NEC4 Engineering and Construction Short Contract

Pagabo DPS Framework

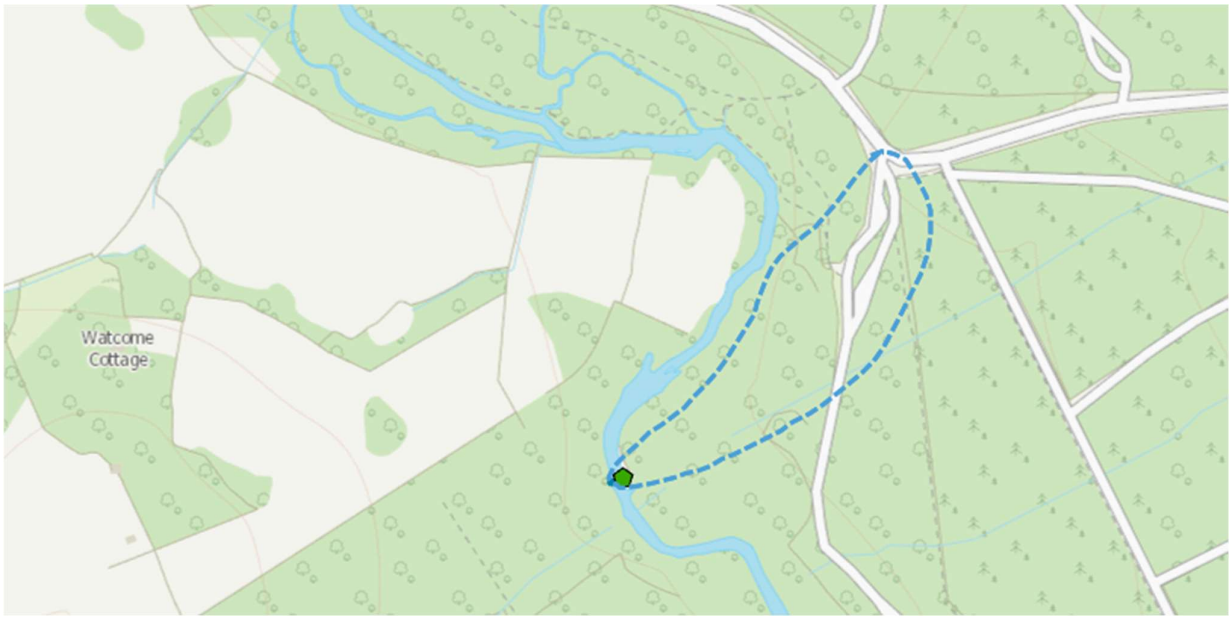
A contract between	**The Environment Agency** **Horizon House** **Deanery Road** **Bristol** **BS1 5AH**
And	**Land & Water Services Ltd**
For	**Brockenhurst Eel Pass Project**
	Contract Forms - **Contract Data** - **The *Contractor's* Offer and *Client's* Acceptance** - **Price List** - **Scope** - **Site Information**

Contract Data

The *Client's* Contract Data

	The *Client* is
Name	Environment Agency
Address for communications	Canal Walk, Romsey, Hampshire, SO51 7LP
Address for electronic communications	[redacted]
The *works* are	Initially, for delivery in 2023/24: • Fabrication of new eel pass The following may be instructed as a Compensation Event for delivery in 2024/25: • FRAP application, submission, and approval for the works • Removal and legal disposal of existing eel pass • Installation of new eel passes • Provision of all necessary CDM documentation and as-built drawings
The *site* is	See Fig 1 below, with Brockenhurst Gauging Station on the River Lymington at SU3177601920.

Figure 1: Map showing the area encompassing the access track and compound.



