



Engineering and Construction Contract

OPTION C: TARGET CONTRACT WITH ACTIVITY SCHEDULE

Contract Data Forms

June 2017

(with amendments January 2023)

Template version history

V1 (as per bidder pack)	Go live template (this document)
V1.1	Updates to correct errors in V1 which conflicted with Framework Schedules

Contract Execution

This agreement is made between the *Client*, the *Contractor* and the Named Suppliers.

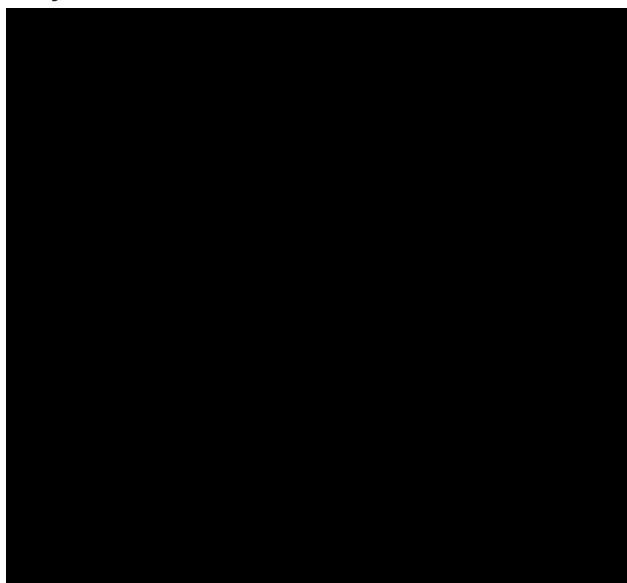
Terms in this agreement have the meanings given to them in the contract between the Environment Agency and TBC for Bowlam Bank Embankment Repair (the *works*).

The *Contractor* offers to Provide the Services in accordance with these conditions of contract for an amount to be determined in accordance with these conditions of contract.

The *Contractor* was appointed to the framework and executed the framework agreement (with reference number C19845).

Executed under hand

by



.....

.....

(Named Suppliers)

Contract Data

PART ONE – DATA PROVIDED BY THE *CLIENT*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The *conditions of contract* are the core clauses, the clauses for main Option C, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2023)

Main Option

C

Option for resolving and avoiding disputes

W2

Secondary Options

X2 Changes in the Law
X5 Sectional Completion
X7 Delay Damages
~~X9 Transfer of Rights~~
X10 Information Modelling
X11 Termination by the *Client*
X15 The *Contractor's* design
~~X16 Retention~~
X18 Limitation of Liability
Y(UK)1 Project Bank Account
Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996
~~Y(UK)3: The Contracts (Rights of Third Parties) Act 1999~~
Z: Additional conditions of contract

The *works* are

The embankment repair and works to upgrade the land drainage of the Bowlam Barrier Bank part of Kirkby Great & Little Ings Reservoir.

The *Client* is

Name

Environment Agency

Address for communications

Horizon House
Deanery Road
Bristol BS1 5AH

Address for electronic communications

[REDACTED]

The *Project Manager* is

Name

TBC

Address for communications

TBC

Address for electronic communications

TBC

The *Supervisor* is

Name

TBC

Address for communications

TBC

Address for electronic communications

TBC

The Scope is in Defined in the scope documents
Reference - AOMR-Lot1-ECC-Scope_Bowlam
Bank_V3_Final

The Site Information is in ENV0006139C-EA-IR-00-TD-K-G0201_1-S2-P01-
G0201-EA3-LOD3-Site Information.zip (Appendix 2 to
the Scope)

The *boundaries of the site* are ENV0006139C-JAC-IR-00-PL-K-A0102_2-
A4-C01-A0102-EA2-LOD2-Bowlam Bank -
Site Boundary.pdf

The *language of the contract* is English

The *law of the contract* is the law of the law of England and Wales, subject to the
jurisdiction of the courts of England and
Wales

The *period for reply* is 1 week except that

- The *period for reply* for is
- The *period for reply* for is

The following matters will be included in the Early Warning Register

- The Reservoir begins to fill when a riverside embankment, on the river Wharfe, starts to overtop at Cock Beck 2.5km upstream, This takes place when the river reaches 8.75mAOD. This has occurred on 86 separate occasions since 1996 but mostly within the winter months. The risk of any impact on the works is heightened when there are concurrent 'named' storms. As the works are planned in the drier summer months the risk of occurrence is low.
- There is a risk of topping of the banks of Dorts Dike prior to the overtopping of the riverside embankment. The *Contractor* should monitor levels when planning works. Where flows in Dorts Dyke come out of channel. This is at top of bank 5.0m AOD

