



Framework:	Collaborative Delivery Framework
Supplier:	
Company Number:	
Geographical Area:	Midlands
Contract Name:	First Avenue Construction ECC
Project Number:	ENV0001419C
Contract Type:	Engineering Construction Contract
Option:	Option C
Contract Number:	C19857
Stage:	Construction

Revision	Status		Originator		Reviewer		Date

ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework

Project Name	First Avenue Construction ECC
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Project Number ENV0001419C

This contract is made on 18 July 2023
between the *Client* and the *Contractor*

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 01st day of April 2019 and Framework Agreement Extension dated and signed 1st April 2023 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 23 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference
CDT NEC4 ECC Scope First Avenue 1.7_clean.doc, dated 12th July 2023

Part One - Data provided by the *Client*

[REDACTED]

11/11/2019

Main
Option

Option C

██████████

W2

██████████

X2: Changes in the law

X7: Delay damages

X9: Transfer of rights

X10: Information modelling

X11: Termination by the *Client*

X15: *Contractor's* design

X18 Limitation of Liability

X20: Key Performance Indicators

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

To supply, construct and install the works for the First Avenue Flood Alleviation Scheme.

The *Client* is

Environment Agency

Address for communications

[illegible]

Address for electronic communications

10

[REDACTED]

[REDACTED]

The *Project Manager* is

Address for communications

[illegible]

Address for electronic communications

The *Supervisor* is

Address |

6 [REDACTED]

Address for electronic communications

The Scope is in
CDT NEC4 ECC Scope First Avenue 1.7_clean.doc, dated 12th July 2023

The Site Information is in
CDT NEC4 ECC Scope First Avenue 1.6.doc Appendix E Site Information

The boundaries of the site are
ENV0001419C-ARU-00-00-DR-C-B1300_07-S4-P02.dwg

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

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	31st July 2023
The access dates are part of the Site	date
Site	31st July 2023
Environment Agency staff, systems and information as detailed in the Scope	31st July 2023

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

The Completion Date for the whole of the works is 31st January 2024

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 is
• The defect correction period for is

5 Payment

The currency of the contract is the £ sterling

The assessment interval is Monthly

The *Client* set total of the Prices is

The *interest rate* is

Base

 2.00% per annum (not less than 2) above the 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		to	as set out in Schedule 17
greater than		120 %	as set out in Schedule 17

6 Compensation events

The place where weather is to be recorded is

Coleshill, Birmingham

- 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:

-
-
-
-
-

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

Coleshill, Birmingham

 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	Jul
Feb	Aug
Mar	Sep
Apr	Oct
May	Nov
Jun	Dec

These are additional compensation events

- Carbon Methodology - Adherence to and compliance with the Carbon Methodology dated 08 June 2023
- Working areas are flooded
- Excavation and subsequent filling of excavations lower than 500mm below existing ground level for the construction of the new embankment.
- The unidentified service that runs through the centre of the scheme is to be retained and . incorporated into the permanent works
- Site won material is not suitable for inclusion in the works as main backfill material for proposed drainage and so material is required to be imported.
- Site won subsoil is not suitable for inclusion in the flood bund batters so is required to be disposed of off-site, and additional class 2A material imported for inclusion in the permanent works.
- Contaminated material is encountered on site.

8 Liabilities and insurance

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

£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

Resolving and avoiding disputes

The <i>tribunal</i> is litigation in the courts	
The <i>Senior Representatives</i> of the <i>Client</i> are	<div></div>
Address for communications	<div></div> <div></div> <div></div> <div></div> <div></div>
Address for electronic communications	<div></div>
Name	
Address for communications	
Address for electronic communications	
The <i>Adjudicator</i> is	'to be confirmed'
Address for communications	'to be confirmed'
Address for electronic communications	'to be confirmed'
The <i>Adjudicator nominating body</i> 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* .

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* r.

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

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. In all instances and circumstances the Price for Work Done to Date shall not exceed the forecast for the same as provided under clause 20.4."

Z7 Contractor's share

After cl54.2 and before cl54.3, 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 suppliers

Subcontractors

The *Contractor* will use the NEC4 contract on all subcontracts for works 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.

If the *Contractor* does not achieve payments within these timescales then the Client reserves the right to delay payments to the Contractor in respect of subcontracted work, services or goods.

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

Z11Y(UK) 3 The Contracts (Rights of Third Parties) Act 1999

Z11.1 The *Contractor* warrants all design complies with the contract whether undertaken by the *Contractor* or by sub-contractors.

