

This document is executed as a deed and is delivered and takes effect at the date written at the beginning of it



Framework: Collaborative Delivery Framework
Supplier: Kier Integrated Services Ltd
Company Number: 00873179

Geographical Area: South West
Project Name: Bridgwater Tidal Barrier - Enabling Works
Project Number: ENVIMSW0002039

Contract Type: Engineering Construction Contract
Option: Option C

Contract Number: C15617

Stage: Construction

Revision	Status	Originator	Reviewer	Date

**ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework
CONTRACT DATA**

Project Name Bridgwater Tidal Barrier - Enabling Works

Project Number ENVIMSW0002039

This contract is made on 27 February 2023
between the *Client* and the *Contractor*

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 10th day of April 2019 between the *Client* and the *Contractor* in relation to the Collaborative Delivery Framework. The entire agreement and the following Schedules are incorporated into this Contract by reference
- Schedules 1 to 21 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference
BTB Access Track Scope V4.1

**Part One - Data provided by the *Client*
Statements given in
all Contracts**

1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and the secondary Options of the NEC4 Engineering and Construction Contract June 2017.

Main Option Option C Option for resolving and avoiding disputes

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*
- X18 Limitation of Liability
- X20: Key Performance Indicators
- 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

Bridgwater Tidal Barrier Enabling works, incl. Western Access track

The *Client* is Environment Agency

Address for communications Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

The *Project Manager* is

Address for communications 2 Glass Wharf
Temple Quay
Bristol
BS2 0FR

Address for electronic communications [REDACTED]

The *Supervisor* is [REDACTED]

Address for communications The Hub
500 Park Avenue
Aztec West
Bristol
BS32 4RZ

Address for electronic communications [REDACTED]

The Scope is in
BTB Access Track Scope V4.1

The Site Information is in
ENVIMSW002039-ATK-ZZ-3EXP-RP-HS-000001

The *boundaries of the site* are
5201883_Bridgwater_Development_Stage_1

The *language of the contract* is English

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

The period for reply is 2 weeks

The following matters will be included in the Early Warning Register
Not used

Not used

Not used

Not used

Early warning meetings are to be held at intervals no longer than 2 weeks

2 The Contractor's main responsibilities

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

'none set' 'none set'

'none set' 'none set'

'none set' 'none set'

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 *starting date* is 06 March 2023

The *access dates* are
part of the Site *date*

the Site 06 March 2023

BTB Western Compound 12 June 2023

The *Contractor* submits revised programmes at
intervals no longer than 4 weeks

The *Completion Date* for the whole of the *works* is 07 November 2023

The *Client* is not willing to take over the *works* before the Completion Date

The period after the Contract Date within which the *Contractor* is to
submit a first programme for acceptance is 4 weeks

4 Quality management

The period after the Contract Date within which the *Contractor* is to submit a quality plan is 4 weeks

The period between Completion of the whole of the *works* and the *defects date* is 52 weeks

The *defect correction period* is 2 weeks except that

- The *defect correction period* for safety issue is 24 Hours
- The *defect correction period* for waterways is 24 Hours

5 Payment

The *currency of the contract* is the £ sterling

The *assessment interval* is Monthly

The *Client* set total of the Prices is £1,653,991.40

The *interest rate* is 2.00% per annum (not less than 2) above the Base rate of the Bank of England

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

	<i>share range</i>		<i>Contractor's share percentage</i>
less than		80 %	0 %
from	80 %	to	120 %
greater than		120 %	as set out in Schedule 17
			as set out in Schedule 17

6 Compensation events

The place where weather is to be recorded is YEOVILTON (51.00778, -2 63843)

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

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 09:00 hours GMT

and these measurements:

1. Not used
2. Not used
3. Not used
4. Not used
5. Not used

The *weather measurements* are supplied by Met Office
The *weather data* are the records of past weather measurement for each calendar month which were recorded at YEOVILTON (51 00778, -2.63843) and which are available from Met Office

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

Jan	Not used	Jul	Not used
Feb	Not used	Aug	Not used
Mar	Not used	Sep	Not used
Apr	Not used	Oct	Not used
May	Not used	Nov	Not used
Jun	Not used	Dec	Not used

These are additional compensation events

1. Unforeseen service protection / diversion
2. Contaminated material
3. Unexploded Ordnance finds
4. Unforeseen Archaeological finds
5. Unforeseen protected species
6. Unforeseen invasive species

7. The working area within the Site is flooded preventing the Contractor from working and the existing west bank defences between NDR Bridge and Pimms Clyde is overtopped or breached.

