

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – Eastern Hub

A contract between

The Environment Agency

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

And

Breheney Civil Engineering Ltd

For

Pymmes Brook Channel Wall Repair Emergency Works

Contract Forms

- Contract Data
- The *Contractor's* Offer and *Client's* Acceptance
- Price List
- Scope
- Site Information

Contract Data

The *Client's* Contract Data

	The <i>Client</i> is	
Name	Environment Agency	
Address for communications		
Address for electronic communications		
The <i>works</i> are	Emergency Works to replace temporary props on the Pymmes Brook	
The <i>site</i> is	Pymmes Brook Channel Wall opposite 34a Wilmer Way, Arnos Park, London.	
The <i>starting date</i> is	03/03/2022	
The <i>completion date</i> is	To be determined by <i>Contractor's</i> programme of works, but no later than 01 May 2022.	
The <i>delay damages</i> are	nil	Per day
The <i>period</i> for reply is	2	weeks
The <i>defects date</i> is	104	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) does 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 *Adjudicator*. The referring Party pays the administrative charge made by the Institution. The person appointed is also *Adjudicator* for later disputes.

Contract Data

The *Client's* Contract Data

The interest rate on late payment is		% per complete week of delay.
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Insert a rate only if a rate less than 0.5% per week of delay has been agreed.

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	£100,000.00
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The <i>Client</i> provides this insurance	None
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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 works, 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 £500,000.00 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 nominating body</i> is	The Institution of Civil Engineers
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The <i>tribunal</i> is	litigation in the courts
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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 (unless stated otherwise in the Scope). 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 <i>works</i> are affected by any one of the following events <ul style="list-style-type: none"> • War, civil war, rebellion revolution, insurrection, military or usurped power • Strikes, riots and civil commotion not confined to the employees of the <i>Contractor</i> and sub-contractors • Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel • Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device • Natural disaster • Fire and explosion

	<ul style="list-style-type: none"> Impact by aircraft or other device or thing dropped from them
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	<p>Delete the text of Clause 92.3 and replace with:</p> <p>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.</p>
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 30 June 2022 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) 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.</p> <p>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.</p> <p>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.</p>
Z30.2	<p>Price Volatility Provision</p> <p>Through a Compensation Event the Client shall pay the PVP. PVP is calculated as:</p> $\text{Assessment} \times \text{MF} \times \text{L} = \text{PVP}$
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>

Contract Data

The *Contractor's* Contract Data

	The <i>Contractor</i> is	
Name	Breheny Civil Engineering Ltd	
Address for communications		
Address for electronic communications		
The <i>fee</i> percentage is	8	%
The <i>people rates</i> are	As per the lot 1 workbook	
category of person	unit	rate
The <i>published list of Equipment</i> is		As per the lot 1 workbook
The <i>percentage for adjustment for Equipment</i> is		8%

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 £13,070.00 plus VAT

Enter the total of the Prices from the Price List.

Signed on behalf of the *Contractor*

Name

Position

Signature

Date 04 March 2022

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

Signed on behalf of the *Client*

Name

Position

Signature

Date	04/03/2022

Price List

Entries in the first four columns in this Price List are made either by the *Client* or the tenderer.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price Column only: the Unit, Quantity and rate columns being left blank.

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
	Design documents	1	sum		£4,680.00
	Preparation and finalisation of Risk Assessments, Method Statements and the Construction Phase Plan	1	sum		£2,200.00
	Health and Safety file documentation	1	sum		£1,200.00
	Engagement with third party landowners	1	sum		£1,200.00
	Site investigations (Ferroscan)	1	Sum		£3,790.00
The total of the Prices					£13,070.00

The method and rules used to compile the Price List are

Civil Engineering Standard Method of Measurement 4th edition (CESMM4) as per the Framework Price Workbook.

Scope

The Scope should be a complete and precise statement of the *Client's* requirements. If it is incomplete or imprecise there is a risk that the *Contractor* will interpret it differently from the *Client's* intention.

Emergency Works are required to replace failing temporary props which support a failing section of the Pymmes Brook channel wall. Due to the emergency nature of the works the design should be completed within 3-4 weeks of contract award with the aim to mobilise on 11th April 2022.

The *Contractor* is required to design the replacement of existing props based on option 3 in the report "Pymmes Brook Wall Remediation Options Appraisal" presented in appendix 1. To include strengthening of the wall base and disposal of old props.

