



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

Geographical Area: South West
Project Name: River Sowey KSD main works Ph1b
Project Number: ENVRESW001353

Contract Type: Engineering Construction Contract
Option: Option C

Contract Number: 33479

Revision	Status		Originator		Reviewer		Date

ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework

CONTRACT DATA

Project Name River Sowy KSD main works Ph1b

Project Number ENVRESW001353

This contract is made on 20 September 2021
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
ENVRESW001353-CH2-XX-400-SO-Z-1084_1b_v3 final

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	W2
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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
Construction and earthworks, raising embankment, channel widening, creation of enhanced environmental features and landscaping along the River Sowy & King's Sedgemoor Drain

The *Client* is
Address for communications
Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

The *Project Manager* is

Address for communications
Environment Agency
Manley House
Kestrel Way
Exeter
EX2 7LQ

Address for electronic communications

The *Supervisor* is
Address for communications
Jacobs

Aperture
Pynes Hill Court
Pynes Hill
Exeter
EX2 5SP

Address for electronic communications

The Scope is in
ENVRESW001353-CH2-XX-400-SO-Z-1084_1b_v3 final

The Site Information is in
ENVRESW001353-CH2-XX-400-RP-Z-1098

The *boundaries of the site* are
ENVRESW001353-CH2-XX-400-DR-GEN-1126

The *partner contract* is
not used

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 <i>key dates</i> and <i>conditions</i> to be met are	
<i>condition</i> to be met	<i>key date</i>
'none set'	'none set'
'none set'	'none set'
'none set'	'none set'
The <i>Contractor</i> prepares forecasts of the total Defined Cost for the whole of the <i>works</i> at intervals no longer than	4 weeks

3 Time

The <i>starting date</i> is	20 September 2021
The <i>access dates</i> are part of the Site	date
Whole of the site	20 September 2021
The <i>Contractor</i> submits revised programmes at intervals no longer than	4 weeks
The <i>Completion Date</i> for the whole of the <i>works</i> is	02 January 2022
The <i>Client</i> is not willing to take over the <i>works</i> before the Completion Date	
The period after the Contract Date within which the <i>Contractor</i> is to submit a first programme for acceptance is	4 weeks

4 Quality management

The period after the Contract Date within which the <i>Contractor</i> is to submit a quality plan is	4 weeks
The period between Completion of the whole of the <i>works</i> and the <i>defects date</i> is	Construction 52 weeks and Establishment of planted materials 0 weeks
The <i>defect correction period</i> is	2 weeks
• The <i>defect correction period</i> for	except that is
• The <i>defect correction period</i> for	is

5 Payment

The <i>currency of the contract</i> is the £ sterling	
The <i>assessment interval</i> is	Fortnightly
The <i>Client</i> set total of the Prices is	£1,962,320.15
The <i>interest rate</i> is	2.00% per annum (not less than 2) above the
Base rate of the	Bank of England
The <i>Contractor's share percentages</i> and the <i>share ranges</i> are	
<i>share range</i>	<i>Contractor's share percentage</i>
less than	0 %
from 80 % to 120 %	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	Westonzoyland Location: 51.115, -2.921
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The <i>weather measurements</i> 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.
- 2.
- 3.
- 4.
- 5.

The <i>weather measurements</i> are supplied by	Met Office
The <i>weather data</i> are the records of past weather measurement for each calendar month which were recorded at	Westonzoyland Location: 51.115, -2.92
and which are available from	Met Office
Assumed values for the ten year weather return <i>weather data</i> for each <i>weather measurement</i> for each calendar month are	
Jan	Jul
Feb	Aug
Mar	Sep
Apr	Oct
May	Nov
Jun	Dec

These are additional compensation events

1. Flooding from the Sowy or KSD or one of the connecting ditches which:
 - prevents safe access to the works, or
 - prevents the works from being undertaken in accordance with the Scope, or
 - would result from construction activities causing damage to archaeological or environmental features
2. Delays to work due to archaeological find or a restriction imposed by the archaeological Written Scheme of Investigation.
3. Delays or constraints imposed due to the presence of ecological protected species.
4. Any temporary access tracks which may be required to carry out the works, and that have not been detailed on the drawings; and has been accepted by the Project Manager.
5. Delays due to the discovery of UXO
6. Areas of works not accessible by standard tracked plant with 700mm wide tracks if likely to damage the river banks or it would result in damage to archaeological or environmental features.
7. Landscaping Maintenance is required.
8. Damage to the works caused by tenants or landowners or third parties where it has not been possible to prohibit and fence off access.
9. Damage to works from flooding from the Sowy or KSD or one of the connecting ditches during construction and throughout the maintenance period.
10. If the ratio of tracked plant to wheel plant required to carry out the works changes from 50:50
11. The import of more than 9,136m³ of suitable material is required to complete the works.

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 *tribunal* is litigation in the courts

The *Senior Representatives* of the *Client* are
Address for communications

Rivers House
East Quay
Bridgwater
Somerset
TA6 4YS

Address for electronic communications

Name

Address for communications

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*.