Early warning meetings are to be held at intervals no longer than 4 weeks

2 The *Contractor's* main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*

The *key dates* and *conditions* to be met are

	<i>condition</i> to be met	<i>key date</i>
(1)	N/A	
(2)		
(3)		

The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *works* at intervals no longer than

4 weeks

3 Time

The <i>starting date</i> is	<input type="text" value="29/05/2025"/>	
The <i>access dates</i> are		
part of the Site		date
(1)	<input type="text" value="Land owned by Sykes and Grimston Park Estate"/>	<input type="text" value="29/05/2025"/>
(2)	<input type="text" value="Remainder of the site"/>	<input type="text" value="29/05/2025"/>
(3)	<input type="text"/>	<input type="text"/>
The <i>Contractor</i> submits revised programmes at intervals no longer than	<input type="text" value="Four (4) weeks"/>	
If the <i>Client</i> has decided the <i>Completion Date</i> for the whole of the <i>works</i>	the <i>Completion Date</i> for the whole of the <i>works</i> is	<input type="text" value="22/10/2025"/>
Taking over the <i>works</i> before the <i>Completion Date</i>	The <i>Client</i> is not willing to take over the <i>works</i> before the <i>Completion Date</i> (Delete as applicable)	
If no programme is identified in part two of the Contract Data	The period after the Contract Date within which the <i>Contractor</i> is to submit a first programme for acceptance is	<input type="text" value="Two (2) weeks"/>

4 Quality management

The period after the Contract Date within which the <i>Contractor</i> is to submit a quality policy statement and quality plan is	<input type="text" value="Two (2) weeks"/>	
The period between Completion of the whole of the <i>works</i> and the <i>defects date</i> is	<input type="text" value="104 weeks"/>	
The <i>defect correction period</i> is	<input type="text" value="2 weeks"/>	except that
• The <i>defect correction period</i> for	<input type="text"/>	is <input type="text"/>
• The <i>defect correction period</i> for	<input type="text"/>	is <input type="text"/>

5 Payment

The <i>currency of the contract</i> is the	<input type="text" value="GBP Sterling"/>	
The <i>assessment interval</i> is	<input type="text" value="1 Month"/>	
The <i>interest rate</i> is	<input type="text" value=""/>	% per annum (not less than 2) above the
<input type="text" value="Base rate (Bank Rate)"/>	rate of the	<input type="text" value="Bank of England"/> bank

If the period in which payments are made is not three weeks and Y(UK)2 is not used

The period within which payments are made is

The *Client* will make payment within 14 days of the date of the invoice.

The *Contractor's share percentages* and the *share ranges* are

share range

Contractor's share percentage

less than

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

The *exchange rates* are those published in

Financial Times (ft.com)

on (date)

6 Compensation events

The place where weather is to be recorded is

Leeds East Airport

The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at hours GMT

and these measurements:

<input type="text"/>

The *weather measurements* are supplied by

Met Office

The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at

Leeds East Airport site

and which are available from

Main Gate, Church Fenton, Tadcaster
LS24 9SE

Where no recorded data are available

Assumed values for the ten year weather return *weather data* for each *weather measurement* for each calendar month are

As per the data supplied by weather station at Leeds East Airport

If there are additional compensation events

These are additional compensation events

8 Liabilities and insurance

If there are additional *Client's* liabilities

These are additional *Client's* liabilities

(1)

Not Used

(2)

Not Used

(3)

Not Used

The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the *works* for any one event is

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

or the minimum amount required by law if that is greater

If the *Client* is to provide Plant and Materials

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

Nil

Resolving and avoiding disputes

The *tribunal* is

Litigation in the courts

If Option W1 or W2 is used The *Senior Representatives of the Client* are

Name (1)

[REDACTED]

Address for communications

Foss House
York
United Kingdom

Address for electronic communications

[REDACTED]

Name (2)

[REDACTED]

Address for communications

Lateral
8 City Walk
Leeds West Yorkshire LS11 9AT
United Kingdom

Address for electronic communications

[REDACTED]

The *Adjudicator* is

Name

To be confirmed

Address for communications

To be confirmed

Address for electronic communications

To be confirmed

The *Adjudicator nominating body* is

The Institution of Civil Engineers

X5: Sectional Completion

If Option X5 is used

The *Completion Date* for each *section* of the *works* is

<i>section</i>	<i>description</i>	<i>Completion Date</i>
(1)	Detailed design	23/07/2025
(2)		
(3)		
(4)		

