



[contractor details]

[LCC team]

Leeds City Council
Civic Hall
Leeds LS1 1UR
Contact: []
T: []
E: []
[date]

Dear Sir/Madam,

Solar PV Contract – Advance Orders & Underwriting Agreement

- 1 In December 2014 the Council and you entered into a contract relating to the provision of “Green Deal” and other sustainability related services (the “**Framework Contract**”). Among other things, the Framework Contract allows for the Council to call-off orders with you in relation to the provision of sustainability measures and services. Accordingly the Council intends to call-off an order under the Framework Contract for you to provide solar PV measures and services at Council buildings (the “**Project**”).
- 2 Defined terms used below shall have the meaning given in the draft contract related to Project, as attached at Schedule A (the “**Draft Contract**”), unless otherwise defined in this agreement.
- 3 The advance orders in relation to the Project (the “**Advance Orders**”) and associated budget (the “**Advance Orders Budget**”) are set out in Schedule B.
- 4 We are in the process of agreeing with you a contract in relation to the Project, as reflected in the Draft Contract (the “**Contract**”). However, while the Draft Contract is agreed in principle, final approvals from both parties are required and it is anticipated that this process may take up to a further 14 days from the date of this letter. As the critical path for the Project requires works to commence no later than 30 June 21 (the “**Project Start Date**”) and there are supply chain issues, we intend to enter into this agreement with you for you to place the Advance Orders as per the Advance Orders Budget, up to a maximum value of £[xxxx] (the “**Maximum Value**”), and in accordance with the provisions of this agreement.
- 5 The Advance Orders shall be placed by you no later than 15 June 2021 (the “**Final Order Date**”), and this agreement shall expire on the earlier of:

5.1 the execution and completion of the Contract; and

- 5.2 15 September 2021 unless extended at the Council's discretion (the "**Long-Stop Date**").
- 6 Notwithstanding that all the terms of the Contract are not yet agreed, we hereby authorise and instruct you (subject to full compliance with the provisions of this agreement) to proceed with the Advance Orders to enable the Project Start Date.
- 7 So far as not inconsistent with the terms of this agreement, the Advance Orders shall be placed in accordance with the Draft Contract.
- 8 You will ensure that any Advance Orders placed by you in accordance with this agreement contain a provision allowing the benefit of the order to be assigned to us (or to any replacement contractor appointed by us) in the event we terminate this instruction for any reason or do not enter into the Contract for any reason. You shall ensure that any assets obtained in accordance with this agreement shall be the subject of vesting certificates for the benefit of the Council, and that such assets are at all times stored in a suitable location given the nature of the assets. You shall ensure that all due care is taken in the storage and transportation of the assets in order to ensure that they remain fit for purpose and installation.
- 9 We will pay you all reasonable costs incurred by you and verified by us for any Advance Orders pursuant to the instruction contained in this agreement and subject to and in accordance with the Advance Orders Budget, provided that our total liability under this letter shall not exceed the Maximum Value, excluding VAT. Each individual item of cost shall not exceed the sum allocated to it in the Advance Orders Budget. For the avoidance of doubt, we are not bound to enter into the Contract or any further contract with you, and our commitment at this stage is strictly limited as set out in this agreement.
- 10 Within 7 days of the date of this agreement you must provide us with certificates of verification of insurance cover confirming that all insurances which you are (or will be) required to maintain under the terms of the Contract in relation to the subject matter of this agreement are in place upon the required terms and at the required levels as detailed in the Draft Contract.
- 11 You are appointed as Principal Designer and Principal Contractor for the purposes of the Construction (Design and Management) Regulations 2015 or any amendment or re-enactment thereof ("**the CDM Regulations**") and shall perform all the functions required of you in that capacity by the CDM Regulations.
- 12 At all reasonable times for the purposes of inspecting the same, the Council and its authorised representatives shall be entitled to access any site where the assets that are the subject of any Advance Orders are stored, to confirm compliance with your obligations under this agreement, to survey such assets (and the appropriateness of the storage site) or as may otherwise be necessary for the performance of the Council's functions or exercise of the Council's rights.
- 13 Save as expressly provided in this agreement, nothing shall limit the liability that you would otherwise have under the Contract, or by law.
- 14 The instruction contained in this letter will automatically terminate on the Final Order Date. If by the Final Order Date you have not fully placed all the Advance Orders, the authorisation and instruction in this agreement shall immediately cease.
- 15 For the avoidance of doubt, we reserve the right not to award the Contract to you for whatever reason. If the Contract is concluded between us by the Long-Stop

Date, the terms of the Contract will supersede this agreement which will thereupon cease to have further effect. In that event, any Advance Orders place by you pursuant to and in accordance with this agreement will be deemed to have been place under the Contract, any payments due in respect of such Advance Orders shall be in accordance with the Contract and no payment shall be due nor any liability accrue pursuant to this agreement.

- 16 We may terminate this agreement at any time by giving you written notice, and this agreement shall expire in accordance with clause 4.2 (unless the Contract is concluded prior to the Long-Stop Date). In such event we shall reimburse you for any Advance Orders placed in full accordance with this agreement, provided that:
 - 16.1 The Council shall not be required to reimburse any amount unless all Advance Orders are made by the Final Order Date;
 - 16.2 The Council shall not be required to reimburse any amounts relating to Advance Orders cancelled in accordance with clause 17.1;
 - 16.3 any reimbursement due shall be in accordance with the Advance Orders Budget;
 - 16.4 Our maximum aggregate liability to you under and arising from the terms of this letter shall not exceed the Maximum Value, excluding VAT; and
 - 16.5 We shall not be liable to compensate you for any other costs or losses arising from such termination or expiry including, without limitation, any claims, expenses, damages, loss of profit, loss of contracts or any other costs or losses.

- 17 In the event that we terminate this agreement or it expires as described in paragraph 16, or we do not enter into the Contract for any reason you shall immediately:
 - 17.1 consult with us regarding the action to be taken for the fulfilment or cancellation of any Advance Orders;
 - 17.2 If required, assign to us or our nominee the benefit of any or all contracts entered into by you with for the Advance Orders, and supply to us all associated invoices and other documents whether made or intended to be made; and
 - 17.3 take steps to transfer (or procure the transfer) to the Council of all assets purchased relating to the Advance Orders.

- 18 This agreement shall be construed in accordance with the Laws of England and Wales and any dispute or difference arising under or in connection with it shall be resolved in accordance with the terms of the proposed Contract.

- 19 For the avoidance of doubt, either party may refer any dispute or difference arising under or in connection with this agreement to the dispute resolution procedure detailed in the Draft Contract.

- 20 Unless the right of enforcement is expressly granted, it is not intended that a third party should have the right to enforce any provision of this letter pursuant to the Contracts (Right of Third Parties) Act 1999.

- 21 This letter supersedes any previous instructions, correspondence or other discussions between us in relation to the Advance Orders and represents the entire agreement between us in relation to its subject matter.

Kindly acknowledge your acceptance of this letter and your agreement to proceed in accordance with its terms by signing and returning the attached copy.

Yours faithfully

www.leeds.gov.uk

General enquiries: 0113 222 4444

For and on behalf of **Leeds City Council**

We acknowledge and accept the terms and conditions of this

letter

Signed.....

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For and on behalf of []

Schedule A: Draft Contract – See attached.

Schedule B: Advance Orders & Budget –

- 1) [c3000 solar PV panels c10 invertors] that fully accord with the requirements of the Draft Contract (including without limitation schedules the Works Information and the Technical Annex (the “**Assets**”);
- 2) Advance Orders of the Assets shall be placed solely with [insert]
- 3) The budget shall be: