

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – South Eastern Hub

A contract between

The Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

And

Ainsty Timber Marketing Limited

For

Provision of routine vegetation maintenance activities as secondary FOF Lot 2 supplier in Area 14 Solent & South Downs (SSD)

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 | Guildbourne House, Chatsworth Road, Worthing, West Sussex, BN11 1LD | |
| | | |
| Address for electronic communications | justine.richardson@environment-agency.gov.uk ben.lush@environment-agency.gov.uk | |
| | | |
| The <i>works</i> are | The routine maintenance activities in Area 14 as stated in Appendix 1 - ATM - SSD Workbook v1 | |
| | | |
| The <i>site</i> is | Various in Area 14 – individual site locations are contained in Appendix 1 - ATM - SSD Workbook v1 as FCRM System locations | |
| | | |
| The <i>starting date</i> is | 1 st August 2022 | |
| | | |
| The <i>completion date</i> is | 20 th December 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 | 52 | 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 <i>Adjudicator</i> . The referring Party pays the administrative charge made by the Institution. The person appointed is also <i>Adjudicator</i> for later disputes. | | |

Contract Data

The *Client's* Contract Data

| The interest rate on late payment is | - | % per complete week of delay. |
|--|--|---|
| 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 | |
| The <i>Client</i> provides this insurance | None | |
| 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 | £nil 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 | |
| The <i>tribunal</i> is | litigation in the courts | |
| 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. 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 | <p>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.</p> <p>The <i>Contractor</i> does not proceed with the relevant work until the <i>Client</i> has accepted this design</p> |
| 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 | <p>Delete the text of Clause 60.1(11) and replace by:</p> <p>The <i>works</i> are affected by any one of the following events</p> <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 • 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 | Delete the text of Clause 92.3 and replace with: 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. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--------------------------|--|------------------|-----------------|---------------|------------------|-------------------------|----------------------|----|-------------------------|----------------------|----|--------------------------|----------------------|----|-------------------------|----------------------|----|-------------------------|----------------------|----|-------------------------|----------------------|----|-------------------------|----------------------|----|-------------------------|----------------------|----|-------------------------|----------------------|----|-------------------------|----------------------|----|-------------------------|----------------------|----|-------------------------|----------------------|----|
| 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 | Material Price Volatility The <i>Client</i> recognises the ongoing pricing uncertainty in relation to materials for the period from 1 July 2021 to 30 June 2023 the <i>Client</i> 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 <i>Client</i> . The L, which is at the discretion of the <i>Client</i> , 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: $\text{Assessment} \times \text{MF} \times \text{L} = \text{PVP}$ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 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 <i>Contractor</i> 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. <table border="1" data-bbox="284 1503 1406 2121"> <thead> <tr> <th>Assessment Date</th><th>Defined Cost?</th><th>Forecasted Cost?</th></tr> </thead> <tbody> <tr><td>31st Jul 21</td><td>In period costs only</td><td>No</td></tr> <tr><td>31st Aug 21</td><td>In period costs only</td><td>No</td></tr> <tr><td>30th Sept 21</td><td>In period costs only</td><td>No</td></tr> <tr><td>31st Oct 21</td><td>In period costs only</td><td>No</td></tr> <tr><td>30th Nov 21</td><td>In period costs only</td><td>No</td></tr> <tr><td>31st Dec 21</td><td>In period costs only</td><td>No</td></tr> <tr><td>31st Jan 22</td><td>In period costs only</td><td>No</td></tr> <tr><td>28th Feb 22</td><td>In period costs only</td><td>No</td></tr> <tr><td>31st Mar 22</td><td>In period costs only</td><td>No</td></tr> <tr><td>30th Apr 22</td><td>In period costs only</td><td>No</td></tr> <tr><td>31st May 22</td><td>In period costs only</td><td>No</td></tr> <tr><td>30th Jun 22</td><td>In period costs only</td><td>No</td></tr> </tbody> </table> | | Assessment Date | Defined Cost? | Forecasted Cost? | 31 st Jul 21 | In period costs only | No | 31 st Aug 21 | In period costs only | No | 30 th Sept 21 | In period costs only | No | 31 st Oct 21 | In period costs only | No | 30 th Nov 21 | In period costs only | No | 31 st Dec 21 | In period costs only | No | 31 st Jan 22 | In period costs only | No | 28 th Feb 22 | In period costs only | No | 31 st Mar 22 | In period costs only | No | 30 th Apr 22 | In period costs only | No | 31 st May 22 | In period costs only | No | 30 th Jun 22 | In period costs only | No |
| Assessment Date | Defined Cost? | Forecasted Cost? | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 31 st Jul 21 | In period costs only | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 31 st Aug 21 | In period costs only | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 30 th Sept 21 | In period costs only | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 31 st Oct 21 | In period costs only | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 30 th Nov 21 | In period costs only | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 31 st Dec 21 | In period costs only | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 31 st Jan 22 | In period costs only | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 28 th Feb 22 | In period costs only | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 31 st Mar 22 | In period costs only | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 30 th Apr 22 | In period costs only | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 31 st May 22 | In period costs only | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 30 th Jun 22 | In period costs only | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| | | |
|--------------------------|----------------------|--|
| 31 st Jul 22 | In period costs only | No |
| 31 st Aug 22 | In period costs only | No |
| 30 th Sept 22 | In period costs only | No |
| 31 st Oct 22 | In period costs only | No |
| 30 th Nov 22 | In period costs only | No |
| 31 st Dec 22 | In period costs only | No |
| 31 st Jan 23 | In period costs only | No |
| 28 th Feb 23 | In period costs only | No |
| 31 st Mar 23 | In period costs only | No |
| 30 th Apr 23 | In period costs only | No |
| 31 st May 23 | In period costs only | No |
| 30 th Jun 23 | 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.

