hereto:

“**Agreement**” means this Services Agreement and includes these General Terms and Conditions, Schedule 1 and Appendices 1 & 2;

“**Appendix 1**” contains the statement of work or “**SOW**” as provided by the Supplier;

“**Appendix 2**” contains supplemental correspondence/documentation between the Supplier and the Government;

“**Business Days**” means Monday to Friday between 9am – 5pm in Bermuda;

“**Claims**” means any written or oral claims, actions or demands for money (including taxes or penalties) or services or for any allegation of a breach in rendering or failure to render any Services performed or which ought to have been performed. Claims also includes patent, trade secret, copyright, or other intellectual property right claims, claims connected to Equipment including infringement of Software, costs, penalties, fees and expenses (including legal and professional fees, charges or expenses);

“**Commencement Date**” means the date of the commencement of the Services as set out in Schedule 1;

“**Completion Date**” means the date of the completion of the Services as set out in Schedule 1;

“**Confidential Information**” means the terms of this Agreement as well as any information or Data disclosed which (i) if in tangible form, is marked clearly as proprietary or confidential, (ii) if oral, is identified as proprietary, confidential, or private on disclosure or (iii) any other information which is not in the public domain, which upon receipt should reasonably be understood to be confidential, provided, however, that such information or data is provided under or in contemplation of this Agreement;

“**Contact**” means the Public Officer appointed as



the liaison between you and the Government;

“**Consents**” means any qualifications, rights, permits, licenses, immigration approvals, authorizations or other consents;

“**Data**” means logbooks, records or data files used or created pursuant to the Services (including electronic storage media, Software, Source Code, any data base and data base rights, personal or personally identifiable information relating to an identified or identifiable individual voice and data transmissions including the originating and destination numbers and internet protocol addresses, date, time, duration), and other relevant data connected with the Services;

“**Documents**” means written advice, project specifications, designs, drawings, plans, specifications, reports, tenders, proposals or other information and documents, technical specifications related to the Software or Services provided by the Supplier or the Representative;

“**Equipment**” means any Supplier provided equipment including any mobile devices, hardware, Software or cables used to provide the Service;

“**Expense**” means all expenses (including legal expenses), charges and costs (including all costs, fees, charges, fines and penalties related to travel and accommodation) and penalties;

“**Fee(s)**” means the gross fees to be paid to you for the Services provided in accordance with the terms of this Agreement;

“**Good Industry Practice**” means the exercise of that degree of skill, care, accuracy, quality, prudence, efficiency, foresight and adherence to timeliness as would be expected from a professional individual or leading company within the relevant industry or business sector in Bermuda or in England;

“**in writing**” shall mean any fax, letter or purchase order on the Government’s letterhead bearing the signature of an authorised person or an e-mail emanating from the personal e-mail address of an authorised person;

“**Insurance Policies**” means an amount of not less than the minimum level of insurance required by law or regulatory body or that is required to cover for similar services as are provided in this Agreement or the amount as set

out in Schedule 1, whichever is greater, covering you, or your officers, directors, employees, agents, or subcontractors, professional negligence and errors and omissions, and shall be on an “occurrence” basis. “The Government of Bermuda” shall be endorsed as an additional insured on the required policy or policies and the insurances afforded to the Government of Bermuda shall be primary insurance;

“**Loss**” means all losses, Claims, damages, costs, fees, charges, Expenses, disbursements, costs of investigation, litigation, settlement, judgment and interest, lost revenue, loss of opportunity to make money, loss of contracts or for the inability to fulfill customer contracts, lost or damaged data or other commercial or economic loss, whether based in contract, tort (including negligence) or any other theory of liability or other loss not limited to those contemplated at the time of entering into this Agreement and whether such loss or liabilities are direct, indirect, incidental, special or consequential, whether foreseen, foreseeable, unforeseen or unforeseeable;

“**Objective**” means the targets, results or goals to be achieved as specified in Schedule 1;

“**Public Officer**” means any person employed by, or acting as an agent for, the Government;

“**PIPA**” means the *Personal Information Protection Act 2016*;

“**Representative(s)**” means, the person(s) providing the Services on the Supplier’s behalf and includes any person engaged by the Supplier;

“**Schedule 1**” contains details of the parties, the Fee, Term, Insurance Policies and other special conditions;

“**Services**” means the provision of all services and deliverables and includes the use of any Equipment and Software;

“**Security Procedures**” means rules and regulations governing access to, and health and safety procedures while on, Government premises; and information technology security protocols;

“**Software**” means the Supplier provided software including modified software, third party software and bespoke software used for the



Equipment and the Services;

“**Source Code**” means the source code within the Software, in the language in which the Software was written, together with all Documents, all of a level sufficient to enable the Government's personnel to understand, develop and maintain that Software.

“**Term**” means the term of this Agreement as set out in Schedule 1.

2 Provision of Services

2.1 You and the Representative agree to perform and complete the Services in accordance with and subject to Schedule 1, Appendix 1 and these General Terms and Conditions and the Government agree to pay the Fee for the Services.

2.2 In the event of inconsistency between Schedule 1, Appendix 1 and these General Terms and Conditions, then the order of precedence to resolve any such inconsistency shall be as follows: (i) the SOW; (ii) Schedule 1; and (iii) these General Terms and Conditions.

2.3 In the event that it is required and with Government prior due diligence and written approval, you may appoint a Representative who shall have full authority to act and provide Services on your behalf. Details of the Representative shall be set out in Appendix 1.

2.4 You are responsible for all acts or omissions of a Representative relating to the Services and for ensuring their compliance with the requirements of this Agreement.

2.5 You may not subcontract your obligations under this Agreement beyond using the Representative, without Government's prior written consent and you, and you shall ensure that, the Representative co-operates with the Government's employees to effectively carry out your obligations under this Agreement.

2.6 The Government may request, by notice in writing to you, the replacement of the Representative, and agreement with such request shall not be unreasonably

withheld. You shall use your best endeavors to replace the Representative with another qualified individual employed by you, and such replacement shall be subject to approval by the Government.

2.7 You will seek permission from the Government prior to outsourcing any service. In the event of any outsourcing, you will be responsible for all outsourced services or personnel.

2.8 Documents: You shall provide Documents as requested or by the date as agreed between the parties and the Government shall have the right to take possession of and use any completed or partially portions of the Documents notwithstanding any provisions expressed or implied to the contrary.

2.9 You acknowledge that the Government will be:

a) relying on the accuracy of the contents of the Documents on the basis that they are accurate and complete in all material respects and are not misleading;

b) relying on your and the Representative's skills, expertise and experience concerning the provision of the Services; and

c) using your reports and any other advice and assistance provided under this Agreement.

2.10 Security Procedures: The Services shall be provided in such place and location as instructed by the Government.

2.11 If the Services are required to be provided on the Governments' premises or use Government IT systems, you and the Representative will conduct yourselves in a professional and safe manner and you and the Representative shall at all times comply with and be subject to Security Procedures.

2.12 Failure to adhere to the Security Procedures and the requirements of this section may be considered a material



breach of this Agreement and may result in termination for default.