Contract Data

The *Client's* Contract Data

The *starting date* is	5 Feb 2024	
The *completion date* is	31 March 2024	
The *delay damages* are	nil	Per day
The *period* for reply is	2	weeks
The *defects date* is	52	weeks after Completion
The *defects correction period* is	4	weeks
The *assessment day* is	the last working day	of each month
The *retention* is	nil	%

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) **does** apply

The *Adjudicator* 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 *Adjudicator*. 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	0.5%	% per complete week of delay.
For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client's* property is limited to	£100,000	
The *Client* provides this insurance	None	

Insurance Table

Event	**Cover**	**Cover provided until**
Loss of or damage to the *works*	The replacement cost	The *Client's* 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 *Contractor's* 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 *Contractor*) arising from or in connection with the *Contractor's* 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 *Contractor* 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 *Contractor* to use the skill and care normally used by professionals providing works similar to the works	Minimum £1,000,000 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 *Adjudicator nominating body* is	The Institution of Civil Engineers
The *tribunal* is	litigation in the courts

Contract Data

The *Client's* Contract Data

The *conditions of contract* are the NEC4 Engineering and Construction Short Contract June 2017 and the following additional conditions

Z1.0	**Sub-contracting**
Z1.1	The *Contractor* submits the name of each proposed subcontractor to the *Client* for acceptance. A reason for not accepting the subcontractor is that their appointment will not allow the *Contractor* to Provide the Works. The *Contractor* does not appoint a proposed subcontractor until the *Client* 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 *Client* 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 *Contractor* is responsible for obtaining these and paying fees (unless stated otherwise in the Scope). The *Client's* acceptance of a tender and the *Client's* 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 *Client* and is not a compensation event.
Z3.0	**Confidentiality & Publicity**
Z3.1	The *Contractor* may publicise the works only with the *Client's* 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 *Client* but is not warranted correct. The *Contractor* 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 *Contractor* to ensure the use of skill and care normally used by professionals providing similar design services.
Z6.2	The *Contractor* designs the parts of the works which the Scope states they are to design.
Z6.3	The *Contractor* submits the particulars of their design as the Scope requires to the *Client* for acceptance. A reason for not accepting the *Contractor's* design is that it does not comply with either the Scope or the applicable law. The *Contractor* does not proceed with the relevant work until the *Client* has accepted this design.
Z6.4	The *Contractor* 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 *works* are affected by any one of the following events • War, civil war, rebellion revolution, insurrection, military or usurped power • Strikes, riots and civil commotion not confined to the employees of the *Contractor* 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 *Contractor* shall ensure at all times during this contract it complies with all the obligations and conditions of the Framework Agreement made with the *Client*.
Z9.0	**Termination**
Z9.1	Delete the text of Clause 92.3 and replace with: If the *Contractor* 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.
Z110	**Inflation** At the Contract Date the total of the Prices does not include a sum to cover inflation. The total of the Prices [at the Contract Date] shall be adjusted by a fixed number of Price Adjustments. The number of Price Adjustments shall be equal to: The number of months between the Completion Date included at the Contract Date and the Contract Date. The proportion of Price Adjustment shall be equal to: The total of the Prices at the Contract Date / The number of Price Adjustments Each time the amount due is assessed, the Price Adjustment shall be: The proportion of Price Adjustment x [80% x CPI 1 – month rate] The CPI 1 – month rate shall be the value determined by the Office of National Statistics for the applicable month of the amount due assessment Provided always that the fixed number of Price Adjustments has NOT been exceeded. The Price Adjustment adjusts the total of the Prices. If a compensation event under this contract omits original Scope covered by the total of the Prices at the Contract Date the Price Adjustments made under this clause shall be corrected accordingly.

Contract Data

The *Contractor's* Contract Data

	The *Contractor* is	
Name	Land & Water Services Ltd	
Address for communications	Weston Yard, Albury, Guildford GU5 9AF	
Address for electronic communications	[redacted]	
The *fee* percentage is	As framework	%
The *people rates* are	As framework	
category of person	unit	rate
The *published list of Equipment* is		As framework
The *percentage for adjustment for Equipment* is		As framework

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	[redacted]
Signed on behalf of the *Contractor*	
Name	
Position	
Signature	
Date	12/01/24

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

Signed on behalf of the *Client*	
Name	[redacted]
Position	
Signature	
Date	15 January 2024

Proposed sub-contractors

	Name and address of proposed subcontractor	Nature and extent of work
1.	[redacted] Form of Contract: Back to Back	Fabrication and supply of eel pass and supports (installation by Land & Water)
2.	Form of Contract:	
3.	Form of Contract:	
4.	Form of Contract:	

