

# NEC4 Engineering and Construction

## Short Contract

### FCRM Operational Framework – SE Hub

<b>A contract between</b>	<b>The Environment Agency</b> <b>Horizon House</b> <b>Deanery Road</b> <b>Bristol</b> <b>BS1 5AH</b>
<b>And</b>	<b>Land and Water Services Ltd</b>
<b>For</b>	<b>Provision of routine maintenance activities as primary supplier in Area Kent, South London and East Sussex (KSLES)</b>
	<b>Contract Forms</b> <ul style="list-style-type: none"><li>- <b>Contract Data</b></li><li>- <b>The Contractor's Offer and Client's Acceptance</b></li><li>- <b>Price List</b></li><li>- <b>Scope</b></li><li>- <b>Site Information</b></li></ul>

# Contract Data

## The *Client's* Contract Data

	The <i>Client</i> is	
Name	Environment Agency	
Address for communications	Yalding Depot, Hampstead Lane, Maidstone, Kent. ME18 6HG	
Address for electronic communications		
The <i>works</i> are	The routine maintenance activities in KSLES as stated in Appendix 1 – Land and Water priced workbook 22/23	
The <i>site</i> is	Various in KSLES – individual site locations are contained in the programme schedule as FCRM System locations	
The <i>starting date</i> is	08 <sup>th</sup> August 2023	
The <i>completion date</i> is	31 <sup>st</sup> March 2024	
The <i>delay damages</i> are	nil	Per day
The <i>period</i> for reply is	2	weeks
The <i>defects date</i> is	52	weeks after Completion
The <i>defects correction period</i> is	4	weeks
The <i>assessment day</i> is	the last working day	of each month
The <i>retention</i> is	nil	%
The United Kingdom Housing Grants, Construction and Regeneration Act (1996) <b>does</b> apply		
The <i>Adjudicator</i> is :		
In the event that a first dispute is referred to adjudication, the referring Party at the same time applies to the Institution of Civil Engineers to appoint an <i>Adjudicator</i> . The application to the Institution includes a copy of this definition of the <i>Adjudicator</i> . The referring Party pays the administrative charge made by the Institution. The person appointed is also <i>Adjudicator</i> for later disputes.		

# Contract Data

## The *Client's* Contract Data

The interest rate on late payment is		% per complete week of delay.
For any one event, the liability of the <i>Contractor</i> to the <i>Client</i> for loss of or damage to the <i>Client's</i> property is limited to	£100,000	
The <i>Client</i> provides this insurance	None	
Insurance Table		
Event	Cover	Cover provided until
Loss of or damage to the <i>works</i>	The replacement cost	The <i>Client's</i> certificate of Completion has been issued
Loss of or damage to Equipment, Plant and Materials	The replacement cost	The defects Certificate has been issued
The <i>Contractor's</i> liability for loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Works	Minimum £5,000,000 in respect of every claim without limit to the number of claims	
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law	
Failure of the <i>Contractor</i> to use the skill and care normally used by professionals providing works similar to the works	Minimum £ Nil in respect of every claim without limit to the number of claims	6 years following Completion of the whole of the works or earlier termination
The <i>Adjudicator</i> nominating body is	The Institution of Civil Engineers	
The <i>tribunal</i> is	litigation in the courts	
The <i>conditions of contract</i> are the NEC4 Engineering and Construction Short Contract June 2017 and the following additional conditions		
Only enter details here if additional conditions are required.		
Z1.0	Sub-contracting	
Z1.1	The <i>Contractor</i> submits the name of each proposed subcontractor to the <i>Client</i> for acceptance. A reason for not accepting the subcontractor is that their appointment will not allow the <i>Contractor</i> to Provide the Works. The <i>Contractor</i> does not appoint a proposed subcontractor until the <i>Client</i> has accepted them.	
Z1.2	Payment to subcontractors and suppliers will be no more than 30 days from receipt of invoice.	