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 Aggregated Contractor's share

Delete existing clauses 54 and 93.4 and replace with:

54.7 The *Project Manager* assess the *Contractor's* share of the difference between the Aggregated Total of the Prices and the Aggregated Price for Work Done to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Aggregated Price for Work Done to Date divided by the Aggregated Total of the Prices, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.

54.8 If the Aggregated Price for Work Done to Date is less than the Aggregated Total of the Prices, the *Contractor* is paid its share of the saving. If the Aggregated Price for Work Done to Date is greater than the Aggregated Total of the Prices, the *Contractor* pays its share of the excess.

54.9 If, prior to the Completion Date, the Aggregated Price for Work Done to Date exceeds 110% of the Aggregated Total of the Prices, the amount in excess of 110% of the Aggregated Total of the Prices is retained from the *Contractor*.

54.10 The *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the Whole of the works using forecasts of the final Aggregated Price for Work Done to Date and the final Aggregated Total of Prices. This share is included in the amount due following Completion of the whole of the *works*.

54.11 The *Project Manager* makes a final assessment of the *Contractor's* share, using the final Aggregated Price for Work Done to Date and the final Aggregated Total of the Prices. This share is included in the final amount due.

93.4 If there is a termination, the *Project Manager* assesses the *Contractor's* share after certifying termination. The assessment uses as the Aggregated Price for Work Done to Date the sum of

- the total of
 - o the Defined Cost which the *Contractor* has paid and
 - o which it is committed to pay for work done before termination

and

- the total of
 - o the Defined Cost which the *Contractor* has paid and
 - o which it is committed to pay

in the *partner contract* before the date the termination certificate is issued under this contract.

The assessment uses as the Aggregated Total of the Prices the sum of

- the total of
 - the lump sum price for each activity which has been completed and
 - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed

and

- the total of
 - the lump sum price for each activity which has been completed and
 - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed

Add:

11.2(37) The Aggregated Total of the Prices is sum of

- the total of the Prices and
- the total of the Prices in the partner contract

11.2(38) The Aggregated Price for Work Done to Date is the sum of

- the Price for Work Done to Date and/
- the Price for Service Provided to Date in the *partner contract*.

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.

Z11Y(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.

Z18 Payment of pain/gainshare and programme incentivisation

Delete existing clause 54.3 and replace with:

54.3 The *Project Manager* makes regular assessments of the *Contractor's* share until the Completion Date using forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due in the following assessment. The *Project Manager* shall be entitled to take the *Contractor's share* percentage into account when assessing amounts in clause 50 and clause 51 due for payment at each assessment date thereafter. The *Project Manager* shall not assess any amount greater than the amount due when the forecast reaches the top *share range* in the Contract Data Part 1 (120% of the total of the Prices).

Delete existing clause 54.4 and replace with:

54.4 If clause 54.3 does not occur during the *works*, the *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the Whole of the *works* using forecasts of the final Price for Work Done to Date and the final total of Prices. This share is included in the amount due following Completion of the whole of the *work*.

Insert the following new clause 54.5:

54.5 If clause 54.3 does not occur during the *works*, the *Project Manager* makes a final assessment of the *Contractor's* share, using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.

Insert the following new clause 54.6:

Programme Payments will be made under the Framework in accordance with Schedule 17

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.

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

	<i>section</i>	<i>description</i>	<i>completion date</i>
	1	Construction works including establishment of planted materials	30 November 2021

X7 plus X5

	<i>section</i>	<i>description</i>	<i>amount per day</i>
	1	Construction works including establishment of planted materials	£1.00

The delay damages for the remainder of the *works* are £1.00

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

6 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

£7,000,000

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(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*

term *beneficiary*

The provisions of
Y(UK)1

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	81 Fountain Street Manchester M2 2EE [Redacted]
Address for electronic communications	
The fee percentage is	<div>Option C</div> <div>[Redacted]</div>
The working areas are	Site boundary & Kier Site Offices including WFH offices
The key persons are	
Name (1)	[Redacted]
Job	Project Manager
Responsibilities	Project Management
Qualifications	[Redacted]
Experience	[Redacted]
The key persons are	
Name (2)	[Redacted]
Job	Senior QS
Responsibilities	Commercial Management
Qualifications	[Redacted]
Experience	[Redacted]
The key persons are	
Name (3)	[Redacted]
Job	Project Manager
Responsibilities	Site Management
Qualifications	[Redacted]
Experience	[Redacted]
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

No Permanent Works Design

3 Time

The programme identified in the Contract Data is

2021-09-16 - KSD - Phase 1b - TenderProg TP-01 (Final)

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 Exeter Exeter EX1 3QS
Address for electronic communications	[Redacted]
Name (2)	[Redacted]
Address for communications	Hawthorn House Exeter 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

named suppliers are

Contract Execution

Client execution

Signed under hand by

[REDACTED]

for and on behalf of the Environment Agency

[REDACTED]

Signature

Deputy Area Director

Role

Consultant execution

Consultant execution

Signed under hand by

for and on behalf of

Kier Integrated Services Ltd

[REDACTED]

Signature

COMMERCIAL DIRECTOR.

Role