X7: Delay damages

If Option X7 is used without
Option X5

Delay damages for Completion of the whole of the *works* are per day

If Option X7 is used with
Option X5

Delay damages for each *section* of the *works* are

<i>section</i>	<i>description</i>	<i>amount per day</i>
(1)	Detailed design	<input type="text"/>
(2)		
(3)		
(4)		
The delay damages for the remainder of the <i>works</i> are		<input type="text"/>

X10: Information modelling

If Option X10 is used

If no *information execution plan* is identified in part two of the Contract Data

The period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

X15: The Contractor's design

If Option X15 is used	The <i>period for retention</i> following Completion of the whole of the <i>works</i> or earlier termination is	Six (6) years
	The minimum amount of insurance cover for claims made against the <i>Contractor</i> arising out of its failure to use the skill and care normally used by professionals designing works similar to the <i>works</i> is, in respect of each claim	50% of Contract value
	The period following Completion of the whole of the <i>works</i> or earlier termination for which the <i>Contractor</i> maintains insurance for claims made against it arising out of its failure to use the skill and care is	Six (6) years

X16: Retention

If Option X16 is used	The retention free amount is	Ninety (90) % of the Contract Price
	The retention percentage is	Fifty (50) %

Retention bond ————— The Contractor ~~may/may not~~ give the Client a retention bond (Delete as applicable)

X18: Limitation of liability

If Option X18 is used	The Contractor's liability to the Client for indirect or consequential loss is limited to	1.2 times the Contract Price
	For any one event, the Contractor's liability to the Client for loss of or damage to the Client's property is limited to	50% value of the Contract
	The Contractor's liability for Defects due to its design which are not listed on the Defects Certificate is limited to	50% value of the Contract
	The Contractor's total liability to the Client for all matters arising under or in connection with the contract, other than excluded matters, is limited to	Contract Price
	The end of liability date is	Six (6) years after the Completion of the whole of the works

Y(UK)1: Project Bank Account

Charges made and interest paid by the <i>project bank</i>	The Contractor <u>is</u> to pay any charges made and to be paid any interest paid by the <i>project bank</i> (Delete as applicable)
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Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due The period for payment is days after the date on which payment becomes due

Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

If Option Y(UK)3 is used

term

beneficiary

–	–
–	–
–	–
–	–

If Y(UK)3 is used with
Y(UK)1 the following entry
is added to the table for
Y(UK)3

term

beneficiary

The provisions of Options Y(UK)1	Named Suppliers
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Z: Additional conditions of contract

If Option Z is used

The additional conditions of contract are

Z1 Correctness of Site Information and other documents
<p>Z1.1 Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the <i>Client</i>, but is not warranted correct. Clause 60.3 does not apply to such Site Information and the Contractor is responsible for checking the correctness of any such Site Information they rely on for the purpose of pricing for or providing the <i>works</i>.</p> <p>Z1.2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the <i>Client</i> but are not warranted correct (except for the purpose of promoting high standards of health and safety) and the Contractor is responsible for checking the correctness of any such information they rely on for the purpose of pricing for, or providing the <i>works</i>.</p>
Z 2A: Risk transfer: Physical conditions within the Site
Clause 60.1 (12) is deleted from this contract.
Z 2B: Water levels: Contractor's risk
Clause 60.1 (12) second bullet point is amended to: "are not weather conditions or floods and"
Z3 Prevention: No change to prices
<p>Delete first sentence of clause 62.2 and replace with:</p> <p>"Quotations for compensation events except for the compensation event described in 60.1(19) comprise proposed changes to the Prices and any delay to the <i>Completion Date</i> and Key Dates assessed by the <i>Contractor</i>. Quotations for the compensation event described in 60.1(19) comprise any delay to the <i>Completion Date</i> and Key Dates assessed by the Contractor.</p> <p>Delete 'The' At start of clause 63.1 and replace with:</p> <p>"For the compensation event described in 60.1(19) the Prices are not changed. For other compensation events the..."</p>
Z 4 Schedule of Cost Components and Prices (Option C and E)
<p>Z4.1 Where a rate is included in the Framework Pricing Schedule, the Defined Cost is the rate in the Activity Schedule which should be used in assessing the Price for Work Done to Date.</p> <p>Z4.2 Where there is no rate in the Framework Pricing Schedule the Schedule of Cost Components in the NEC4 ECC should be used.</p>
Z 6 Payment for Work
<p>Delete existing clause 11.2 (31) and replace with:</p> <p>"11.2 (31) The Price for Work Done to Date is the total Defined Cost which the <i>Project Manager</i> forecasts will have been paid by the Contractor before the next assessment date plus the Fee, not exceeding the forecast provided under clause 20.4 and accepted by the <i>Client</i>."</p>
Z7 Contractor's share
<p>After cl54.2 and before cl54.3, insert the following additional clause:</p> <p>54.2A If, prior to Completion of the whole of the <i>works</i>, the Price for Work Done to Date exceeds 111% of the total of the Prices, the amount in excess of 111% of the total of the Prices is retained from the Contractor.</p>