Z2.0	Environment Agency as a regulatory authority
Z2.1	The Environment Agency's position as a regulatory authority and as <i>Client</i> under the contract is separate and distinct. Actions taken in one capacity are deemed not to be taken in the other.
Z2.2	Where statutory consents must be obtained from the Environment Agency in its capacity as a regulatory authority, the <i>Contractor</i> is responsible for obtaining these and paying fees. The <i>Client's</i> acceptance of a tender and the <i>Client's</i> instruction or variation of the works does not constitute statutory approval or consent.
Z2.3	An action by the Environment Agency as regulatory authority is not in its capacity as <i>Client</i> and is not a compensation event.
Z3.0	Confidentiality & Publicity
Z3.1	The <i>Contractor</i> may publicise the works only with the <i>Client's</i> written agreement
Z4.0	Correctness of Site Information
Z4.1	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. The <i>Contractor</i> checks the correctness of any such Site Information they rely on for the purpose of Providing the Works.
Z5.0	The Contracts (Rights of Third Parties) Act 1999
Z5.1	For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in this contract confers or purports to confer on a third party any benefit or any right to enforce a term of this contract.
Z6.0	Design
Z6.1	Where design is undertaken, it is the obligation of the <i>Contractor</i> to ensure the use of skill and care normally used by professionals providing similar design services.
Z6.2	The <i>Contractor</i> designs the parts of the works which the Scope states they are to design.
Z6.3	The <i>Contractor</i> submits the particulars of their design as the Scope requires to the <i>Client</i> for acceptance. A reason for not accepting the <i>Contractor's</i> design is that it does not comply with either the Scope or the applicable law.  The <i>Contractor</i> does not proceed with the relevant work until the <i>Client</i> has accepted this design
Z6.4	The <i>Contractor</i> may submit their design for acceptance in parts if the design of each part can be assessed fully.
Z7.0	Change to Compensation Events
Z7.1	Delete the text of Clause 60.1(11) and replace by: The works are affected by any one of the following events <ul style="list-style-type: none"> <li>• War, civil war, rebellion revolution, insurrection, military or usurped power</li> <li>• Strikes, riots and civil commotion not confined to the employees of the <i>Contractor</i> and sub-contractors</li> <li>• Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel</li> <li>• Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device</li> <li>• Natural disaster</li> <li>• Fire and explosion</li> <li>• Impact by aircraft or other device or thing dropped from them</li> </ul>
Z8.0	Framework Agreement
Z8.1	The <i>Contractor</i> shall ensure at all times during this contract it complies with all the obligations and conditions of the Framework Agreement made with the <i>Client</i> .
Z9.0	Termination
Z9.1	Delete the text of Clause 92.3 and replace with:

	If the <i>Contractor</i> terminates for Reason 1 or 6, the amount due on termination also includes 5% of any excess of a forecast of the amount due at Completion had there been no termination over the amount due on termination assessed as for normal payments.																																										
Z10.0	Data Protection																																										
Z10.1	The requirements of the Data Protection Schedule shall be incorporated into this contract																																										
Z11.0	Liabilities and Insurance																																										
Z11.1	Civil data protection claims and regulatory fines for breaches of Data Protection Legislation are excluded from any limit of liability stated.																																										
Z30.0	<p>Material Price Volatility</p> <p>The Client recognises the ongoing pricing uncertainty in relation to materials for the period from 1 July 2021 to 31<sup>st</sup> March 2024 the Client will mitigate this additional cost through this clause. Payment is made per assessment based upon a general average material proportion within assessments, calculated at 40%.</p>																																										
Z30.1	<p>Defined terms</p> <p>a) <b>The Latest Index (L)</b> is the latest index as issued by the <i>Client</i>. The L, which is at the discretion of the <i>Client</i>, is based upon the issued consumer price index ((CPI) based upon the 12-month rate) before the date of assessment of an amount due.</p> <p>b) <b>The Price Volatility Provision (PVP)</b> at each date of assessment of an amount due is the total of the Material Factor as defined below multiplied by L for the index linked to it.</p> <p>c) <b>Material Factor (MF)</b> 40% is used, based on a general average material proportion across our programme. The volatility provision is only associated with material element. No volatility provision is applicable to any other component of costs.</p>																																										
Z30.2	<p>Price Volatility Provision</p> <p>Through a Compensation Event the <i>Client</i> shall pay the PVP. PVP is calculated as:</p> <p style="text-align: center;">Assessment x MF x L = PVP</p> <p>If an index is changed after it has been used in calculating a PVP, the calculation is not changed and remains based upon the rate issued by the <i>Client</i>. The PVP calculated at the last assessment before 31<sup>st</sup> March 2024 is used for calculating the price increase after that date.</p>																																										
Z30.3	<p>Price Increase</p> <p>Each time the amount due is assessed, an amount for price increase is added to the total of the Prices which is the change in the Price for Work Done to Date for the materials component only (and the corresponding proportion) since the last assessment of the amount due multiplied PVP for the date of the current assessment.</p>																																										
Z30.4	<p>Compensation Events</p> <p>The Contractor shall submit a compensation event for the PVP on a monthly basis (where applicable) capturing Defined Cost only for the PWDD increase in month. Forecasted costs should only be considered for 31<sup>st</sup> March 2024 onwards period compensation event.</p> <table><tr><th>Assessment Date</th><th>Defined Cost?</th><th>Forecasted Cost?</th></tr><tr><td>31<sup>st</sup> Jul 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31<sup>st</sup> Aug 21</td><td>In period costs only</td><td>No</td></tr><tr><td>30<sup>th</sup> Sept 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31<sup>st</sup> Oct 21</td><td>In period costs only</td><td>No</td></tr><tr><td>30<sup>th</sup> Nov 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31<sup>st</sup> Dec 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31<sup>st</sup> Jan 22</td><td>In period costs only</td><td>No</td></tr><tr><td>28<sup>th</sup> Feb 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31<sup>st</sup> Mar 22</td><td>In period costs only</td><td>No</td></tr><tr><td>30<sup>th</sup> Apr 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31<sup>st</sup> May 22</td><td>In period costs only</td><td>No</td></tr><tr><td>30<sup>th</sup> Jun 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31<sup>st</sup> Jul 22</td><td>In period costs only</td><td>No</td></tr></table>	Assessment Date	Defined Cost?	Forecasted Cost?	31 <sup>st</sup> Jul 21	In period costs only	No	31 <sup>st</sup> Aug 21	In period costs only	No	30 <sup>th</sup> Sept 21	In period costs only	No	31 <sup>st</sup> Oct 21	In period costs only	No	30 <sup>th</sup> Nov 21	In period costs only	No	31 <sup>st</sup> Dec 21	In period costs only	No	31 <sup>st</sup> Jan 22	In period costs only	No	28 <sup>th</sup> Feb 22	In period costs only	No	31 <sup>st</sup> Mar 22	In period costs only	No	30 <sup>th</sup> Apr 22	In period costs only	No	31 <sup>st</sup> May 22	In period costs only	No	30 <sup>th</sup> Jun 22	In period costs only	No	31 <sup>st</sup> Jul 22	In period costs only	No
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28 <sup>th</sup> Feb 24	In period costs only	No
31 <sup>st</sup> Mar 24	In period costs only	Forecasted costs for remainder of contract

