

Highways England Company Limited

**Ground Investigation
Framework**

**Z Clauses
(Engineering and Construction
Short Contract)**

Z CLAUSES (Engineering and Construction Short Contract)

MANDATORY Z CLAUSES

Clause Z1B Changes to Conditions of Contract

11 Identified and defined terms

In clause 11.2(16) delete definition of “Site Information” and insert

Site Information is information which describes the *site* and its surroundings and is in the document called “ICE Specifications and Schedules 1 to 5”

In clause 11. 2 add the following defined terms

(17) Information Systems are the systems specified in the Scope for the collection and storage of information regarding the *site* and the *works* or any revised systems introduced by the *Client* from time to time.

(18) Investigation Supervisor is the *Investigation Supervisor*.

14 The *Client's* authority and delegation

After clause 14.5, add clause 14.6 of the *conditions of contract* and insert:

14.6 A reference to an action of the Investigation Supervisor in the contract is interpreted as an action of the *Client*. The *Client* may replace the *Investigation Supervisor* after notifying the *Contractor* of the name of the replacement.

51 Payment

In clause 51.1 of the *conditions of contract*, delete “three weeks” and insert “14 days”.

82 Recovery of costs

Delete clause 82.4 of the *conditions of contract*.

83 Insurance cover

Delete clause 83 of the *conditions of contract* and insert:

83.1 The *Contractor* provides the insurances stated in, and to comply with the requirements set out in the Scope.

Additional condition 1 (Page CC 17)

In condition 1.1(3) delete “three weeks” and insert “14 days”.

Clause Z8B Conflict of interest

Z8B.1 Clause 60.1(4) is amended by adding the following words at the end (before the full stop):

“, unless the instruction relates to a notification from the *Contractor* that a conflict of interest may exist or arise”.

Clause Z10B Subcontracting

- Z10B.1 The *Contractor* submits the name of each proposed subcontractor to the *Client* for acceptance. A reason for not accepting the subcontractor is that the appointment will not allow the *Contractor* to Provide the Works. The *Contractor* does not appoint a proposed subcontractor until the *Client* has accepted them.
- Z10B.2 The *Contractor* submits the proposed conditions of contract for each subcontract to the *Client* for acceptance unless the *Client* has agreed that no submission is required.
- Z10B.3 The *Contractor* does not appoint a subcontractor on the proposed subcontract conditions submitted until the *Client* has accepted them. A reason for not accepting them is that
- they will not allow the *Contractor* to Provide the Works
 - do not comply with the requirements of the contract or
 - they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation.
- Z10B.4 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount assessed under the contract.
- Z10B.5 If the *Contractor* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Client*.
- Z10B.6 The *Client* may, having stated the reasons, instruct the *Contractor* to remove a Subcontractor. The *Contractor* then arranges the removal of the Subcontractor and the appointment of a replacement in accordance with the contract.
- Z10B.7 Before
- appointing a proposed Subcontractor or
 - allowing a Subcontractor to appoint a proposed subsubcontractor
- the *Contractor* submits to the *Client* for acceptance
- either
 - a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed

Subcontractor or subsubcontractor or

- other means of proof (as specified in regulations 60(4) and 60(5) of the Public Contracts Regulations 2015) that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subcontractor or subsubcontractor and
- details of any RIDDOR Incident under any contract for which the proposed Subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed Subcontractor or subsubcontractor.

Z10B.8 The *Contractor* does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed subsubcontractor) until the *Client* has accepted the submission. A reason for not accepting the submission is that

- it shows that there are grounds for excluding the proposed Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or
- the *Client* is not satisfied that the proposed Subcontractor or subsubcontractor has put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur.

Z10B.9 If requested by the *Client*, the *Contractor* provides further information to support, update or clarify a submission under clause Z10B.7.

Z10B.10 If, following the acceptance of a submission under clause Z10B.8, it is found that

- one of the grounds for excluding the Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or
- the Subcontractor or subsubcontractor has not put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur

the *Client* may instruct the *Contractor* to

- replace the Subcontractor or
- require the Subcontractor to replace the subsubcontractor.