8 Liabilities and insurance

These are additional *Client's* liabilities

- 1 Any change in landfill leachate levels
- 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

£15,000,000

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

not less than the amount required by law

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

None

Resolving and avoiding disputes

The *tribunal* is litigation in the courts

The *Senior Representatives* of the *Client* are

Address for communications

Manley House
Kestrel Way
Exeter
EX27LQ

Address for electronic communications

Name

Address for communications

Rivers House
East Quay
Bridgwater
TA6 4YS

Address for electronic communications

The *Adjudicator* is

'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

Z Clauses

Z1 Correctness of Site Information and other documents

Z1.1 Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the *Client*, 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 *works*.

Z1.2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the *Client* 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 *works*.

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

Delete first sentence of clause 62.2 and replace with:

"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 Completion Date and Key Dates assessed by the *Contractor*. Quotations for the compensation event described in 60.1(19) comprise any delay to the Completion Date and Key Dates assessed by the *Contractor*. Delete 'The' At start of clause 63.1 and replace with:

"For the compensation event described in 60.1(19) the Prices are not changed. For other compensation events the..."

Z 4 The Schedule of Cost Components

The Schedule of Cost Components is as detailed in the Framework Schedule 9.

Z 6 Payment for Work

Delete existing clause 11.2 (31) and replace with:

"11.2 (31) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* 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 *Client*."

Z7 Contractor's share

After c154.2 and before c154.3, insert the following additional clause:

54.2A If, prior to Completion of the whole of the works, 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.

Z10 Payments to subcontractors, sub consultants and

Subcontractors

The *Contractor* will use the NEC4 contract on all subcontracts for works. Payment to subcontractors will be 28 days from the assessment date.

If the *Contractor* does not achieve payments within these time scales then the *Client* reserves the right to delay payments to the *Contractor* in respect of subcontracted work, services and supplies.

Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the *Contractor's* opportunities to work on framework contracts.

Z11(UK) 3 The Contracts (Rights of Third Parties) Act

The design consultant employed by the *Contractor* is required to fulfil the obligations of the warrantor under the primary contract for design works that they complete. This includes: Transfer of rights clause Z11

Professional indemnity insurance cover to same cover as that specified for the *Contractor*

Z11.1 The *Client* ('the third party') may in its own right enforce the provisions of this clause, subject to and in accordance with the provisions of the Contracts (Right of Third Parties) Act 1999 and the following provisions:

Z11.1.1 the parties may not rescind or vary any provision(s) of this agreement, including this clause, at any time without the consent of the third party; and

Z11.1.2 each third party's rights against party A under this agreement shall be subject to the same conditions, limitations and exclusions as apply to party B's rights against party A under this agreement.

Z11.2 Except as provided in clause Z11.1, this 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 this clause does not affect any right or remedy of a other party which exists or is available apart from that Act.

Z16 Disallowed Costs

Add the following bullets to clause 11.2 (26) Disallowed costs

- 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 client 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

Delays and additional cost on this contract resulting from the *Contractor's* 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.

Z20 Defect Dates for Sections

Where a section of the *works* is defined and is located in a separate area of the Site, the time to the *defects date* for that section is the defined period after the Completion of that section, and is defined in the Contract Data.

Z21 Requirement for Invoice

Add the following sentence to the end of clause 51.1:

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 *Project Manager's* certificate.

Delete existing clause 51.2:

51.2 Each certified payment is made by the later of

- 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.

If a certified payment is late, or if a payment is late because the *Project Manager* 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

Z22 Resolving Disputes

Delete W2.1

Z23 Risks and insurance

Replace clause 84.1 with the following

Insurance certificates are to be submitted to the Client on an annual basis.

Z30 Material Price Volatility

The *Client* recognises the ongoing pricing uncertainty in relation to materials for the period from 1 July 2021 to 30 June 2023 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%.

Z30.1 Defined terms

a) The Latest Index (L) is the latest index as issued by the *Client*. The L, which is at the discretion of the *Client*, is based upon the issued consumer price index ((CPI) based upon the 12-month rate) before the date of assessment of an amount due.

b) The Price Volatility Provision (PVP) 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.

c) Material Factor (MF) 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.

Z30.2 Price Volatility Provision

Through a Compensation Event the *Client* shall pay the PVP. PVP is calculated as:
 $Assessment \times MF \times L = PVP$

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 *Client*. The PVP calculated at the last assessment before 30 June 2023 is used for calculating the price increase after that date.

Z30.3 Price Increase

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.

Z30.4 Compensation Events

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 the June 2023 period compensation event.