The Defined Cost for compensation events is assessed using

- the Defined Cost at base date levels for amounts calculated from rates stated in the Contract Data for People and Equipment and
- the Defined Cost current at the date the compensation event was notified, adjusted to the base date by 1+PVP for the last assessment of the amount due before that date, for other amounts.

# Contract Data

## The Contractor's Contract Data

The Contractor is		
Name	Land and Water Services Ltd	
Address for communications	Weston Yard, Albury, Guildford, Surrey, GU5 9AF	
Address for electronic communications		
The fee percentage is	15	%
The people rates are	As per framework	
category of person	unit	rate
The published list of Equipment is		As per framework
The percentage for adjustment for Equipment is		

# Contract Data

## The Contractor's Offer and Client's Acceptance

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

The offered total of the Prices is £267,546.31

Enter the total of the Prices from the Price List.

Signed on behalf of the Contractor

Name

Position

Signature

Date 8<sup>th</sup> August 2023

The Client accepts the Contractor's Offer to Provide the Works

Signed on behalf of the Client

Name

Position

Signature

Date 08/08/23



# Price List

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

Item Number	Description	Unit	Quantity	Rate	Price
	The Price List is contained in Appendix 1 – SE - Land and Water – Lot 2c KSL – Workbook Yr5 23-24 Priced	sum	1	£267,546.31	£267,546.31
The total of the Prices				£267,546.31	

The method and rules used to compile the Price List are:

- The price list has been determined using the Lot 2 Priced Workbook.
- A sum is compiled using the unit rate per linier metre at a given band width for each maintenance activity.
- The total labour resource cost is also listed in the workbook and added to the overall total price for tender evaluation.
- Each calculated cost is open to supplier adjustment within the workbook.

The Framework Price Workbook and the Framework Deed of Agreement.

# Scope

## 1. Description of the works

Give a detailed description of what the *Contractor* is required to do and of any work the *Contractor* is to design.

The *Contractor* is to undertake routine maintenance activities as described in Appendix 1 and in accordance with the Specification and the FCRM Asset Maintenance Standards 2013.