Contract Data

The *Contractor's* Contract Data

| | | |
|---|---------------------------------|------|
| | | |
| | The <i>Contractor</i> is | |
| Name | Ainsty Timber Marketing Limited | |
| | | |
| Address for communications | | |
| | | |
| Address for electronic communications | | |
| | | |
| The <i>fee</i> percentage is | | % |
| | | |
| The <i>people rates</i> are | | |
| | | |
| category of person | unit | rate |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| The <i>published list of Equipment</i> is | | |
| | | |
| The <i>percentage for adjustment for Equipment</i> is | | |
| | | |

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 | £36,806.33 |
|------------------------------------|------------|

| | |
|--|--|
| | Enter the total of the Prices from the Price List. |
|--|--|

Signed on behalf of the *Contractor*

| | |
|------|------------|
| Name | Tim Penman |
|------|------------|

| | |
|----------|--------------------------|
| Position | Senior Contracts Manager |
|----------|--------------------------|

| | |
|-----------|---|
| Signature |  |
|-----------|---|

| | |
|------|------------|
| Date | 09-08-2022 |
|------|------------|

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

Signed on behalf of the *Client*

| | |
|------|-------------|
| Name | Jess Morris |
|------|-------------|

| | |
|----------|-------------------------|
| Position | Senior Category Officer |
|----------|-------------------------|

| | |
|-----------|------------|
| Signature | JL Morris |
| Date | 11/08/2022 |

Price List

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 |
|-------------------------|---|------|----------|------|------------|
| 1 | The Price List is contained in Appendix 1 - ATM - SSD Workbook v1 | | | | £36,806.33 |
| | | | | | |
| | | | | | |
| The total of the Prices | | | | | £36,806.33 |

The method and rules used to compile the Price List are

The Framework Price Workbook and the Framework Deed of Agreement.

| |
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| |
|--|

Scope

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.

The *Contractor* is to undertake routine maintenance activities as described in Appendix 1 - ATM - SSD Workbook v1 and in accordance with the Specification and the FCRM Asset Maintenance Standards 2013.

2. Drawings

List the drawings that apply to the contract.

| Drawing Number | Revision | Title |
|----------------|----------|-------|
| | | |
| | | |
| | | |

3. Specifications

List the specifications which apply to the contract.

| Title | Date or Revision | Tick if publicly available |
|-------|------------------|----------------------------|
| | | |

| | | |
|--|----------------------|-----|
| Appendix A2 to the Framework Deed of Agreement Section 6 – Lot 2 Specification | V1 September 2017 | No |
| FCRM Asset Maintenance Standards | 2013 | Yes |
| | | |

4. Constraints on how the *Contractor* 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 *Client*.

The *Contractor* will receive “Work Orders” through the *Client*’s asset planning portal (AIMS: OM). These Work Orders will contain any specific constraints relating to the individual *site*. The *Contractor* is expected to use AIMS:OM in accordance with training provided by the *Client*.

The *Contractor* shall not commence any work on the *site* until the *Client*, or their representative, has accepted the method statements and risk assessments related to this contract

The *Contractor* is to prepare, for the *Client*’s acceptance, the Environmental Action Plan (EAP)

The *Contractor* shall be responsible for arranging site storage of any plant.

Working times

The *Contractor* will be permitted to work between 7.30am and 6.00pm on weekdays (Monday to Friday)

5. Requirements for the programme

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

State what the use of the *works* is intended to be at their Completion as defined in clause 11.2(1).

The *Contractor* submits his programme with the *Contractor*’s Offer for acceptance. The *Contractor* 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
- (f) The *Contractor* shall submit a full works programme including key milestones, and the programme shall be updated as items of individual works are completed (Weekly) or changed.

6. Services and other things provided by the *Client*

| | |
|---|-----------------------------------|
| | |
| | |
| Item | Date by which it will be provided |
| None. | |
| | |
| | |
| | |
| | |
| | |
| <h2>Site Information</h2> | |
| | |
| <p>The Site Information for each "Work Order" will be provided prior to the <i>Contractor</i> arriving on <i>site</i> in accordance with Statutory guidelines for 'Services' Gas, Electric, Water (3 month validation period) and specific detailed information related to the environmental or agricultural changes dependent upon seasonal changes.</p> | |
| <p>This information will be contained in the draft Pre-Construction Information (PCI) for External Works, PCI main body template 11_12_SD17 Version 3 and the Maintenance Schedule for the individual sites.</p> | |
| <p>Individual Maintenance Schedules / <i>site</i> maps will be provided by the <i>Client</i> to the Field Team Specialist Team Member for dissemination prior to the programme of works.</p> | |
| | |
| | |
| | |
| | |

| | | |
|-----------------------------------|--|---------------------------|
| <h2>Proposed sub-contractors</h2> | | |
| | Name and address of proposed subcontractor | Nature and extent of work |
| 1. | Form of Contract: | |
| 2. | Form of Contract: | |

| | | |
|----|-------------------|--|
| 3. | Form of Contract: | |
| 4. | Form of Contract: | |