Z10B.11 Where two or more Consortium Members comprise the *Contractor*, each Consortium Member is jointly and severally liable for the payment of any subcontractor.

Clause Z18B Quality Management Points

Z18B.1 A failure by the *Contractor* to take the agreed actions to reduce the number of Quality Management Points in effect under the contract to 25 or less following the issue of a quality warning notice is treated as a substantial failure by the *Contractor* to comply with the contract.

Clause Z27B Termination – PCRs, Regulation 73

Z27B.1 The *Client* may terminate the *Contractor's* obligation to Provide the Works if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Contractor* at the *starting date*. The procedure and amount due on termination are the same as for Reason 2.

Z27B.2 The *Client* may terminate the *Contractor's* obligation to Provide the Works if

- the contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
- the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

The procedure and amount due on termination are the same as for

- Reason 2 if the modification or infringement was due to a default by the *Contractor*,
- Reason 5 if the modification or infringement was due to a default by the *Client* or
- Reason 7 if the modification or infringement was due to any other reason.

Clause Z28B Termination and removal of work

Z28B.1 The following are treated as a substantial failure by the *Contractor* to comply with the contract

- the *Contractor* substantially or repeatedly breaks a requirement of environmental legislation,
- the *Contractor* persistently or materially fails to comply with the Quality Statement or to meet any of the Performance Requirements or
- a key resource needed by the *Contractor* to Provide the Works is no longer available and the *Contractor* does not propose an alternative resource acceptable to the *Client*.

Z28B.2 The *Client* may instruct the *Contractor* that

- part of the *works* is to be permanently removed from the contract or
- for urgent reasons of health and safety, part of the *works* is to be temporarily removed from the contract.

In either case the *Contractor* acknowledges that the *Client* may itself, or appoint another supplier in place of the *Contractor* to undertake works similar to the removed *works* (or part of them).

Z28B.3 An instruction given under clause Z28B.2 is assessed as a compensation event, except that if the instruction is given for one of Reasons 1 to 4, the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *works*.

Z28B.4 If the *Contractor's* obligation to Provide the Works is terminated for any reason, the *Contractor* if instructed by the *Client*

- completes the performance of any part of the *works* started prior to the date of termination and
- co-operates with the *Client* or any Incoming Contractor so as to ensure a smooth transfer of functions.

Clause Z30B Compensation events

Z30B.1 Clause 60.1(1) of the *conditions of contract* is amended as follows

The *Client* gives an instruction changing the Scope unless the change is

- to the method of or requirements for performance measurement,
- stated elsewhere in the *conditions of contract* not to be a compensation event or
- in order to make a Defect acceptable.

Clause Z32B Project Bank Account

Z32B.1 If so stated in the Contract Data, Option Y(UK)1 of the NEC4 Engineering and Construction Contract (June 2017 with amendments January 2019)) applies to the contract, with appropriate changes and as amended below.

Z32B.2 Not Used.

Z32B.3 The *Client* may notify the *Contractor* that payments under the contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Client's* notice, the *Contractor* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts.

Clause Z33B Joint ventures

Z33B.1 Where two or more Consortium Members comprise the *Contractor*, clauses 90.1 and 90.2 of the *conditions of contract* is amended by inserting after “the other Party” the words “(or, in the case of the *Contractor*, any Consortium Member)”.

Clause Z36B Construction Industry Scheme

Z36B.1 In this clause Z36B (but not otherwise)

- the Act is the Finance Act 2004 and
- the Regulations are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

Z36B.2 This contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.

Z36B.3 The *Contractor* provides the information required by the Regulations to enable the *Client* to verify (in accordance with paragraph 6 of the Regulations) whether the *Contractor* under the Act

- is registered for gross payment,
- is registered for payment under deduction,
- is exempt from registration as a local authority or other public body or
- is neither registered nor exempt from registration.