The *Contractor* shall provide a program of works at the start of the contract detailing the date of programme as per the start dates listed in Appendix 1 – Land and Water – Lot 2 c KSL - Workbook Yr5 23/24 Priced. All works are to be completed by the end date listed in Appendix 1 unless agreed otherwise with the Environment Agency Project Manager. Date extensions will be agreed in the form of email correspondence of offer and acceptance between the supplier and the EA.

For all weed cutting activities the *Contractor* will place all weed cuttings upon the crest of the bank, unless specified otherwise. No cuttings will be removed from site.

## 2. Drawings

List the drawings that apply to the contract.

Drawing Number	Revision	Title

## 3. Specifications

List the specifications which apply to the contract.

Title	Date or Revision	Tick if publicly available
Appendix A2 to the Framework Deed of Agreement Section 6 – Lot 2 Specification	V1 September 2017	No
FCRM Asset Maintenance Standards	2013	Yes

#### 4. Constraints on how the *Contractor* Provides the Works

State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Client*.

The *Contractor* will receive works instructions or "contracts" through the *Client's* asset planning portal (AIMS:OM).

The *Contractor* will receive works information and site-specific details from the *Client* on a site schedule and accompanying maintenance schedules.

Works to be provided in accordance to the above specifications.

Project updates should be provided to the project manager on a weekly basis. The need for site meeting are flexible and are to be determined as required.

The *Contractor* shall not commence any work on the *site* until the *Client*, or their representative, has accepted the method statements and risk assessments related to this contract.

The *Contractor* is to prepare, for the *Client's* acceptance, the Construction Phase Plan (CPP) and the Environmental Management Plan (EMP) prior to starting the works

##### Working times

The *Contractor* will be permitted to work between 7.30am and 6.00pm on weekdays (Monday to Friday) However, certain sites may have specific access times and dates. These will be confirmed with the contractor before works commence and specified with in the attached Site Schedule 23\_24.

Work times different to those specified above will be requested by the contractor via email correspondence and will be accepted by the EA Project Manager ahead of works starting.

#### 5. Requirements for the programme

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

State what the use of the works is intended to be at their Completion as defined in clause 11.2(1).

The *Contractor* submits his programme with the *Contractor's* Offer for acceptance. The *Contractor* shows on each programme which he submits for acceptance (in form of Gantt chart showing the critical path, proposed order and timing to undertake the works and proposed plant and labour resources) the following:

- (a) Period required for mobilisation/ planning & post contract award
- (b) starting date
- (c) Each of the activities listed within the Price List
- (d) Any key third party interfaces: lead in periods for materials and sub-contractors; time required to obtain consents/waste permits; stated constraints; *Contractor's* risks.
- (e) Completion date

#### 6. Services and other things provided by the *Client*

Item	Date by which it will be provided
Site Schedule 23_24	With Contract
LAWS 23_24 Maintenance PCI	With Contract
Medway In channel maintenance schedule	With Contract
NK INNS Weedspraying Maintenance Schedule	With Contract
NK NON-INVASIVE weedspraying maintenance schedule	With Contract
North Kent Hand Weed Cutting Maintenance Schedule	With Contract
Romney Hand Weed Cutting Under-Cables Maintenance Schedule	With Contract
Romney Handweed Cut Maintenance Schedule	With Contract
Rother Hand Cut Maintenance Schedule	With Contract
Rother Mechanical Weed Cutting Maintenance Schedule	With Contract

## Site Information

This information is provided in the Pre-Construction Information (PCI) and the Site Schedule 23\_24, with Maintenance Schedules provided for each activity.

## Proposed sub-contractors

	Name and address of proposed subcontractor	Nature and extent of work
1.	Vegetation Management Services Ltd Tingdene, Bradfield Road, Wellingborough, Northants, NN8 4HB Form of Contract: NEC4 ECSS	Weed Cutting and Weed Spraying
2.	T & J Fencing Little Odiam, Lower Stone Road, Stone-In-Oxney Nr Tenterden, Kent, TN30 7JH Form of Contract: NEC4 ECSS	Weed Cutting

3.	<p>Ken Heritage Agricultural Contractor</p> <p>The Gables, Twixt Locks, Military Road, Playden, RYE, East Sussex, TN31 7PH</p> <p>Form of Contract: NEC4 ECSS</p>	Mechanical Grass Cuts and Hand Cuts
4.	<p>Rhino Plant</p> <p>Porlock, Follingwood Road, St Margarets at Cliffe Dover, CT15 6EX</p> <p>Form of Contract: NEC4 ECSS</p>	Mechanical Weed Cuts