IMPORTANT: Construction will be carried out under this contract as a Compensation Event. This approach is hoped to avoid programme delays associated with scoping the construction deliverables.

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.

Design Requirements

- In developing the proposal, the *Contractor* shall provide a full breakdown of the various cost elements and clearly state the assumptions made in terms of quantity of materials and construction duration required. These will be based on the proposed design and on the present scope, including constraints.
- The *Contractor* shall provide an initial programme to include the design phase and best estimate of the construction phase. This programme should account for any access constraints or other constraints identified in the Pre-Construction Information.
- All design, specification and construction undertaken by the *Contractor* and/or any sub-contractors shall be compliant with the latest Civil Engineering Specification for the Water Industry (CESWI). In the absence of any meaningful specification elements in CESWI then the relevant series of the latest Highways Specification shall be used. This is in addition to the *Client's* own Minimum Technical Requirements.
- The *Contractor* shall provide Risk Assessments, Method Statements, a team organogram and evidence of required skills, knowledge and experience of relevant staff working on the project.
- The *Contractor* shall work with the Principal Designer to ensure all information required under the CDM Regulations (2015) is approved before any work begins.
- The *Contractor* to provide all relevant design information required for the H&S File.

Site investigations

- The *Contractor* shall provide details of any ground or site investigations required to allow the design to be fully developed. These details will be presented to the *Client* for review and acceptance using a Compensation Event/s.

Third Party Engagement

- The *Contractor* shall provide details of any access requirements onto 3rd party owned land. The *Contractor* shall lead on engagement with these 3rd party landowners to agree access arrangements with support from the *Client* where required.

Modelling

- There is no requirement to carry out hydraulic modelling.

Flood risk during works

- The *Contractor* shall take all necessary steps, including appropriate mitigation measures, to ensure that the activities do not result in an unacceptable increase in flood risk to themselves or any third party.
- The *Contractor* shall remove any obstruction from the channel within 2 hours of a flood alert being issued, or when requested by the *Environment Agency* so as to ensure that the river can flow at its full capacity. No equipment will be left in the river channel overnight.

2. Appendices

List the drawings that apply to the contract.

Appendix Number	Revision	Title
1		Pymmes Brook Wall Remediation Options Appraisal
2		Pre Construction Information (PCI)

3. Specifications

List the specifications which apply to the contract.		
Title	Date or Revision	Tick if publicly available
Environment Agency Blockage Management Guide (Gov.uk)	12/2019	yes
Latest Ciria Guidance: Culvert, screen and outfall manual - New CIRIA guidance	12/2019	yes
4. Constraints on how the <i>Contractor</i> 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 <i>Client</i>.		
1. The <i>Contractor</i> shall not commence any work on the <i>site</i> until the <i>Client</i> , or their representative, has accepted the method statements, risk assessments and any design documents required by the CDM Regulations (2015) related to this contract		
2. The <i>Contractor</i> is to prepare, for the <i>Client's</i> acceptance, the Construction Phase Plan (CPP) prior to starting the <i>works</i>		
3. The <i>Contractor</i> shall submit the completed design to the <i>Client</i> for approval within 3-4 weeks of contract award.		
Working times		
The <i>Contractor</i> will be permitted to work between 7.30am and 6.00pm on weekdays (Monday to Friday).		
5. Requirements for the programme		
The <i>Contractor</i> shall provide an initial programme to include the design phase and best estimate of the construction phase. This programme should account for any access constraints or other constraints identified in the Pre-Construction Information.		
State what the use of the <i>works</i> is intended to be at their Completion as defined in clause 11.2(1).		
The <i>Contractor</i> submits his programme with the <i>Contractor's</i> Offer for acceptance. The <i>Contractor</i> 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*

Describe what the *Client* will provide, such as services (including water and electricity) and “free issue” Plant and Materials and equipment.

Item	Date by which it will be provided
Latest utility service results provided in the PCI	Provided with contract

Site Information

All items listed below are provided within the PCI:

- Utility search results
- Latest Public Safety Risk Assessment
- Land Registry details
- Hazard Plan

Proposed sub-contractors

	Name and address of proposed subcontractor	Nature and extent of work
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1.	Form of Contract:	
2.	Form of Contract:	
3.	Form of Contract:	
4.	Form of Contract:	