2.13 The Government shall inform you of the Contact, i.e. whom you or the Representative shall be reporting to and who will accept the Services.

2.14 Services are provided on a **non-exclusive** basis to the Government in Bermuda.

3 Government Responsibilities

The Government shall disclose all information and provide reasonable and agreed computer facilities and access necessary for you to provide the Services.

4 Additional Services

4.1 Additional services or variations in the Services may be required after the date of execution of this Agreement and may be performed upon written approval of the Government. Such written approval shall be evidenced by a change authorization order ("**Change Order**") or such other written authorization as approved and signed by the Contact or a duly authorised Public Officer. In such case, a Change Order shall be issued within a reasonable time thereafter.

4.2 All Change Orders are subject to the terms and conditions of this Agreement.

4.3 Fees for additional services shall be agreed by the Government in writing prior to any additional services being performed.

5 Fees, Invoicing and Payment

5.1 The Government shall compensate you the Fee for the Services in arrears during the Term. The Fee shall be set out in Schedule 1 and paid in US\$. The Fee has been calculated to take account of payroll tax and social insurance contributions that, as a non-employee, you are required to pay in full.

5.2 The Fee will be subject to deductions by law in the event that you have not registered as a service provider with the relevant Government department.

5.3 The Fee will be subject to further deductions for the following reasons:

- a) where there has been an overpayment to you for any reason;
- b) if you have not delivered the Services or any part of the Services, as required;
- c) where the Government has suffered loss by your failure to follow instructions or exercise due diligence;
- d) if you cause damage to Government property, the value of replacement or repair of the damaged property shall be deducted from the Fee;
- e) if you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period may be deducted; and
- f) when you no longer provide Services to the Government, there will be a deduction of any overpayments or advances of payment taken in excess of the Fee.

5.4 You will only be paid the Fee for the hours that you provide services. For the avoidance of doubt, you will not be paid during any time that you do not provide Services and you will not be paid for public holidays.

5.5 Invoicing: You shall provide a monthly invoice for the Services as set forth herein, with supporting documentation and itemizing the following:

- a) Your name, invoice date and invoice number;
- b) Change Order number, if applicable;
- c) Details of Services performed;
- d) Time and services rendered in hourly (or less than daily) increments with sufficient detail to determine appropriate expenditure of hourly efforts;
- e) Other supporting documentation (including copies of any invoices or receipts for reimbursable expenditures as provided for herein);
- f) Mailing address and the person to whom payment is to be sent or the banking institution and full account



information for payment by wire transfer (unless such information has previously been provided to the Government); and

- g) Telephone number, fax number and e-mail address.

5.6 Government shall pay the Fee and/or undisputed invoices 30 days in arrears. The Government may dispute an invoice within 30 days of receipt, however, the Government reserves the right to dispute payments, made on an invoice at any time if it suspects fraud or willful misconduct on your part (“Faults”). In the event that any Faults are discovered in relation to payments made to you, the Government reserves the right to recover such payments from you, at your cost (which shall include all legal and collection fees and expenses) or to set off any disputed amounts against unpaid invoices.

5.7 Your failure to submit a proper invoice in a timely manner may result in a delay in payment by the Government. You agree that the Government is not responsible, nor will it be liable to you or under law or equity for any interest or expenses that you may incur resulting from any delays in payment caused by your failure to comply with your obligations under this Agreement.

6 Expenses

6.1 Neither you, nor the Representative, are allowed to incur Expenses associated with the provision of the Services without having received prior written consent from the Government. You shall be liable for all Expenses not prior approved.

6.2 If prior approved, all air travel shall be at economy class, unless otherwise agreed in writing.

6.3 While performing the Services in or from Bermuda, the Representative may require accommodation in connection with the provision of Services. In the event that accommodation is required, the Government may assist you or the Representative in acquiring

accommodation but the Government shall not be liable to pay for such accommodation. You shall be liable for all Expenses and utility fees (including water, telephone and other charges) incurred by residing or otherwise staying at a property of your own choosing. You agree to abide by the rules and regulations of the property owner and you shall indemnify the Government against any losses the property owner may suffer as a result of your or the Representative, residing or staying at that property.

6.4 Except for the Fee and any approved Expenses, no other amounts are payable by the Government to you. Government may set off any amounts owed by you to the Government against any Fees or Expenses.

6.5 The Government shall pay by direct transfer into your bank account. It is your responsibility to inform the Government of your current contact and bank details in order that the Government can contact and make payment to you.

6.6 Without prejudice to section 4.1, the Government reserves the right to refuse to pay an invoice in the event that the invoice is presented 6 months after the time when it should have been presented for payment.

7 Taxes

~~7.1 You shall be responsible to register with the appropriate department of the Government in order to pay for all taxes associated with the provision of Services, including but not limited to payroll tax and social insurance contributions (“Taxes”) and you consent to the Government deducting due or outstanding Taxes from the Fee on your behalf, at our option. Your Tax numbers shall be out in Schedule 1.~~

~~7.2 In the event that we have not made deductions on your behalf, you shall provide us with proof of payment of amounts due to the Government such as any Taxes and all other receivables to us, prior to you receiving your final payment.~~

8 Representations and Warranty

8.1 You represent and warrant that you and



- the Representative, will perform all activities relating to the Services:
- a) in accordance with Good Industry Practice and in a professional and lawful manner;
 - b) if applicable, using appropriately skilled and experienced Representatives whose identity, address and right to live and work in Bermuda and (to the maximum extent permissible) whose absence of relevant criminal records has been verified;
 - c) in strict accordance with the standards and timelines set out in Schedule 1 or Appendix 1, free of defects, errors or faults, in order to meet the objectives of this Agreement; and
 - d) in accordance with applicable law including PIPA; rules, regulations and guidelines or policies provided by the Government.
- 8.2 You represent and warrant that:
- (a) you have the right to license all intellectual property rights in the Services and Documents, to the Government, and the software license will be provided directly by the portal supplier.
 - (b) upon installation, the Equipment will be compatible with existing equipment and software, if the software is configured with the correct Application Systems Interface for interoperability with the portal, on Government systems and the Equipment will meet all the technical documentation and requirements required to operate the Services in accordance with Government requirements and objectives;
- 8.3 You represent and warrant that this Agreement is executed by you or by your duly authorized Representative and that you have obtained all required authorizations and capacity in order that you can fulfill your obligations.
- 8.4 You declare that you are in possession of all Consents necessary for the provision of Services and you will maintain such Consents at all times while providing Services.
- 8.5 You shall procure the benefit of any warranties or guarantees in respect of goods and materials you supply to Government and provide copies of such warranties or guarantees.
- 8.6 You confirm that all payments to Government, including but not limited to, taxes and social insurance, are current. In the event that any payments are delinquent, the Government may deduct, in part or in full, any payments made to you under this Agreement.
- 8.7 You shall provide information or sign any other agreements necessary or as requested by the Government, in order that either you or the Government can fulfill their obligations under this Agreement.
- 8.8 You acknowledge and warrant that you are fully satisfied as to the scope and nature of the Services and of your obligations under this Agreement and that you have the corporate power and authority to enter into, and perform your obligations under, the Agreement.
- 9 Remedies**
- 9.1 If the Service does not conform to the warranty as set out in this Agreement, you shall, at your cost and Expense, use all reasonably commercial efforts to correct any such non-conformance or non-availability promptly, or provide the Government with an alternative means of accomplishing the desired performance.
- 9.2 Without prejudice to any other rights available to the Government, you shall, at your Expense:
- a) repair or replace Equipment where the Equipment is damaged as a result of your, or the Representative's negligence, error, omission or willful misconduct in providing the Service.
 - b) if the Documents are inaccurate or misleading or the Services are not



performed in accordance with this Agreement, then the Government, in its sole discretion, may:

- i) require correct Documents;
- ii) require, in whole or in part, the Services to be re-performed during the Term or within 6 months of the Completion Date;
- iii) carry out an assessment of the value of the defective Documents or Services and deduct that value from amounts that Government is required to pay you; or
- iv) obtain the Documents or Services from another service provider and you will be required to pay all amounts payable by the Government in obtaining alternative documents or services from another service provider to make good the defective Documents or Services.

9.3 Without prejudice to any other rights available to it, the Government may, at your Expense:

- a) repair, replace or otherwise fix the Service where the Equipment is damaged as a result of your, or any person providing services on your behalf, negligence, error, omission or willful misconduct; or
- b) obtain Services from another service provider and terminate this Agreement.

10 Progress Report

10.1 If required, you shall submit progress reports in connection with the Services (“Reports”) on at least a monthly basis, or as otherwise required, to the Government. The Reports shall include a summary of the activities and accomplishments during the previous reporting period.

10.2 ~~The Report will also include YTD totals for payments received and work completed (expressed in BMD\$).~~

10.3 Any decisions and/or actions required of the Government during the upcoming

reporting period(s) should be included in the Report. The specified date for submission of the Reports for the reporting period shall be determined by the Government.

11 Inspection and Approval of Services

11.1 The Government shall at all times retain the right to inspect the Services provided by you or the Representative and you consent to visits to your premises in order to inspect the Services or Documents and Government shall have the right to review, require correction or additional follow up, if necessary, and accept or reject the Services and any Documents submitted by you or the Representative.

11.2 You shall make any required corrections promptly at no additional charge and return a revised copy of the written work product to the Government within 7 days of notification or a later date if extended by the Government. In the event that you are required to implement changes with respect to your performance of Services, such change shall be implemented within a reasonable time, as determined by the Government in consultation with you.

11.3 Your failure to proceed with reasonable promptness to make necessary corrections shall be a default. If your corrected performance or written work product remains unacceptable, the Government may terminate this Agreement, reduce the Fee and/or reject the hours submitted in connection with such work to reflect the reduced value of services received.

12 Time of the Essence

12.1 You are responsible for managing time in order to complete your obligations under this Agreement and shall complete any portion or portions of the Services in such order as the Government may require rather than providing Services during a specified amount of time and you recognize that providing Services outside of Business Days may be necessary in order to fulfil your obligations and responsibilities without additional



- compensation of any kind.
- 12.2 The Government shall give due consideration to all Documents submitted by you or the Representative, and shall make any decisions which are required to be made in connection therewith within a reasonable time so as not to delay the progress of the Services.
- 13 Licence**
- 13.1 Through their licence agreement directly with the Government, the portal supplier will grant to Government a non-exclusive and royalty-free license to use Software and Documents, to enable Government to use Equipment and the Services.
- 13.2 Through their licence agreement directly with the Government, the portal supplier will retain title and property rights to the Equipment under this Agreement. Unless specifically stated in the Agreement, Government neither owns nor will acquire any right of ownership to any Equipment, including, but not limited to, copies, and any related patents, copyrights, trademarks, or IP addresses assigned to you.
- 13.3 Through their licence agreement directly with the Government, the portal supplier will assure that the Licence granted herein includes all major releases, updates or upgrades of Software.
- 13.4 Through their licence agreement directly with the Government, the portal supplier will ~~shall~~ ensure the continued compatibility of the Equipment with all major releases, updates, or upgrades of any Software.
- 13.5 Through their licence agreement directly with the Government, In the event the portal supplier is not able to support any Software update, upgrade, version or new release that changes major functionality and is not compatible with the Equipment or a Service, the portal supplier will ~~shall~~ use their best efforts to resolve such issues and to provide optimal functionality of the Equipment or the Service.
- 14 Indemnity, Limitation of Liability, Insurance, Force Majeure and Business Continuity**
- 14.1 Indemnity: You shall indemnify, keep indemnified and defend the Government against:
- a) any Claim or Loss arising from any breach by you or the Representative; or
 - b) any Claim or Loss arising from a third party as a result of negligent act, errors, omission or wilful misconduct by you or a Representative.
- 14.2 The Government may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to you.
- 14.3 If the use of a Service is enjoined as a result of an IP infringement claim, through their licence agreement directly with the Government, the portal supplier will (at their Expense): (i) obtain for the Government the right to use the infringing Service; (ii) modify such Service or Software in a manner that does not infringe any third party intellectual property rights; or (iii) substitute equivalent software or services that are acceptable to the Government and does not infringe any third party intellectual property rights.
- 14.4 No Liability: In no event shall the Government or a Public Officer be liable to you for Loss.
- 14.5 Limitation of Liability: Without limiting the provisions of this Section, Government's maximum aggregate liability, for all Claims or Loss in connection with this Agreement or the performance thereof arising during its entire term shall be limited to the Fees paid to you under this Agreement for the twelve (12) months immediately preceding the date the on which the latest Claim(s) or Loss first arose.
- 14.6 Your maximum liability to Government shall be the greater of any successful claims by Government against the Insurance Policies detailed in Schedule 1 or 3 x total Fees.