Z36B.4 If the *Contractor* is registered for payment under deduction or is

neither registered nor exempt from registration

- the *Contractor* submits an application for payment which separately identifies the cost of labour and
- the *Client* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

Clause Z65B Recovery of sums due from *Contractor*

Z65B.1 Where, under this contract or any other contract between the Parties, any sum of money is recoverable from or payable by the *Contractor*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Contractor* under this contract or any other contract between the Parties.

Clause Z66B Limitation of Liability

Z66B.1 The *Contractor's* liability to the *Client* for the *Client's* indirect or consequential loss is limited to the amount stated in the Contract Data.

Z66B.2 For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client's* property within the *site* is limited to the amount stated in the Contract Data.

Z66B.3 The *Contractor's* liability to the *Client* for Defects due to its design which are not listed on the Defects Certificate is limited to the amount stated in the Contract Data.

Z66B.4 The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the law of the country where the *site* is.

Z66B.5 The excluded matters are amounts payable by the *Contractor* as stated in the contract for

- loss of or damage to the *Client's* property,
- delay damages,
- fraud or fraudulent misrepresentation,
- events for which the contract requires the *Contractor* to insure (but only up to the required level for each type of insurance stated in the Scope),
- infringement of an intellectual property right,

- loss or damage
 - to third party property or
 - due to pollution,
- loss arising from breach of
 - confidentiality or data protection obligations or
 - anti-bribery or anti-corruption obligations,
- interest on debt and
- losses caused by the *Contractor's* wilful misconduct illegal acts, deliberate default, deliberate abandonment or reckless misconduct.

Clause Z71B Works Contract Single Point of Contact

Z71B.1 The *Contractor* nominates the representative named in the Contract Data for the purposes of the Works Contract and for the giving and receiving of all notices, certificates, instructions and other communications under it. The *Contractor* acknowledges that receipt of a communication by the *Contractor's* nominated representative constitutes receipt by all the Consortium Members. The *Contractor* notifies the *Client* in advance of any change to the identity of the *Contractor's* nominated representative

OPTIONAL Z CLAUSES

Clause Z64B Performance Bond

Z64B.1 The *Contractor* gives the *Client* a performance bond, provided by a bank or insurer which the *Client* has accepted, for the amount stated in the Contract Data and in the form set out in the Scope. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the date the contract came in to existence, it is given to the *Client* within four weeks of the date the contract came in to existence.

Clause Z67B Undertakings to Others

Z67B.1 The *Contractor* gives *undertakings to Others* as stated in the Contract Data.

Z67B.2 The *undertakings to Others* are in the form set out in the Scope.

Z67B.3 The *Client* prepares the undertakings and sends them to the *Contractor* for signature. The *Contractor* signs the undertakings, and returns them to the *Client* within three weeks.

Clause Z68B Sectional Completion

Z68B.1 In these *conditions of contract*, unless stated as the whole of the *works*, each reference and clause relevant to

- the *works*,
- Completion and
- Completion Date

applies, as the case may be, to either the whole of the *works* or any *section* of the *works*.

Clause Z69B Delay Damages

[To be used
with Z68B]

Z69B.1 Delete clause 50.6

Z69B.2 The *Contractor* pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of

- Completion and
- the date on which the *Client* takes over the *works*.

Z69B.3 If the Completion Date is changed to a later date after delay damages have been paid, the *Client* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment.

Z69B.4 If the *Client* takes over a part of the *works* before Completion, the delay damages are reduced from the date on which the part is taken over. The *Client* assesses the benefit to the *Client* of taking over the part of the *works* as a proportion of the benefit to the *Client* of taking over the whole of the *works* not previously taken over. The delay damages are reduced in this proportion.

Clause Z70B Network Rail Possessions

Z70B.1 The *Contractor* pays the *Client*

- the relevant Network Rail possession charge for each additional possession required over and above the number of Network Rail possessions stated in the Contract Data and
- any fines and charges levied on the *Client* by Network Rail

resulting from any action or inaction of the *Contractor*.

The number of Network Rail possessions is adjusted if additional possessions are required as a result of a compensation event.