Price List

Item Number	Description	Unit	Quantity	Rate	Price (£)
01	Site visit and design review	Sum			[redacted]
02	Fabrication of new eel passes	Sum			
03	Documentation and CDM compliance	Sum			
	Other Price List items needed to deliver the Scope: Part 1 (*Contractor* to specify)	Sum			
04	Pagabo fee				
				The total of the Prices	
The following Items shall apply in the event of the *Client* issuing a change in Scope under 60.1(1)					
A1	FRAP application, submission, and approval for the works	Sum			
A2	Mobilisation, including welfare provision	Sum			
A3	The removal and legal disposal of existing eel pass	Sum			
A4	Installation of new eel pass	Sum			
A5	Demobilisation	Sum			
A6	Provision of all necessary CDM documentation and as-built drawings	Sum			
A7	Other Price List items needed to deliver the Scope: Part 2 (*Contractor* to specify)				
A7a	Ecology Survey	Sum			
A7b	Management and Supervision	Sum			
A7c	Maintain Welfare, Compound and Prelims	Sum			
A7d	New Concrete works	Sum			
A7e	Rip Rap at Inlet	Sum			
A7f	Handrailing	Sum			
A7g	Testing and handover	Sum			
A7h	Pagabo fee on items A7a to A7g	Sum			

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

1. Description of the *works*

The objective of this project is to replace an eel pass at the Brockenhurst Gauging Weir on the River Lymington in the New Forest

The *Site* is as per Figure 1 in the Contract Data, with Brockenhurst weir at NGR SU3177601920. The asset is an EA managed hydrometric measurement structure on the Lymington River (GB107042011220). There is a thin plate gauging weir with a sharp edged central rectangular notch. Downstream is a broad crested weir with a glass reinforced plastic crump type lower central section. Below the crump section is a pre-barrage pool to raise water levels for a straight swim for fish over the crump weir. Between the glass reinforced plastic crump and the thin plate gauging weir is a central deeper channel presumably constructed to give salmonids deeper water in which to traverse the structure.

Photo showing the downstream broad crested weir (left) and thin plate gauging weir (right).

An eel pass already exists on site but it is dilapidated and falling apart and subsequently does not perform optimally and is the focus of repeated vandalism. The decision has been made that in order to comply fully with the Eel Regulations (2009) a new eel pass is required.

A new pass has been designed by FishTek Ltd. This design is now available for fabrication.

Scope: Part 1

The *Contractor* shall:

- Site visit prior to works to satisfy the *Contractor* about the buildability and accuracy (design tolerances) of the designs and if the *Contractor* has concerns about buildability, drawing up questions and/or queries as Early Warnings.
- Commission the fabrication of the eel pass as per the Design and Designer's comments.
- Delivery of the final product and all associated materials to the Environment Agency depot in Romsey, Hampshire (SO51 7LP), noting that access to the depot can only be made via a tunnel the height limit of which is 8' 3". The delivery vehicle must be able to access through this tunnel. Arrangements must be confirmed in writing with the *Client* at least 2 weeks prior to delivery.
- Comply with CDM Regulations and the EA SHeW COP.
- Review and update CDM documents if necessary. Approve CDM documents following consultation with the *Client* and Principal Designer.

Scope: Part 2

The *Contractor* shall not deliver any of the following items, unless instructed to do so by the *Client.* The instruction, if issued and at the *Client's* discretion, will be a change in Scope, to amend this statement accordingly.

- Apply for the Flood Risk Activity Permit (FRAP), including payment of required fees to the Environment Agency. Application to include temporary works as well as works required to remove the existing eel pass and install the new pass.
- Comply with CDM regulations.
- Review and update CDM documents and check services. Approve CDM documents following consultation with the *Client* and Principal Designer.
- Produce a photographic diary of the construction site before, during and after works. This shall include as a minimum:
    - access routes, the site and nearby structures that could be affected by the *works*, for the purposes of re-instatement / making good.
- Access to be agreed and approved by the landowners (Hampshire & Isle of Wight Wildlife Trust (HIWWT) and Forestry England (FE)) in writing 6 weeks prior to works commencing. Due to access difficulties, the *Contractor* will need to satisfy themselves of the weight/height restrictions prior to accessing the land when works commence. HIWWT have provisionally agreed to clear a track from the gates at the top to the site to create an access track for the *Contractor* to use. The *Contractor* cannot deviate from this agreed route as there is a badger sett nearby (currently unused). Provided the *Contractor* sticks to the pre-defined routes as laid out by HIWWT disturbance to the sett will be minimised.