Z10 Payments to subcontractors, sub consultants and Subcontractors
<p>Subcontractors</p> <p>The <i>Contractor</i> will use the NEC4 contract on all subcontracts for <i>works</i> unless another alternative and appropriate form is proposed and agreed in accordance with clause 26.3. Payment to subcontractors will be 28 days from the assessment date.</p> <p>If the <i>Contractor</i> does not achieve payments within these timescales then the <i>Client</i> reserves the right to delay payments to the <i>Contractor</i> in respect of subcontracted work, services or goods.</p> <p>Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the <i>Contractor's</i> opportunities to work on framework contracts.</p>
Z11Y(UK) 3 The Contracts (Rights of Third Parties) Act 1999
<p>Z11.1 The <i>Contractor</i> warrants all design complies with the contract whether undertaken by the <i>Contractor</i> or by sub-contractors.</p> <p>Z11.2 All contracts for design employed by the <i>Contractor</i> must include:</p> <ul style="list-style-type: none"> • Y(UK)3 The Contracts Rights of Third Parties) Act 1999 • A requirement for the <i>Contractor's</i> sub-contractor to hold Professional indemnity insurance to the same level as the cover specified for the <i>Contractor</i> in this Call-off contract • A clause to give the <i>Client</i> (the Environment Agency) the right to enforce the provisions of the Contracts (Right of Third Parties) Act 1999, • A clause to ensure that neither the <i>Contractor</i> nor their sub-contractor can alter the provisions of their sub-contract without the consent of the <i>Client</i> • A clause to ensure that the <i>Client's</i> rights against the sub-contractor under this agreement shall be subject to the same conditions, limitations and exclusions as apply to the <i>Contractor's</i> rights against the design consultant under this agreement • A clause to state that except as provided in clause Z11.1, the agreement does not create any right enforceable by any person who is not a party to it (Other Party) under the Contracts (Rights of Third Parties) Act 1999, but the clause does not affect any right or remedy of any other party which exists or is available apart from that Act.
Z16 Disallowed Costs
<p>Add the following bullets to clause 11.2 (26) Disallowed costs.</p> <ul style="list-style-type: none"> • was incurred due to a breach of safety requirements, or due to additional work to comply with safety requirements. • was incurred as a result of the <i>Client</i> issuing a Yellow or Red Card to prepare a Performance Improvement Plan. • was incurred as a result of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit.
Z19 Linked contracts
<p>Delays and additional cost on this contract resulting from the <i>Contractor's</i> fault or error on a previous contract on this project or programme will be a Disallowable cost under this contract and not be a Compensation event under this contract.</p>
Z20 Defect Dates for Sections
<p>Where a section of the <i>works</i> is defined and is located in a separate area of the Site, the time to the <i>defects date</i> for that section is the defined period after the Completion of that section and is defined in the Contract Data.</p>
Z21 Requirement for Invoice
<p>Add the following sentence to the end of clause 51.1:</p> <p>The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the <i>Project Manager's</i> certificate. Delete existing clause 51.2:</p> <p>51.2 Each certified payment is made by the later of</p> <ul style="list-style-type: none"> • one week after the paying Party receives an invoice from the other Party and • three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated. <p>If a certified payment is late, or if a payment is late because the <i>Project Manager</i> has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made</p>
Z22 Resolving Disputes
Delete W2.1
Z23 Risks and insurance
<p>Replace clause 84.1 with the following</p> <p>Insurance certificates are to be submitted to the <i>Client</i> on an annual basis.</p>
Z31 ECC – Price Adjustment for Inflation
<p>The <i>Client</i> recognises the ongoing pricing uncertainty with regards to inflation. The <i>Client</i> will mitigate</p>

this uncertainty through this clause.