- 14.7 Nothing in this Agreement shall exclude or limit any liability for wrongful use of Confidential Information, misrepresentation, fraud, willful misconduct or any liability which cannot be lawfully limited or excluded and you shall accordingly maintain in full force and effect during the Term, the Insurance Policies.
- 14.8 All Claims against the Government must be commenced in court within one (1) year after the cause of action has accrued or the act, omission or event occurred from which the Claim arises, whichever is earlier, without judicial extension of time, or said Claim is barred, time being of the essence.
- 14.9 Insurance: If required by the Government, you shall maintain at your sole expense, on a primary basis, and an "occurrence basis", at all times during the Term, the Insurance Policies in the minimum amounts set forth in Schedule 1. The Insurance Policies shall be evidenced by delivery to the Government of certificate(s) of insurance executed by the insurer(s) listing coverages and limits, expiration dates and terms of the policy or policies and all endorsements, and upon request a certified copy of each policy including all endorsements. Failure to provide acceptable proof of insurance as required by the Government shall entitle the Government to either obtain or maintain the Insurance Policies on your behalf at your sole cost and expense, or to terminate this Agreement without prejudice to any other of the Governments rights or remedies in connection with this Agreement.
- 14.10 You shall be responsible for the payment of all deductible amounts on such policy or policies and shall on request supply to the Government copies of such Insurance Policies and evidence that the relevant premiums have been paid.
- 14.11 In the event that you have not paid Insurance Policy premiums, upon signing this Agreement, you consent to the Government either deducting the Insurance Policy premium from the Fee, or otherwise making such Insurance Policy premium payment, on your behalf and recouping such payment from you, at the Government's sole discretion.
- 14.12 At the Government's sole option, all monies payable under the Insurance Policy shall be applied in making good or recouping expenditure, loss or damage suffered or incurred by the Government as a result of you or a Representative providing the Services.
- 14.13 You shall notify the Government forthwith of any changes to any of the policies, or of any claims or potential claims which have arisen to which the insurer(s) of the above policy or policies may be required to respond.
- 14.14 The policy clause "Other Insurance" or "Excess Insurance" shall not apply to any insurance coverage currently held by The Government of Bermuda, or to the Government of Bermuda's Self-Insured Retentions of whatever nature.
- 14.15 If you subcontract any Services, you shall ensure that each subcontractor maintains insurance coverage with policy limits of at least the amounts stated above.
- 14.16 The insurance requirements set forth above do not in any way limit the amount or scope of your liability under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that the Government is willing to accept to help ensure full performance of all terms and conditions of this Agreement.
- 14.17 Waiver of Rights of Recovery. You hereby waive all rights of recovery against the Government which you may have or acquire because of deductible clauses in or inadequacy of limits of the Insurance Policy or any policies of insurance that are secured and maintained by you.
- 14.18 Force Majeure: Neither of the parties shall be liable for failure or delay to perform obligations under this Agreement to the extent that this delay is caused by flood, fire and other event beyond its reasonable control (not caused by its own act or



negligent omission) (“*force majeure*”) but each party shall use its best efforts to perform its obligations notwithstanding the *force majeure* event.

14.19 **Business Continuity:** Where applicable, you shall maintain, test and where appropriate implement business continuity procedures to reduce the risk of force majeure impacting the provision of the Services and upon request, provide such evidence to the Government.

15 Non-Solicitation

During the Term and for a period of 12 months after expiration or termination of this Agreement, you shall not solicit (whether directly or indirectly) any employee or consultant of the Government who was involved in the performance or receipt of the Services, unless otherwise agreed to in writing by the Government.

16 Non-Disclosure of Confidential Information

16.1 You must ensure that all Confidential Information held by you is protected against unauthorized access, use, copying or disclosure. You acknowledge that the improper use, copying or disclosure of such information could be unlawful.

16.2 You will comply with Government’s instructions if it has access to personal data as a result of providing the Services.

16.3 You may disclose information related to this Agreement to your personnel on a ‘*need to know*’ basis as required for the performance of the Services. You will keep strictly confidential any other Confidential Information and you shall only use such Confidential Information as required for providing the Services (and no other purpose).

16.4 A breach or anticipated breach of the confidentiality provisions of this Agreement, will cause Government irreparable harm and you agree that monetary damages alone may not be an adequate remedy and, accordingly, that the Government will, without prejudice to any other rights or remedies that it may

have, be entitled, without proof of special damages and without the necessity of giving an undertaking in damages, to seek an injunction or specific performance together with all other remedies as may be available in law or equity.

16.5 If either you or the Representative fail to abide by the confidentiality provisions at any time, then such failure shall constitute a material breach of this Agreement and you shall pay the Government the equivalent of the Fee paid to you for a 3 month period as liquidated damages, in addition to any attorney’s fees and costs of enforcement. You and the Representative shall be jointly and severally liable to the Government under this section.

17 Intellectual Property, Copyright and Ownership

17.1 **Intellectual Property:** You represent and warrant to the Government that you or the Representative, if necessary, have created the Documents for and on behalf of the Government or have obtained a written and valid Consent and assignment of all existing and future intellectual property rights in the Documents.

17.2 Documents created under this Agreement shall be original works created by you or the Representative and shall:

- a) not include intellectual property owned by or licensed to a third party except for intellectual property which you have the right to use (including the right to use such intellectual property for the purposes of this Agreement); and
- b) not subject the Government to any claim for infringement of any intellectual property rights of a third party.

17.3 You shall do all things necessary to assign to the Government all existing and future intellectual property rights in the Documents created under this Agreement embodying such rights to the fullest extent permitted by law. Insofar as they do not so vest automatically by operation of law or



- under this Agreement, you shall hold legal title in such rights on trust for the Government.
- 17.4 You agree that all Documents created under this Agreement and other works created in full or in part by you or the Representative for the Services may be maintained, changed, modified and/or adapted by the Government without the consent of either you or the Representative. Notwithstanding the foregoing, you and the Government may agree in writing that certain identified Document's created under this Agreement or designated intellectual property rights will remain with you.
- 17.5 Copyright: Documents created under this Agreement and corresponding copyright and other intellectual property in the Documents created under this Agreement shall belong to Government, which may utilise those Documents freely (including by adapting, publishing and licensing).
- 17.6 Documents created under this Agreement or Confidential Information may not be used or copied for direct or indirect use by you or a Representative after expiry or termination of this Agreement without the express written consent of the Government.
- 17.7 Government acknowledges that you and Representative possess knowledge and expertise relating to the subject matter of the Services ("**Supplier Know-How**"), which may include intellectual property rights in certain pre-existing tools and materials used by you in performing the Services. Nothing in this Agreement is intended to transfer to Government any rights in the Supplier Know-How, which shall remain your property.
- 17.8 To the extent that any Supplier Know-How is included in any Documents created under this Agreement and you hereby grant to Government a perpetual, unlimited, royalty-free, non-exclusive right and license to use and reproduce the Supplier Know-How to the extent reasonably necessary to achieve the Objective.
- 17.9 Government logo: You may not use Government's name or logo for any publicity or marketing purposes, unless consent for such use is provided in writing.
- 18 Term, Termination and Suspension**
- 18.1 This Agreement shall be effective from the Effective Date for the Term. The Services shall commence on the Commencement Date and continue until the Completion Date, whereupon this Agreement shall expire unless terminated earlier in accordance with its terms.
- 18.2 You shall not commence any additional services in the event of notification of termination of this Agreement, however, in the event that services are provided to the Government beyond the Completion Date, the terms and conditions of this Agreement shall continue on a day-to-day basis terminable without cause upon 24 hours prior written notice by either party to the other.
- 18.3 Either party may terminate a Service or this Agreement, in part or in whole, during the Term upon prior written notice without cause in accordance with the termination notice period as set out in Schedule 1.
- 18.4 Government may terminate this Agreement at any time based upon your default of your obligations under this Agreement. The Government, in its sole discretion, may provide you with a notice to cure ("**Cure Notice**") the breach that would otherwise amount to a basis to terminate this Agreement as a result of your failure to fulfill your obligations hereunder. You shall respond to any such Cure Notice within a reasonable time or within such time as provided therein, and you shall either cure the specified breach or provide assurances to cure the same which the Government, in its sole discretion, deems adequate.
- 18.5 Either party may terminate this Agreement immediately, if the other party:
- a) commits an irremediable breach; or