- Make arrangements at least 6 weeks in advance of works commencing with the landowner/riparian owners within the site for the placement of compound(s) and the facility of deliveries to site. The number of vehicles needs to be kept to an absolute minimum. To reduce the number of cars on site the landowners have requested that staff use the car park at Ivy Wood (see Figure 2: map below - NGR SU3158702470) and then car share down to site. No large plant can be used on site here. Tracked wheelbarrows have been provisionally agreed with the landowners. Ideally the compound will be situated on the existing gravel areas.

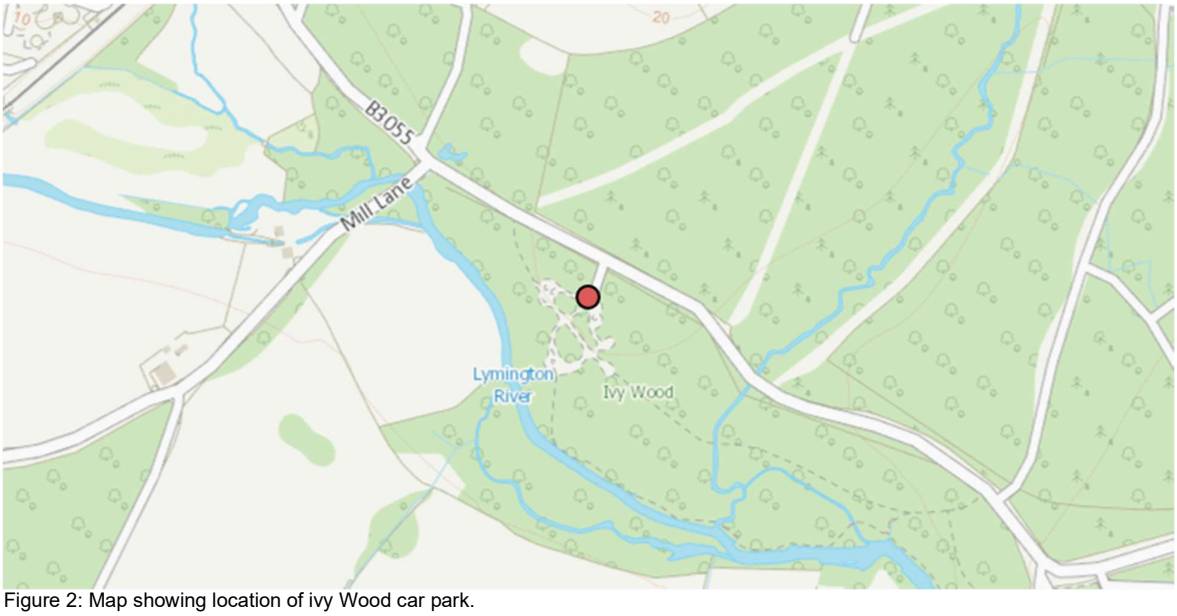


Figure 2: Map showing location of ivy Wood car park.

- Water levels over 0.5m above the weir (upstream), shall be considered to be a Compensation Event under 60.1(8) – namely physical conditions which would have been unreasonable to have allowed for.
  Water levels below this level should be reasonably accounted for by the Contractor.

  It should be noted that the seasonal timing of the works on site will be important in managing and mitigating this risk.

- RAMS will need to be discussed and accepted by the EA H&T team at least 6 weeks in advance of the works commencing to satisfy them that the works are not going to impact on the gauging at the site. Caution must be taken in the vicinity of the CCTV camera which is immediately upstream of the eel pass.

