



Framework:	Collaborative Delivery Framework
Supplier:	BAM Nuttall Ltd
Company Number:	00305189
Geographical Area:	East
Project Name:	Byfleet FAS: SOC-OBC Early Supplier Engagement Lot 2
Project Number:	ENVIMSE500194
Contract Type:	Engineering Construction Contract
Option:	Option C
Contract Number:	28943

Revision	Status		Originator		Reviewer		Date

ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework
CONTRACT DATA

Project NameByfleet FAS: SOC-OBC Early Supplier Engagement Lot 2

Project NumberENVIMSE500194

This contract is made on 08 February 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
Byfleet FAS ECC Scope ESE V5.2

Part One - Data provided by the *Client*
Statements given in
all Contracts

1 GeneralThe *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
- 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)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

Early supplier engagement and potential ground investigation for Byfleet Flood Alleviation Scheme, to support the production of an Outline Business Case (OBC) that achieves Environment Agency (NPAS or LPRG) approval.

The <i>Client</i> is	Environment Agency
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Address for communications	Environment Agency
	[Redacted]
	[Redacted]
	[Redacted]

Address for electronic communications	[Redacted]
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The <i>Project Manager</i> is	[Redacted]
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Address for communications	Environment Agency [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Address for electronic communications	[REDACTED]
The <i>Supervisor</i> is	N/A
Address for communications	N/A N/A N/A N/A N/A N/A
Address for electronic communications	N/A
The Scope is in Byfleet FAS ECC Scope ESE V5.2	
The Site Information is in TBC as part of PMI for any works.	
The <i>boundaries of the site</i> are TBC as part of PMI for any works.	
The <i>partner contract</i> is 28891 - THM CDF Lot 1 - Byfleet Appraisal; Jacobs UK Ltd; £332,525.00	
The <i>language of the contract</i> is English	
The <i>law of the contract</i> is <i>the law of England and Wales, subject to the jurisdiction of the courts of England and Wales</i>	
The period for reply is	2 weeks
The following matters will be included in the Early Warning Register N/A	

Early warning meetings are to be held at intervals no longer than	2 weeks
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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 'none set' 'none set' 'none set'	<i>key date</i> '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	11 December 2020
The <i>access dates</i> are part of the Site Asite FastDraft Byfleet Mill Weir Broadoak Weir	date 11 December 2020 11 December 2020 11 December 2020 11 December 2020
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	03 December 2021

The *Client* is not willing to take over the *works* before the Completion Date

The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is 4 weeks

4 Quality management

The period after the Contract Date within which the *Contractor* is to submit a quality plan is 4 weeks

The period between Completion of the whole of the *works* and the *defects date* is 52 weeks

The *defect correction period* is 2 weeks except that

- The *defect correction period* for A safety issue for the public is 24 Hours
- The *defect correction period* for MEICA is 7 Days

5 Payment

The *currency of the contract* is the £ sterling

The *assessment interval* is Monthly

The *Client* set total of the Prices is £23,604.22

The *interest rate* is 2.00% per annum (not less than 2) above the Base rate of the Bank of England

The *Contractor's share percentages* and the *share ranges* are

	<i>share range</i>		<i>Contractor's share percentage</i>
less than		80 %	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 Wisley, 51.31, -0.475

The *weather measurements* to be recorded 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. N/A
- 2.
- 3.
- 4.
- 5.

The *weather measurements* are supplied by The Met Office

The *weather data* are the records of past weather measurement for each calendar month which were recorded at Wisley, 51.31, -0.475 and which are available from The Met Office

Assumed values for the ten year weather return *weather data* for each *weather measurement* for each calendar month are

Jan	N/A	Jul	N/A
Feb	N/A	Aug	N/A
Mar	N/A	Sep	N/A
Apr	N/A	Oct	N/A
May	N/A	Nov	N/A
Jun	N/A	Dec	N/A

These are additional compensation events

1. Managing and mitigating the impact of Covid 19 and working in accordance with Public Health England guidance, as may vary from time to time, between 1st November 2020 and 31st March

- 2. 'not used'
- 3. 'not used'
- 4. 'not used'
- 5. 'not used'

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

N/A

Resolving and avoiding disputes

The *tribunal* is litigation in the courts

The *Senior Representatives* of the *Client* are

[REDACTED]

Address for communications

Environment Agency
[REDACTED]
[REDACTED]
[REDACTED]

Address for electronic communications

[REDACTED]

Name

N/A

Address for communications

N/A
N/A
N/A
N/A
N/A

Address for electronic communications

[N/A](#)

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

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 suppliers

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.

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.

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 X7: Delay damages

X7 only

Delay damages for Completion of the whole of the *works* are £216.86 per day

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 year(s)

OPTION X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to

£1,000,000.00

For any one event, the *Contractor's* liability to the *Client* for loss or damage to the *Client's* property is limited to

£5,000,000.00

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to

N/A

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

£5,000,000.00

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(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	<i>beneficiary</i>
Not used	

Part Two - Data provided by the *Contractor*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The *Contractor* is

Name BAM Nuttall Ltd

Address for communications

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

Address for electronic communications

christopher.buckle@bam.com

The *fee percentage* is

Option C

9.90%

The *working areas* are

The site, all BAM and EA offices and premises either temporary or permanent, as well as BAM employees home residences

The *key persons* are

Name (1)	[REDACTED]
Job	Senior Contracts Manager
Responsibilities	Overall responsibility for delivery of projects under the fran
Qualifications	
Experience	

The *key persons* are

Name (2)	[REDACTED]
Job	Project Manager
Responsibilities	Project delivery
Qualifications	
Experience	

The *key persons* are

Name (3)	[REDACTED]
Job	Commercial Manager
Responsibilities	Commercial Management of project
Qualifications	
Experience	

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

3 Time

The programme identified in the Contract Data is

5 Payment

The *activity schedule* is

Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1) [REDACTED]
Address for communications

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

Address for electronic communications

[REDACTED]

Name (2) [REDACTED]
Address for communications

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

Address for electronic communications

[REDACTED]

X10: Information Modelling

The *information execution plan* identified in the Contract Data is

Classification: Internal

Contract Execution


Client execution

Signed under hand by

for and on behalf of the Environment Agency


Signature

Project Team Manager
Role


8/2/21

Contractor execution

Consultant execution

Signed under hand by

for and on behalf of

BAM Nuttall Ltd


Signature
05.02.21

Operations Manager
Role