- b) is subject to a change of control or chooses to discontinue its business; or
- c) if the other party has a lack of funding or becomes or is deemed insolvent; or
- d) if the other party's performance is affected by a *force majeure* event which lasts 7 days or more.
- 18.6 In the event of termination of this Agreement, all Fees due and payable shall be paid to you.
- 18.7 Upon expiry or termination of this Agreement, you shall return all Government property or information or you shall irretrievably delete, as commercially practicable as possible, all Confidential Information, stored in any way using any device or application and all matter derived from such sources which is in your possession, custody or power and provide a signed statement that you have fully complied with your obligations under this section, save for any back-up required by law or as required in accordance with your record retention policy.
- 18.8 Upon expiry or termination of this Agreement, you shall provide Government with all such assistance as may be reasonably necessary in order to end the relationship in a manner which causes the least inconvenience to the Government including assisting with the transfer of Data.
- 18.9 The Government may temporarily suspend the Services hereunder and shall confirm such instruction in writing to you.
- 18.10 Upon any such suspension, the Government shall pay all Fees and Expenses up until the time of such suspension of Services. If, following suspension of the Services, there is no resumption within 6 months, this Agreement may be terminated by you, and the Government shall make a payment of all outstanding Fees and Expenses in accordance with this Agreement if such amounts are due.
- 18.11 The Government may issue a written order to resume the provision of Services within 6 months of suspension in accordance with the terms and conditions of this Agreement.
- 18.12 The rights arising under this termination section represent your sole remedy and excludes common law rights to terminate and claim damages for Loss you may suffer under this Agreement.
- 19 Data use and Transfer**
- 19.1 Upon request by the Government prior to or within sixty (60) days after the effective date of termination, the portal supplier, will make available to Government a complete and secure (i.e. encrypted and appropriately authenticated) file of Data in a format to be agreed at the time.
- 19.2 The portal supplier will be available throughout this transfer of Data period to answer questions about all elements of the Data transfer process so that Government may fully access and utilize the transferred Data.
- 19.3 You shall guarantee that the Source Code shall be fully source controlled with a complete history of all changes. The Source Code shall adhere to professional standards in terms of quality and organisation where necessary.
- 20 General**
- 20.1 Any notice or other communication required to be given under this Agreement shall be duly given or served if it is in writing (for the purposes of this section, a notice shall be deemed to be in writing if it is in the form of a printed or hand-written letter or other document, or in the form of an e-mail message), signed and delivered by hand or sent by prepaid recorded post to the address of the party as first set out above (or such other address as is notified in writing to the other party from time to time); or sent by e-mail to the e-mail address of the party as provided by that party (or such other e-mail address as is notified in writing to the other party from time to time).
- 20.2 Where this Agreement refers to past or current obligations, this Agreement applies



- retrospectively from the Effective Date.
- 20.3 This Agreement together with any documents referred to in it supersedes, extinguishes and replaces all previous agreements, promises, assurances, warranties, representations and understandings, whether written or oral including whether in invoices, emails or otherwise between the parties relating to the Services and is the complete agreement between the parties.
- 20.4 Any amendments to this Agreement shall be made in writing and signed by each party.
- 20.5 You may not assign or transfer any rights or obligations under this Agreement (for example assigning or factoring invoices) without the Government's written consent. Any such transfer by you in breach of this section shall be void and be an irremediable material breach of this Agreement. Government may transfer its rights and obligations under this Agreement.
- 20.6 You will be an independent contractor and nothing in this Agreement shall render you an employee, worker, agent or partner of the Government and you shall not hold yourself out as such.
- 20.7 No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 20.8 The doctrine of *Contra Proferentem* shall not be applicable in this Agreement.
- 20.9 Expiry or termination of this Agreement in any manner shall not release you or a Representative from any liability or responsibility with respect to any representation or warranty. Sections related to indemnification, limitation of liability, non-disclosure of information and intellectual property shall survive termination of this Agreement.
- 20.10 Waiver of any breach of this Agreement must be in writing to be effective and shall not be a waiver of any subsequent breach, nor shall it be a waiver of the underlying obligation. Should any court determine that any provision of this Agreement is not enforceable, such provision shall be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable.
- 20.11 You consent to the Government processing data relating to you for legal, administrative and management purposes. The Government may make such information available to those who provide services to it (such as advisers and payroll administrators), regulatory authorities and governmental or quasi-governmental organizations including those outside of Bermuda.
- ## 21 Governance
- 21.1 You will inform Government promptly of all known or anticipated material problems relevant to the delivery of Services.
- 21.2 You agree to provide the Government (and, if Government requests in writing, its auditors and competent regulatory authorities) with full information on the provision and delivery of the Services in an open and cooperative way and attend meetings with the Government to discuss the Services and this Agreement. The Government may disclose any information relating to this Agreement to a regulator or auditor.
- 21.3 You will notify the Government immediately if you have any actual or potential conflict of interest which might affect your ability to provide the Services.
- ## 22 Retention of Confidential Information, Records and Audit
- 22.1 You will retain any part of, or all, Confidential Information during the Term and following expiry or termination of this Agreement until all appeals processes are complete in the event of any litigation in connection with the Services. The Government will have full access to and the right to examine any documents connected to the Services, at any time during this period. The Government must be notified, in writing, prior to any of the



- aforementioned documents being destroyed.
- 22.2 You shall retain all records pertinent to this Agreement for a period of 3 years following expiration or termination hereof.
- 22.3 You shall establish and maintain books, records, and documents (including electronic storage media) in accordance with Canadian Generally Accepted Accounting Principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the Government, including all receipts, invoices, payroll records and/or other documentation used to substantiate requests for payment hereunder. At any time or times before final payment and for 3 years thereafter, the Government may cause your records to be audited by a duly authorized Public Officer. Records required to resolve an audit shall be maintained for a period of not less than 3 years following resolution of the audit or any arbitration or litigation arising hereunder.
- 22.4 The Government reserves the right to conduct periodic visits to your premises and/or audits after the commencement of this Agreement to ensure continued compliance.
- 22.5 Any payment or payment request may be reduced by amounts found by the Government not to constitute allowable costs. In the event that all payments have been made to you by the Government and an overpayment is found, you shall reimburse the Government for such overpayment within thirty (30) days following receipt of written notification thereof.
- 22.6 Duly authorized Public Officers shall have full access to and the right to examine any of the records pertinent to this Agreement at all reasonable times for as long as such records are required to be retained hereunder.
- 22.7 You shall include the aforementioned audit and record keeping requirements in all subcontracts and assignments, if any, made in accordance with this Agreement.
- 23 Electronic Communication**
- Government may communicate with you by email. The internet is not secure and messages sent by email can be intercepted. You shall use your best efforts to keep your security procedures current and all communications by email secure.
- 24 Governing law**
- This Agreement is subject to Bermuda law and you and the Government submit to the exclusive jurisdiction of the Bermuda courts in relation to this Agreement.
- 25 Dispute Resolution**
- 25.1 Where the parties are unable to resolve a dispute in accordance with this Agreement the parties, upon agreement, may submit such dispute for resolution by arbitration. The tribunal shall consist of a sole arbitrator appointed by agreement between the parties or failing such agreement by the Appointments Committee of the Chartered Institute of Arbitrators, Bermuda Branch. The procedure to be followed shall be that as laid down in the Bermuda International Conciliation and Arbitration Act 1993 and the UNCITRAL Arbitration Rules presently in force. The place of arbitration shall be Bermuda and Bermuda law shall apply. The language of the arbitration shall be English.
- 25.2 The decision and award of the arbitrator shall be delivered within three (3) months of his or her appointment, unless otherwise agreed between the parties, and shall be final and binding on the Parties and enforceable in any court of competent jurisdiction. Nothing in this section prevents or in any way restricts either party from seeking specific performance, injunctive relief or any other form of equitable remedy. The parties shall continue to perform their respective obligations during the dispute resolution process set out in this section, unless and until this Agreement is terminated in