Assessment Date	Defined Cost?	Forecasted Cost?
31 July 2021	In period costs only	No
31 August 2021	In period costs only	No
30 September 2021	In period costs only	No
31 October 2021	In period costs only	No
30 November 2021	In period costs only	No
31 December 2021	In period costs only	No
31 January 2022	In period costs only	No
28 February 2022	In period costs only	No
31 March 2022	In period costs only	No
30 April 2022	In period costs only	No
31 May 2022	In period costs only	No
30 June 2022	In period costs only	No
31 July 2022	In period costs only	No
31 August 2022	In period costs only	No
30 September 2022	In period costs only	No
31 October 2022	In period costs only	No
30 November 2022	In period costs only	No
31 December 2022	In period costs only	No
31 January 2023	In period costs only	No
28 February 2023	In period costs only	No
31 March 2023	In period costs only	No
30 April 2023	In period costs only	No
31 May 2023	In period costs only	No
30 June 2023	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.

Secondary Options

OPTION X2: Changes in the law

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

OPTION X5: Sectional Completion

The <i>completion date</i> for each <i>section</i> of the <i>works</i> is		
<i>section</i>	<i>description</i>	<i>completion date</i>
1	Completion of Western Access track and Compound	04 September 2023

X7 plus X5

Delay damages for each <i>section</i> of the <i>works</i> are		
<i>section</i>	<i>description</i>	<i>amount per day</i>
1	Completion of Western Access track and Compound	£492.00

The delay damages for the remainder of the *works* are £492.00

OPTION X10: Information modelling

The period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is 2 weeks

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use skill and care normally used by professional providing information similar to the Project Information is, in respect of each claim £5,000,000

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 12 years

OPTION X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to £5,000,000

For any one event, the *Contractor's* liability to the *Client* for loss or damage to the *Client's* property is limited to £5,000,000

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to £5,000,000

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 £5,000,000

The *end of liability date* is 12 years after the Completion of the whole of the *works*

OPTION X20: Key Performance Indicators (not used with Option X12)

The *incentive schedule* for Key Performance Indicators is in Schedule 17.

A report of performance against each Key Performance Indicator is provided at intervals of 3 months.

Y(UK)1:Project Bank Account

The Contractor is to pay any bank charges made and to be paid any interest paid by the *project bank*

Y(UK2): The Housing Grants, Construction and Regeneration Act 1996

The period for payment is 14 days after the date on which payment becomes due

Y(UK3): The Contracts (Rights of Third Parties Act) 1999

term *beneficiary*

Not used Not used

Not used Not used

Not used Not used

Not used Not used

term *beneficiary*

The provisions of Y(UK)1 Not used

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 Kier Integrated Services Ltd

Address for communications 2nd Floor
Optimum House
Clippers Quay
Salford
M50 3XP

Address for electronic communications

[REDACTED]

The fee percentage is

Option C [REDACTED]

The working areas are

The site, Kier offices, and private dwellings of Kier staff.

The key persons are

Name (1) [REDACTED]
Job Chief Engineer
Responsibilities Specialist Advice
Qualifications BSC Civil Engineering
Experience 40+ years

The key persons are

Name (2) [REDACTED]
Job Project Manager
Responsibilities Project Delivery
Qualifications BSC Civil Engineering
Experience 10+ years

The key persons are

Name (3) [REDACTED]
Job Senior Quantity Surveyor
Responsibilities Commercial Support
Qualifications AssocRICS, HND Construction
Experience 20 + years

The key persons are

Name (4)
Job
Responsibilities
Qualifications
Experience

The following matters will be included in the Early Warning Register

2 The Contractor's main responsibilities

The Scope provided by the *Contractor* for its design is in

3 Time

The programme identified in the Contract Data is

BTB WAR Contract Programme DD03012023

5 Payment

The *activity schedule* is

Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1) [REDACTED]
Address for communications
Hawthorn House
Emperor Way
Exeter Business Park
Exeter
EX1 3QS

Address for electronic communications
[REDACTED]

Name (2) [REDACTED]
Address for communications
Hawthorn House
Emperor Way
Exeter Business Park
Exeter
EX1 3QS

Address for electronic communications
[REDACTED]

X10: Information Modelling

The *information execution plan* identified in the Contract Data is

Y(UK)1: Project Bank Account

The *project bank* is

[REDACTED]

named suppliers are

Contract Execution

Client execution

Signed as a Deed by [PRINT NAME]

for and on behalf of the Environment Agency

[Redacted Signature]

Signature

Date 07/03/2023

Role Senior Lawyer (Team Leader)

In the presence of:

[Redacted Signature]

Signature

Date 3/2023

Role Costs Manager

Name [Print]

[Redacted Name]

Address

c/o Manley House

Kestrel Way

Exeter

EX2 7LQ

Contractor execution

Signed as a Deed by [PRINT NAME]

for and on behalf of

Kier Integrated Services Ltd

[Redacted Signature]

Signature

Date 21/02/2023

Date

Role Group Managing Director

Role

In the presence of:

[Redacted Signature]

Signature

Date 21/02/2023

Date

Role Contracts Officer

Role

Name [Print]

[Redacted Name]

Address

2 Eastnor Close

Redditch

B98 7NW