- Undertake site mobilisation, including welfare provision and site security if deemed necessary.
- Undertake removal of existing eel pass and other site preparatory works.
- Arrange for legal disposal of old existing eel pass in accordance with the waste plan.
- Install new eel pass according to the design provided by FishTek, taking into account the buildability statement and designers risk assessment. The exception to this will be any electric components pertaining to the pump.
- The *Contractor* will be required to ensure that the pipework is installed as per the design provided by FishTek (i.e. connected to the pipework), but to clarify, they will not be required to undertake electrical design or power connection design work. This will be carried out by local H&T staff.
- Prior to sign off and demobilisation, the *Contractor* will be required to provide a period of time in their programme for H&T to install the electrical components to check the functional operation of the pass to ensure the delivery of water to the apex of the pass is functioning as designed and there are no leaks throughout the length of the pass.
- Works on site will ideally take place around August/September time.
- The *Contractor* will need to consider biosecurity on site and outline measures in their RAMS that will be taken to Check, Clean & Dry.
- Any refuelling (if required) will need to take place off site to avoid contamination of the watercourse.
- The use of concrete on site is of particular concern to all landowners. The *Contractor* must ensure that this is referenced in the RAMS documents specifically outlining the approach to preparing and installing the concrete and the necessary pollution prevent management associated with this.
- Prior to demobilisation, the *Contractor* will be required to ensure that all components are working to the satisfaction of the EA.
- Undertake and comply with the role of Principal Contractor under the CDM regulations. Review and update CDM documents and checking services. Approve CDM documents with the *Client* and Principal Designer.
- Undertake demobilisation, including making good any damage caused by the *Contractor* in delivering the works to the property of the landowners.
- Obtain *Client* sign-off the works as per the design to confirm it has been installed to the designer specification.

2. Drawings

Drawing Number	Revision	Title
03054 - 100		**Designer Risk Assessment - Brockenhurst Eel pass (V05)**
03054 – 101		**Buildability statement - Brockenhurst Eel pass (V05**
03054 - 102		**RAG List -Brockenhurst Eel pass (V02)**
03054		**Brockenhurst FDC & Map**
Brockenhurst-03054-P04		**Brockenhurst Pumped Eel Pass Design Drawings**

3. Specifications

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
LIT 16559 SHEW Code of Practice	Jan 2023	No
EA Code of Practice for Electrical Safety (CoPES), including - LIT 13130 - Code of practice for electrical safety (COPES) - Electrical authorisation - LIT 13133 - Code of practice for electrical safety (copes)- part 2 - LIT 13230 - MEICA- Specification- Electrical Installations	 22/09/2023 21/11/2023 06/09/2023	No

4. Constraints on how the *Contractor* Provides the Works

The *Contractor* is to prepare, for the *Client*'s acceptance, the Construction Phase Plan (CPP) and RAMS prior to starting the works at either site.

Access on site is over private land owned and managed by the Hampshire & Isle of Wight Wildlife Trust (HIWWT) and Forestry England (FE). Access arrangements must be agreed with the landowner prior to the works starting as this is designated land.

HIWWT have provisionally agreed to clear a track from the gates at the top to the site to create an access track for the *Contractor* to use. The *Contractor* cannot deviate from this agreed route as there is a badger sett nearby (currently unused). Provided the *Contractor* sticks to the pre-defined routes as laid out by HIWWT disturbance to the sett will be minimised.

This is a spatey river. The *Contractor* has access to flow data from the gauging weir to help in determining best time of year to install the new eel pass before water levels increase.

The *Contractor* must not touch the adjacent gauging weirs and must not impact on the gauging of that weir.

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

A programme is required in the form stated below, containing the following information.

The *Contractor* submits their programme with the *Contractor's* Offer for acceptance. The *Contractor* shows on each programme which they submit 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*

Item	**Date by which it will be provided**
Service searches attached	

Site Information

PCI included
CAD drawings are provided.
FP002 Application for fish pass approval_SIGNED V2.0 - Application for fish pass approval
Difficulties with this site are primarily associated with ground conditions. It can get extremely wet underfoot so the smallest machines would need to be used. No plant can be taken on site. All materials will need to be transported down by wheelbarrow or something small like a motorised wheelbarrow; something which spreads the weight load.