

Short Contract

A contract between UK Research and Innovation (UKRI)
The Natural Environment Research Council (NERC),
National Oceanography Centre Southampton (NOCs)
and
.....
.....
for FM18062 – The Provision of Water Treatment and Water
System Management at NOC Southampton (2018 – 2021 with
the potential to extend +1 +1)

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Notes about this contract are printed in boxes like this one. They are not part of the contract.

Contract Data

The *Employer* is

Name UK Research and Innovation, The National Environment Research Council, The National Oceanography Centre Southampton
Address European Way, Southampton, SO14 3ZH
Telephone Fax
E-mail address

The *works* are Water Treatment and Water System Management, as specified in FM18062 Section 4 Specification.

The *site* is NOC Southampton

The *starting date* is 25th June 2018

The *completion date* is 25th June 2021 with the potential to extend +1 and +1 until a maximum of 2023

The *period for reply* is 2 weeks.

The *defects date* is 52 weeks after Completion.

The *defect correction period* is 2 weeks.

The *delay damages* are £50.00 per day.

The *assessment day* is the 1st Working day of each month.

The *retention* is 2.5 %.

Does the United Kingdom Housing Grants, Construction and Regeneration Act (1996) apply? No

The *Adjudicator* is

Name The Royal Institute of Chartered Surveyors

Address RICS Contact Centre, Survey Court, Westwood Way, Coventry, CV4 8JE

Telephone 0870 333 1600

E-mail address ContactRICS@RICS.org

Contract Data

The interest rate on late payment is 0 % per complete week of delay.

The *Contractor* is not liable to the *Employer* for loss of or damage to the *Employer's*

property in excess of £10 Million GBP for any one event.

The *Employer* provides this insurance No insurance to be provided by the *Employer*

The minimum amount of cover for the third insurance stated in the Insurance Table is £5 Million GBP

The minimum amount of cover for the fourth insurance stated in the Insurance Table is £5 Million GBP

The *Adjudicator nominating body* is RICS Dispute Resolution Service

The *tribunal* is Arbitration

If the *tribunal* is arbitration, the arbitration procedure is The RICS Dispute Resolution Service (DRS) procedure in force when the arbitrator is appointed

The *conditions of contract* are the NEC3 Engineering and Construction Short Contract April 2013 and the following additional conditions

Clause 1

Freedom of Information Act and the Environmental Information Regulations

The Contractor shall provide all assistance to enable the Employer and/or its clients to comply with any request received under the Freedom of Information Act 2000 and/or the Environmental Information Regulations should either be applicable to the Employer.

In no event shall the Contractor or its Subcontractors respond directly to a Request for Information unless expressly authorised to do so by the Employer.

Clause 2

Transparency

In order to comply with the Government's policy on transparency in the areas of procurement and contracts the Contractor agrees that the Contract and the sourcing documents issued by the Employer which led to its creation will be published by the Employer on a designated web site.

The entire Contract and all the sourcing documents issued by the Employer will be published on the designated web site save where to do so would disclose information the disclosure of which would:

- (i) contravene a binding confidentiality undertaking that protects information which the Employer, at the time when it considers disclosure, reasonably considers to be confidential to the Contractor;
- (ii) be contrary to regulation 21 of the Public Contracts Regulations 2015; or
- (iii) in the reasonable opinion of the Employer be prevented by virtue of one or more of the exemptions in the FOIA or one or more of the exceptions in the Environmental Information Regulation (EIR).

If any of the situations in (i),(ii),(iii) apply the Contractor consents to the Contract or sourcing documents being redacted by the Employer to the extent necessary to remove or obscure the relevant material and being published on the designated website subject to those redactions.

In this entire clause the expression “sourcing documents” means the advertisement issued by the Employer seeking expressions of interest, any pre-qualification questionnaire stage and the invitation to tender.

Clause 3

Termination Para 1

The Employer may terminate the Contract by written notice to the Contractor in any of the following circumstances:

- (i) Where it considers that the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015(as amended) ("PCR 2015");
- (ii) Where it considers that the Contractor has at the time of the award of the Contract been in one of the situations referred to in Regulation 57(1) of the PCR 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure;
- (iii) Where the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the EU Treaties and Directive 2014/24/EU of the European Parliament and of the Council that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;
- (iv) Where the European Commission sends a reasoned opinion to the United Kingdom or brings the matter before the Court of Justice of the European Union under Article 258 of the TFEU alleging that the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and Directive 2014/24/EU of the European Parliament and of the Council; or
- (v) Where a third party starts court proceedings against the Employer seeking a declaration that the Contract is ineffective or should be shortened under Regulations 98 to 101 of the PCR 2015, which the Employer considers have a reasonable prospect of success.

Such termination shall be effective immediately or at such later date as is specified in the notice. The Employer shall not incur any liability to the Contractor by reason of such termination and shall not be required to pay any costs, losses or damage to the Contractor. Termination under this clause shall be without prejudice to any other rights of the Employer.