accordance with its terms.

- 25.3 The costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by the parties and each party shall bear its own costs and attorneys' and witness' fees incurred in connection with the arbitration unless the arbitrator determines that it is equitable to allocate such costs and fees differently and so orders in rendering judgment.
- 25.4 In rendering judgment, the arbitrators may not provide for punitive or similar exemplary damages.
- 25.5 The arbitration proceedings and the decision shall not be made public without the joint consent of the parties and each party shall maintain the confidentiality of such proceedings and decision unless otherwise permitted by the other party, except as otherwise required by applicable law or statutes.

IN WITNESS WHEREOF, the parties, or their authorized representatives, have read and agree to the terms and conditions of this Agreement on the Effective Date.

SIGNED by a duly authorised officer for and on behalf of the Government	Signature:
	Print Name:
	Title:
SIGNED by the Supplier or a duly authorised for and on behalf of	Signature:
	Print Name:
	Title:

SCHEDULE 1

This appendix is incorporated into the Agreement. Capitalized terms used but not defined in this appendix will have the meanings given to them in the Agreement. If a term in this appendix conflicts with a term in the Agreement, the provisions of this appendix will prevail to the extent of such conflict.

1. **Objective:** The Government of Bermuda, Ministry of Public Works is soliciting responses from experienced Companies to provide a Term Trenching Support proposals for the Ministry of Public Works Water and Sewage Section.

2. **The Government**

Ministry:		Ministry of Public Works	
Department:		Works & Engineering – Water Section	
Address:		3rd Floor, General Post Office Building	
		56 Church Street, Hamilton HM12, Bermuda	
Tel No.:	1 441 295 5151	Mobile No.:	
Email address:		water@gov.bm	
Government Contact:		J. Tarik Christopher	
Tel No.:	1 441 278 0570	Mobile No.:	1 441 501 3003
Email address:		tjchristopher@gov.bm	

3. **Supplier and Service specific conditions:**

Supplier Name:			
Address:			
Home Tel:		Mobile No.:	
Email address:			
Commencement Date of Pilot:			
Completion Date of Pilot:			
Termination Notice Period:		30 days	
TOTAL COST OF SERVICE:			
Schedule of Prices:		See Appendix 1	
Payroll Tax #:		Social Insurance No.:	
Minimum Insurance Coverage:		US\$1,000,000 Public Liability	

4. Services provided by the Supplier

Appendix 1 – Schedule of Prices

Item No.	Deliverable Category	Rate	Unit	Notional Quantity	Price
1	Supply of excavating equipment inclusive of operator mobilization and demobilization (see Deliverable description)		Hourly	100	
2	Supply of excavating equipment inclusive of operator and mobilization for excavating hard rock/concrete		Hourly	25	
3	Supply of Traffic control using stop and go labour for excavation in highways		Daily per person	16	
4	Supply of Traffic Control lighting		Daily	16	
5	Supply of truck with driver for delivery and removal of material		Hourly	100	
6	Supply of Backfill material incl haulage inclusive of disposal of excess material		Per Ton	50	
7	Backfill and compact excavation		Per Cubic Yard	125	
8	Reinstate excavation with 5" asphalt		Per Square ft	500	
9	Reinstate excavation with 5" concrete		Per Square ft	100	
10	Reinstate excavation with 5" soil		Per Square ft	100	
11	Excavate existing Valve and cover once the valve is replaced By MPW include for backfill and reinstatement. Depth not exceeding 5ft.		Per Valve	10	
12	Provision of Camera Survey		Hourly	50	
13	Provision of steel road plate for temporary cover to excavation		Per Square ft	300	
14	Detail any elements of work or expenditure not covered in the Schedule and are necessary in the execution of this work.				
TOTAL					

Item	Description	% Rate increase
15	Monday to Saturday Working outside 7am to 4pm	
16	Sunday Working	

PRICING NOTES

1. All rates and prices in the schedule are to be inclusive of all other associated works as described in the Contract documents including, but not limited to, materials, related accessories, storage, transport, assembly, placement, overhead and profit.
2. Invoicing – The Ministry requires all invoicing be submitted within 5 days of the “As needed works”.
3. Each invoice shall be submitted along with the Itemized billing sheet provided below indicating agreed works completed.
4. During any downtime of the contractor’s equipment, the Contractor is responsible for providing a replacement. Failure to do so will result in the Owner securing alternative services and any additional expenses incurred as a result will be at the expense of the Contractor

APPENDIX 2 - Statement of Work

Supply of excavating equipment inclusive of mobilization

The contractor shall price for the supply of a mini excavator with a licensed operator. The digger shall have a digging depth of up to 10ft and dig reach of at least 15ft. The machine shall have rubber tracks to protect existing undisturbed surfaces. The machine shall have full 360 degree swing capability. The machine shall have minimal oil leaks and the contractor will be responsible for repairing any damage arising from fluid leaks emanating from the machine. The machine shall have the capability of utilizing bucket widths from 6ins to 12ins with the option of fitting a hydraulic hammer to break up hard materials (Concrete etc). All rates given shall include for mobilization and transportation of machine to and from the excavation site.

In the event that the trenching machine cannot remove harder than normal rock during excavations then, after notification to, and by agreement with, the Employer’s Representative this rock shall be removed by hammering. The rates for hammering shall be charged on an hourly basis as per the prices described in Schedule of Rates.

The normal working hours shall be 7am to 4pm Monday to Saturday. Where works are unavoidable outside these normal hours or necessary for saving life or property or for the safety of the Works an enhanced rate may be agreed by Ministry management personnel.

Works will mainly be carried out on public roads which may cause interruption to the Works during peak traffic times.

Prior to commencing work on site the Contractor will be responsible for contacting all utility companies to have any existing utility services marked on site.

The Contractor shall be fully responsible for any damage to services that were clearly marked at the surface caused by the Contractors work and shall fully indemnify the Employer from any liability arising from any such damages.

When approaching underground services, the Contractor shall cease mechanical digging when machinery is within three (3) feet of the service location or when digging indicates that a service is present.

All workers under the employ of the Contractor, including any sub-contractors it may employ shall comply with the Health and Safety at Work Act 1982 and at a minimum wear at all times.

1. A Hard Hat
2. Metal toe Safety Boots
3. Reflective vests

Supply of Traffic control for excavation in highways

All Works in highways shall be conducted in accordance with the Health and Safety at Work Act 1982. No work is to commence in a public highway prior to the Contractor notifying the Highway Authority of an agreed start date and time. The Contractor in conjunction with Ministry personnel shall erect appropriate traffic warning signs and safety barriers. Safe access must be maintained to all public and private properties at all times.

The Contractor shall at all times maintain at least one (1) lane of the carriage way open to the public and free of any excavation materials. The contractor shall provide a rate for the provision of personnel to operate a stop and go board traffic control system to maintain traffic flows.

The Contractor shall comply with all traffic management requirements of the Trenching License and any other governmental authority requirements of Applicable Law.

In the event that temporary traffic control signals are required the contract shall include in a daily hire rate all mobilization and transportation of the equipment to and from the excavation site. The contractor is required to provide full maintenance and repair service for the equipment within the hour of a reported breakdown. The contractor shall provide an emergency contact telephone number to respond to all breakdowns of the equipment.

Supply of Back fill material inclusive of delivery

When sufficient satisfactory soil materials are not available from excavations the contractor shall supply material from off site, specified as follows:

Naturally or artificially graded mixture of natural or crushed gravel, crushed stone, and natural or crushed sand; ASTM D 2940; except with 100 percent passing a 1-inch sieve and not more than 8 percent passing a No. 200 sieve.

Backfill and compact excavation

Place and compact bedding course on trench bottoms and where instructed. Shape bedding course to provide continuous support for bells, joints, and barrels of pipes and for joints, and fittings.

Place and compact initial backfill material, free of particles larger than 1 inch in any dimension, to a height of 12 inches over the utility pipe. Carefully compact initial backfill under pipe haunches and compact evenly up on both sides and along the full length of utility piping to avoid damage or displacement of piping. Coordinate backfilling with utilities testing. The backfilling is to be compacted in layers of not more than 10 ins applying water as required to obtain a minimum compaction ration of 95% shall be attained.

Reinstate excavation with 5" asphalt

Restore appearance, quality, and condition of finished surfacing to match adjacent work, and eliminate

Evidence of restoration to greatest extent possible. Temporary reinstatement to be completed immediately upon completion of backfill. In asphalt paved areas the trench edges are to be saw cut prior to asphaltting to provide a uniform edge. A minimum of 5" of compacted asphalt shall be laid to finish flush with adjacent surfaces.

Subsequent permanent re-instatement will be carried out by others.

Reinstate excavation with 5" concrete

Restore appearance, quality, and condition of finished surfacing to match adjacent work, and eliminate evidence of restoration to greatest extent possible. Reinstatement to be completed immediately upon completion of backfill.

In concrete paved areas the trench edges are to be saw cut prior to concreting to provide a uniform edge. A minimum of 5" of 1500psi concrete shall be laid to finish flush with adjacent surfaces.

Reinstate excavation with 5" soil

Restore appearance, quality, and condition of finished surfacing to match adjacent work, and eliminate evidence of restoration to greatest extent possible. Reinstatement to be completed immediately upon completion of backfill. A minimum of 5" of compacted topsoil shall be laid to finish flush with adjacent surfaces and then seeded with grasses to match existing.

Excavate and backfill existing valve and cover

The Contractor shall price for the excavation of an existing valve inclusive of backfill and installation of a valve access shaft to a level to match the final grade of the surrounding materials which could be asphalt or concrete. The works shall include for any 1500 psi concrete required to set the access shaft for the valve.

Provision of Camera Survey

The contractor shall price for the provision of a camera survey of existing pipelines with diameters ranging from 2" diameter to 8" diameter. Equipment for the survey used inside a potable water pipe must not have been used in non-potable environs.

The survey is to be undertaken under the supervision of Ministry staff and no survey work is to be undertaken prior to the Contractor notifying Ministry staff of an agreed start date and time.

A copy of the video recording shall be made available to Ministry staff upon request.

Contractor Response Requirements

The contractor is expected to respond to a request from MPW representatives for service provision within 24hrs. The normal working hours shall be 7am to 4pm Monday to Saturday. Where works are unavoidable outside these normal hours or necessary for saving life or property or for the safety of the Works an enhanced rate is payable as per the Schedule of rates as agreed by Ministry management personnel.

Appendix 3 - Supplementary Documentation

Submission Form

Certificate of Confirmation of Non-Collusion

Project Personnel Qualifications and References

Annex B – Pricing Schedule

Item No.	Deliverable Category	Rate	Unit	Notional Quantity	Price
1	Supply of excavating equipment inclusive of operator ,mobilization and demobilization (see Deliverable description)		Hourly	100	
2	Supply of excavating equipment inclusive of operator and mobilization for excavating hard rock/concrete		Hourly	25	
3	Supply of Traffic control using stop and go labour for excavation in highways		Daily per person	16	
4	Supply of Traffic Control lighting		Daily	16	
5	Supply of truck with driver for delivery and removal of material		Hourly	100	
6	Supply of Backfill material incl haulage		Per Ton	50	
7	Backfill and compact excavation inclusive of disposal of excess material		Per Cubic Yard	125	
8	Reinstate excavation with 5" asphalt		Per Square ft	500	
9	Reinstate excavation with 5" concrete		Per Square ft	100	
10	Reinstate excavation with 5" soil		Per Square ft	100	
11	Excavate existing Valve and cover once the valve is replaced By MPW include for backfill and reinstatement. Depth not exceeding 5ft.		Per Valve	10	
12	Provision of Camera Survey		Hourly	50	
13	Provision of steel road plate for temporary cover to excavation		Per Square ft	300	
14	Detail any elements of work or expenditure not covered in the Schedule and are necessary in the execution of this work.				
				TOTAL	

Item	Description	% Rate increase
15.	Monday to Saturday Working outside 7am to 4pm	
16.	Sunday Working	

NOTES

1. All rates and prices in the schedule are to be inclusive of all other associated works as described in the Contract documents including, but not limited to, materials, related accessories, storage, transport, assembly, placement, overhead and profit.
2. Invoicing – The Ministry requires all invoicing be submitted within 5 days of the “As needed works”.
3. Each invoice shall be submitted along with the Itemized billing sheet provided below indicating agreed works completed.
4. During any downtime of the contractor’s equipment, the Contractor is responsible for providing a replacement. Failure to do so will result in the Owner securing alternative services and any additional expenses incurred as a result will be at the expense of the Contractor.