Z31.1 Defined terms:

- a) The index is Office for National Statistics (ONS) Construction Output Price Indices (OPIs) New work output prices: Infrastructure Index 1 – month rate.
- b) The Base Date Index (B) is the latest available index published by ONS prior to the Contract Date.
- c) The Latest Index (L) is the latest available index published by ONS before the date of assessment of an amount due.
- d) The Price Adjustment Factor (PAF) at each date of assessment of an amount due is $0.9((L-B)/B)$.

Z31.2 Application rules.

The provisions of this clause [Z31] shall apply provided that:

- a) The Price for Work Done to Date is less than or equal to the total of the Prices and
- b) Inflation remains positive i.e. L is greater than B.

Z31.3 Price Adjustment Factor.

If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the *Completion Date* for the whole of the *works* is used for calculating an amount for price adjustment after that date.

Z31.4 Price adjustment Options A and B.

NOT USED

Z31.5 Price adjustment Options C and D.

Each time the amount due is assessed, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by $(PAF/(1+PAF))$.

Z31.6 Compensation events.

NOT USED

Z111 ECC - Fee adjustment for non-compliance with Scope

Delete existing 11.2 (10) and replace with the following clause

The Fee is the amount calculated by applying the fee percentage to the Defined Cost excluding the cost of Sub-contractors that have not complied with procurement by best value processes as defined in the Scope. 80% of the fee percentage is applied to the amount of the Defined Cost for Sub-contractors that have not complied with procurement by best value processes as defined in the Scope.

Z 140 2023 amendments Schedule of Cost Components

Amend component 1 to the following.

The following components of the cost of

- people who are employed by the Contractor and whose normal place of working is within the Working Areas,
- people who are employed by the Contractor and whose normal place of working is not within the Working Areas but who are working in the Working Areas, proportionate to the time they spend working in the Working Areas and
- the people listed in Contract Data who are employed by the Contractor, whose normal place of working is not within the Working Areas and who are working outside of the Working Areas other than on manufacture and fabrication and design.

If the Project Manager agrees, additional people may be assessed as if they were listed in the Contract Data.

Add the following to the start of components 11, 12 and 13.

For people who are directly employed by the Contractor,

Amend component 14 to the following.

For people who are not directly employed by the Contractor but are paid for by the Contractor according to the time they work, the amounts paid by the Contractor

PART TWO – DATA PROVIDED BY THE CONTRACTOR

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The *Contractor* is

Name JN Bentley

Address for communications

Address for electronic communications

The *fee percentage* is %

The *working areas* are

The Site and compound areas adjacent to the Site. Contractor's operational office, contractor's main office, client office & Employee Home Addresses (if working from home)

The *key persons* are

Name (1)

Job

Job

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Experience

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The following matters will be included in the Early Warning Register

2 The Contractor's main responsibilities

If the Contractor is to provide The Scope provided by the Contractor for its design is in Scope for its design

N/A

3 Time

If a programme is to be identified in the Contract Data The programme identified in the Contract Data is

BE25J004 - Bowlam Bank Repair Rev01

If the Contractor is to decide the Completion Date for the whole of the works The Completion Date for the whole of the works is

22/10/2025

5 Payment

The activity schedule is

Bowlam Bank _ Activity Schedule

The tendered total of the Prices is

£445,117.42

Resolving and avoiding disputes

If Option W1 or W2 is used The Senior Representatives of the Contractor are

Name (1)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

X10: Information modelling

If Option X10 is used

If an information execution plan is to be identified in the Contract Data The information execution plan identified in the Contract Data is

[REDACTED]

Y(UK)1: Project Bank Account

If Option Y(UK)1 is used The project bank is

named suppliers are

Data for the Schedule of Cost Components

The people listed in Contract Data who are employed by the Contractor, whose normal place of working is not within the Working Areas and who are working outside of the Working Areas other than on manufacture and fabrication and design are

category of person	work
Buyer	Placement or materials and subcontract orders required for the works
SHEQ Advisor	Undertake safety audits and provide guidance for the works
Other categories within the Framework Pricing Schedule	Various

The listed items of Equipment purchased for work on the contract, with an on cost charge, are

Equipment	time-related on cost charge	per time period

The rates for special Equipment are

Equipment	rate
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the *Contractor* are

category of person	rate
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

The rates for Defined Cost of design outside the Working Areas are

category of person	rate
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

The categories of design people whose travelling expenses to and from the Working Areas are included as a cost of design of the *works* and Equipment done outside the Working Areas are

Design Manager, Design Engineer, Graduate Engineer, CAD Technician