Termination Para 2

The Employer, shall at any time have the right for convenience to terminate the Contract or reduce the quantity of Supplies or Services to be provided by the Contractor in each case by giving to the Contractor

reasonable written notice. During the period of notice Employer may direct the Contractor to perform all or any of the work under the Contract. Where Employer has invoked either of these rights, the Contractor may claim reasonable costs necessarily and properly incurred by him as a result of the termination or reduction, excluding loss of profit, provided that the claim shall not exceed the total cost of the Contract.

Clause 4

Payment to other parties

The Contractor shall ensure, pursuant to Regulation 113(2)(c) of the Public Contracts Regulations 2015 (as amended), that any subcontract awarded by the Contractor contains suitable provisions to impose, as between the parties to the subcontract, requirements that –

- (i) any payment due from the Contractor to the subcontractor under the subcontract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
- (ii) any invoices for payment submitted by the subcontractor are considered and verified by the Contractor in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and
- (iii) any subcontractor will include, in any subcontract which it in turn awards, suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those imposed in paragraphs (i), (ii) and (iii) of this Clause 4, subject to suitable amendment to reflect the identities of the relevant parties.

Clause 5

Sub-contractors

The Employer may (without cost to or liability of the Employer require the Contractor to replace any subcontractor where in the reasonable opinion of the Employer any mandatory or discretionary grounds for exclusion referred to in Regulation 57 of the Public Contracts Regulations 2015(as amended) apply to the subcontractor.

Clause 7

Modern Slavery Act 2015

During the Term or any extension of this Contract, Employer is committed to ensuring that its supply chain complies with the above Act. The Contractor shall provide such assurances, on the anniversary of the commencement date or completion of the Contract, if less than 12 months.

The Contractor shall provide a report covering the following but not limited to areas as relevant and proportionate to the Contract evidencing the actions taken, relevant to the Contractor and your supply chain associated with this Contract.

- Impact assessments undertaken
- Steps taken to address risk/actual instances of modern slavery and how actions have been prioritised
- Evidence of stakeholder engagement
- Evidence of ongoing awareness training

- Business-level grievance mechanisms in place to address modern slavery
- Actions taken to embed respect for human rights and zero tolerance of modern slavery throughout the organisation

The Employer reserve to sole right to audit any and all reports submitted by the Contractor to an extent as deemed necessary and the Contractor shall unreservedly assist the Employer in doing so. Any financial burden incurred by the Contractor in doing so shall not be reimbursable.

Clause 9

Taxation obligations of the Contractor

The relationship between the Employer and Contractor shall be that of “independent contractor” which means that Contractor is not the Employer employee, worker, agent or partner, and Contractor shall not give the impression that they are.

As this is not an employment Contract, Contractor shall be fully responsible for all their own tax, including any national insurance contributions arising from carrying out the Services.

- (1) The Contractor in respect of consideration received under this Contract, Contractor shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- (2) Where Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this Contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- (3) The Employer may, at any time during the term, completion extension or post termination of this Contract, request Contractor to provide information which demonstrates how Contractor complies with its obligations under tax an National insurance Clauses (1) and (2) above or why those Clauses do not apply to it.

A request under Clause (3) above may specify the information which Contractor shall provide and the period within which that information must be provided.

In the case of a request mentioned in clause (3) above, the provision of inadequate information or a failure to provide the information within the requested period, during any term or extension, may result in the Employer terminating the Contract.

Any obligation by Contractor to comply with Clause (1), (2), (3) shall survive any term, extension, completion or termination and Contractor obligations to Indemnify the Employer shall survive without limitation until such time as any of these obligations are complied with.

The Employer may supply any information, including which it receives under Clause (3) to the Commissioners of Her Majesty’s Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

If the Employer has to pay any such obligations owed by Contractor under Clauses (1) and (2) then Contractor shall pay back to the Employer in full, any money that the Employer has to pay, and Contractor shall also pay back the Employer for any fine or compensate the Employer for any other punishment imposed on the Employer because the tax or national insurance due was not paid by the Contractor.

Clause 10

Cyber Essentials Questionnaire

The Contractor agrees that during any term or extension at the sole discretion of the Employer to complete the attached questionnaire as many times as is required within (14 days) from notice to do so and shall send this information as directed by the Employer. The Employer is required to provide such assurances to comply with government legislation. Any financial burden associated with the completion and submission of this questionnaire incurred by the Contractor shall not be reimbursable.