Z11.2 All contracts for design employed by the *Contractor* must include:

- Y(UK)3 The Contracts Rights of Third Parties) Act 1999
- A requirement for the *Contractor's* sub-contractor to hold Professional indemnity insurance to the same level as the cover specified for the *Contractor* in this Call-off contract
- A clause to give the *Client* (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 *Contractor* nor their sub-contractor can alter the provisions of their sub-contract without the consent of the *Client*
- A clause to ensure that the *Client's* rights against the sub-contractor under this agreement shall be subject to the same conditions, limitations and exclusions as apply to the *Contractor's* 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

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.

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.

Z31 ECC – Price Adjustment for Inflation
The *Client* recognises the ongoing pricing uncertainty with regards to inflation. The *Client* will mitigate this uncertainty through this clause.

Z31.1 Defined terms:

a) The index is Office for National Statistics (ONS) CPI (UK, 2015=100).
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) The Price for Work Done to Date is greater than 0.
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.
Z31.5 Price adjustment Options C and D.
Z31.6 Compensation events.

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

Z120 ECC – Carbon reduction

Ref. (Clause No.)	Clause words
11.2	Add as Clause 11.2(36)
15.1	In Clause 15.1 add as a new bullet between the second and third bullet:
Performance Measurements	
57	Add as Clause 57:
57.1	'From the <i>starting date</i> until the Completion Date, the <i>Contractor</i> reports to the <i>Project Manager</i> its performance against
57.2	If the <i>Contractor’s</i> performance against a target in the Performance Table is not achieving or is forecast not to achieve the
57.3	At the dates stated in the Performance Table,
57.4	Information in the Performance Table is not Scope.
X18	X18.5 add as a new bullet after the fourth bullet:

The *performance table* is [ECC-carbon-performance-table.xlsx](#)

the Performance Table for this contract type [form, Partner, Stage] as set out in the Carbon Methodology dated 08 June 2023

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 X7: Delay damages

X7 only Delay damages for Completion of the whole of the *works* are £370.61 per day

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 6 years

OPTION X15: The *Contractor's* design

The *period for retention* following Completion of the whole of the *works* or earlier termination is 12 years

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 professionals designing works similar to the *works* is, in respect of each claim £5,000,000.00

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 £1,000,000

For any one event, the *Contractor's* liability to the *Client* for loss or damage to the *Client's* property is limited to £1,000,000

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 6 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(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

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

Address for communications

Address for electronic communications

The fee percentage is

Option C

The working areas are

the site, haul roads and diversionary routes

The key persons are

Name (1)	
Job	
Responsibilities	
Qualifications	
Experience	

The key persons are

Name (2)	
Job	
Responsibilities	
Qualifications	
Experience	

The key persons are

Name (3)	
Job	
Responsibilities	
Qualifications	
Experience	

The key persons are

Name (4)	
Job	
Responsibilities	
Qualifications	
Experience	

The following matters will be included in the Early Warning Register

- Impact of existing cycle route passing through the site boundary
- Bearing pressure at proposed formation is insufficient
- Carbon reduction processes associated with Z120 are yet to be fully resolved

2 The Contractor's main responsibilities

The Scope provided by the Contractor for its design is in

Not applicable

3 Time

The programme identified in the Contract Data is

23017/TP/01 dated 27th April 2023

5 Payment

The activity schedule is
First Avenue Activity Schedule ref 23017

Resolving and avoiding disputes

The Senior Representatives of the Contractor are

Name (1) [REDACTED] D [REDACTED]
Address for communications [REDACTED]
30 White [REDACTED]
Ipswich
IP1 5LT

[REDACTED]
Address for electronic communications [REDACTED]

Name (2) [REDACTED]
Address for communications [REDACTED]
[REDACTED]
Ipswich [REDACTED]
[REDACTED]
[REDACTED]

Address for electronic communications [REDACTED]

X10: Information Modelling

[REDACTED] *information execution plan* identified in the
Contract Data is
[REDACTED]

Contract Execution

Client execution

Signed Underhand by [PRINT NAME]

for and on behalf of the Environment Agency

18/07/2023

SignatureDate

18/07/2023

PCM Project Team Mnager

Role

Senior Project Manager

Contractor execution

Signed Underhand by [PRINT NAME]

for and on behalf of

14/07/2023

14/07/2023