ANNEX C - Subcontractor Company Information

(Note: all sheets form part of the proposal)

Will subcontractors be used for this work Yes No, if yes, please state what service this subcontractor will performed or what goods this subcontractor will provided below:

If no subcontractors will be used skip this annex, below. Otherwise, list all subcontractors that will be used for this work. **Submit multiple copies of Annex A, one for each Subcontractor included in this Proposal.**

1. **Subcontractor Name** _____

Contact Person _____

Phone numbers: Cellular _____ **Telephone** _____

Email Address: _____

2. **Principal(s), Director(s), and Shareholder(s) of the Company:**

5. **What is the corresponding % of the bid prices will this subcontractor perform** _____%

6. **Company Insurance details:**

Commercial Third Party Insurance carried: BD\$ _____

Workers Compensation Insurance carried: BD\$ _____

7. **Company's Bermuda Payroll Tax No.:** _____

8. **Company's Bermuda Social Insurance No.:** _____

9. **Company Banking Details:**

Name and address of principal bankers:

Include a letter from principal bank confirming credit status of Bidder.

10 **Do you have any involvement with other entities that may be seen as a conflict of interest? If so, please provide details:**

Annex A Subcontractor Company Information (continued)

11. Number of Employees/Bermudians

Please indicate the total number of persons employed by the subcontractor and the number and percentage of Bermudian employees.

TOTAL NUMBER OF STAFF	
NUMBER OF BERMUDIAN	
NUMBER OF NON-BERMUDIANS	
PERCENTAGE OF BERMUDIANS	

12. Attach a copy of the Company`s Certificate of Incorporation (if applicable)

13. Safety, Health and Environmental Policies

Please indicate whether the company has a (i) safety and health policy, (ii) sustainable goods and/or services policy, and/or (iii) an environmental policy. If so, then please provide a copy.

Copies are attached Yes _____ No _____

14. Do you offer apprenticeships/training opportunities? _____

Apprenticeships/training opportunities

Please indicate whether the company offers apprenticeships or training opportunities. If no apprenticeship or training opportunities exist, then indicate below. (Add more lines as needed)

NUMBER	NAME	NON BERMUDIAN	BERMUDIAN	BERMUDIAN	APPRENTICESHIPS OR TRAINING OFFERED BY YOUR COMPANY (month/year)

By signing this Annex A, I certify this information provided is true and correct.

Signed: _____

Print Name: _____

Title: _____ Company: _____

Date: _____

ANNEX D - LOCAL BENEFITS
(SOCIAL, ECONOMIC AND ENVIRONMENTAL)

All pages of this form must be completed and returned with the Proponent's response.

This form is used to gather information to influence and help the economic transformation and enable meaningful participation of Bermudians and "specified business" in Bermuda's economy. This form looks at the ownership, management structures, and skill development opportunities and to learn more about the businesses bidding on Government Contracts. The Government's aim is to increase access to local economic activities and encourage skills training opportunities for Bermudians and the Government's use of specified businesses.

Rated criteria in the Government's Standard Evaluation Matrix Section 3 is equivalent to mandatory 30% of the overall score. It helps the public officers to measure, promote equal opportunities, and optimize the participation of specified businesses.

Date:

Ownership:

- 1. **Bermudian Owned Business**..... Yes No

- 2. Are you defined as a "Specified Business" in Bermuda (Small or Medium Sized)?
 Yes No
 Other _____

Definition - Reference the Code of Practice Project Management and Procurement - (page 8 and 9) "**specified business**" means a Bermudian-owned and owner-operated business enterprise with such characteristics as the Bermuda Economic Development Corporation may determine and – (A) gross annual sales of less than one million dollars, or an annual payroll of less than five hundred thousand dollars; or (B) a least three of the following attributes: (i) gross annual revenue of between \$1,000,000 and \$5,000,000; (ii) net assets of less than \$2,500,000; (iii) an annual payroll of between \$500,000 and \$2,500,000; (iv) between a minimum of 11 and a maximum of 50 employees; and (v) been in operation for a minimum of 10 years.

- 3. Provide a copy of the Certificate of Incorporation (if applicable).

Copy attached Yes No

4. Number of employees/Bermudians

Please indicate the total number of persons employed by the company and the number and percentage of Bermudian employees.

NUMBER OF NON-BERMUDIANS:	
NUMBER OF BERMUDIANS:	
NUMBER OF EMPLOYEES:	
PERCENTAGE OF BERMUDIANS:	

Management Control

5. INCUMBENCY CERTIFICATE

The undersigned being the secretary of the company has named below (the "Company"), a company duly organised and existing under the laws of the Islands of Bermuda and having its registered office as set out below **DO HEREBY CERTIFY** that the following is a true and correct listing of the Directors and Officers of the Company in full force and effect as of the date hereof.

DIRECTORS

ALTERNATE DIRECTORS

List names and titles

List names and titles

OFFICERS

List names and titles

IN WITNESS WHEREOF I have hereunto set my signature in accordance with the Bye-Laws of the Company.

Company Name:

Skill Development - Apprenticeships/training opportunities

6. Do you offer apprenticeships/training opportunities? _____

7. Does your business offer Bermudian's apprenticeships/training opportunities?
 Yes No

8. Does your business offer Bermudian's internship opportunities?
 Yes No

9. If yes, to questions 8 and 9, what apprenticeship or training opportunities exist, please indicate below. (add more lines as needed)

NUMBER	NAME	NON BERMUDIAN	BERMUDIAN	APPRENTICESHIPS OR TRAINING OFFERED BY YOUR COMPANY (month/year)

Preference Procurement

10. Will the proponent use Bermuda specified businesses in their supply chain?

Yes _____ No _____

If no, then please provide an explanation _____

11. Will the proponent use Bermuda specified business sub-contractors (if applicable)?

Yes _____ No _____

If no, then please provide an explanation _____

Enterprise and Supplier Development

Safety, Health and Environmental Policies

12. Safety and Health, Sustainability and Environmental Policies

Please indicate whether the business has a:

- a) Safety and Health Policy,
 Yes No, if yes, then please provide a copy.

- b) Sustainable Goods and Services Policy
 Yes No, if yes, then please provide a copy.

- c) Environmental Policy.
 Yes No, if yes, then please provide a copy.

ANNEX E _PROJECT PERSONNEL QUALIFICATIONS AND REFERENCES

(Note: all sheets form part of the proponent proposal)

Provide a two page CV for key personnel (team leader, managerial and general staff) that will be provided to support the implementation of this project. CVs should demonstrate qualifications in areas relevant to the deliverables.

Company Name: _____

Employee Name	Title	Date Employment Commenced and Total Years of Experience	Certifications and Dates Received
Relevant Experience (From most recent):			
Period: From – To	Name of activity/ Project/ funding organisation, if applicable:	Job Title and Activities undertaken/Description of actual role performed:	

References no.1 <i>(minimum of 3):</i>	Name and Title: Project: Organization: Contact Information – Address; Phone; Email; etc.:	
Reference no.2	Name and Title: Project: Organization: Contact Information – Address; Phone; Email; etc.:	
Reference no.3	Name and Title: Project: Organization: Contact Information – Address; Phone; Email; etc.:	