Copy of Statement
of Assurance Questio

Clause 11

General Data Protection Regulations (GDPR)

The Contractor warrants that that it shall under this Contract:

Process only on documented instructions (Annex A) by the Employer, including regarding international transfers (unless, subject to certain restrictions, legally required to transfer to a third country or international organisation);

- provide all reasonable assistance to the Employer in the preparation of any Data Protection Impact Assessment (see <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN> of the GDPR). prior to commencing any processing. Such assistance may, at the discretion of the Employer ,include;
 - a) systematic description of the envisaged processing operations and the purpose of the processing;
 - b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- ensure those processing personal data are under a confidentiality obligation (contractual or statutory);
- appoint a suitably qualified data protection representative to manage the data;
- keep records of their data processing activities performed under this Contract in order to be able to provide information included in those records to the Data Protection Authorities, upon request. Records should include: (1) details of the data controller and data processor and their representatives; (2) the categories of processing activities that are performed; (3) information regarding cross-border data transfers and; and (4) a general description of the security measures that are implemented;
- take all measures required under the security provisions which includes pseudonymisation and encrypting personal data as appropriate;
- only use a sub-processor with the Employers formal written consent (specific or general, although where general consent is obtained processors must notify all and any changes to the

Employer, giving them an opportunity to object);

- flow down the same contractual obligations to sub-processors;
- notify the Employer without undue delay data breaches;
- assist the Employer in responding to requests from individuals (data subjects) exercising their rights;
- assist the Employer in complying with the obligations relating to a security breach notification, Data Protection Impact Assessment and consulting with supervisory authorities;
- securely destroy (providing evidence that this has occurred e.g. a secure waste disposal certificate from a third party) or return as instructed by the Employer all personal data at the end of the Contract (unless storage is required by EU/member state law);
- make available to the Employer all information necessary to demonstrate compliance; allow/contribute to audits (including inspections by the Employer or a third party); and inform the if its instructions infringe data protection law or other EU or member state data protection provisions.

The Employer may require further assurances during the Contract through a series of questions as to the Contractors GDPR compliance.

Notwithstanding any other remedies available to the Employer, the Contractor shall fully indemnify the Employer as a result of any such breach of the General Data Protection Regulations (GDPR), by the Contractor or any other party used by the Contractor in its performance of the Contract, which results in the suffering fines, loss or damages.

Annex A - Schedule of Processing, Personal Data and Data Subjects

The Contractor shall only process in accordance with the instructions as advised below and comply with any further written instructions with respect to processing by the Employer. Any such further written processing instructions required by the Employer shall be incorporated into this Schedule and shall be the subject of a formal amendment to this Contract.

<u>Description</u>	<u>Details</u>
Subject matter of the processing	The contract is for the provision of Water Services at the National Oceanography Centre. It is no envisaged that any personal data will be collected, other than names of persons employed by NOC and contractor who are directly involved with the operation of the contract. It is envisioned that no data will be held by the contractor.
Duration of the processing	Any personal information may be kept for the duration of the contract and will not be held past the contract end date.
Nature and purposes of the processing	The records will retain no personal data other than names of persons employed by NOC and contractor who are directly involved with the operation of the contract. The purpose of the records are to monitor and operate the water services systems at the National Oceanography Centre.
Type of Personal Data	The only data held will be the names of persons employed by NOC and contractor who

		are directly involved with the operation of the contract.		
	Categories of Data Subject	The only data held will be the names of persons employed by NOC and contractor who are directly involved with the operation of the contract.		
	Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The data will be securely held in paper and or electronic format for no more than 10 years after the contract year of collection after which it will be securely disposed of.		
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Contract Data

The Contractor's Offer

The Contractor is

Name

Address

Telephone Fax

E-mail address

The percentage for overheads and profit added to the Defined Cost for people is %.

The percentage for overheads and profit added to other Defined Cost is %.

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

The offered total of the Prices is **All costs to be provided in AW5.2 and supporting pricing questions.**

Signed on behalf of the Contractor

Name

Position

Signature Date

The Employer's Acceptance

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

Signed on behalf of the Employer

Name

Position

Signature Date

Price List

Item number	Description	Unit	Quantity	Rate	Price
.....
	As outlined in the FM18062 AW5.2 Pricing Schedule and supporting pricing questions				
.....
.....
The total of the Prices					

Contract Data

Works Information

1 Description of the *works*

.....
 As per FM18062 Section 4 – Specification and any supporting documentation or clarifications

2 Drawings

Drawing number	Revision	Title
.....
As per FM18062 Section 4 – Specification and any supporting documentation or clarifications		
.....
.....

Contract Data

Works Information

3 Specifications

Title	Date or revision	Tick if publicly available
.....

.....
As per FM18062 Section 4 – Specification and any supporting documentation or clarifications
.....
.....

4 Constraints on how the *Contractor* Provides the Works

.....
As per FM18062 Section 4 – Specification and any supporting documentation or clarifications
.....
.....

5 Requirements for the programme

.....
As per FM18062 Section 4 – Specification and any supporting documentation or clarifications
.....
.....

6 Services and other things provided by the *Employer*

Item	Date by which it will be provided
------	-----------------------------------

.....
As per FM18062 Section 4 – Specification and any supporting documentation or clarifications
.....
.....

Contract Data

Site Information

.....
As per FM18062 Section 4 – Specification and any supporting documentation or clarifications
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