



Framework:	Client Support Framework
Supplier:	Capita Binnies
Company Number:	[REDACTED]
Geographical Area:	National
Project Name:	Asset Recovery (West & East Mids) 21/22 Supervisor & ECoW
Project Number:	ENV0004285C
Contract Type:	Professional Service Contract
Option:	Option E
Contract Number:	project_34348

Revision	Status		Originator		Reviewer		Date

PROFESSIONAL SERVICE CONTRACT - Under the Client Support Framework CONTRACT DATA

Project Name Asset Recovery (West & East Mids) 21/22 Supervisor & ECoW

Project Number ENV0004285C

This contract is made on 10 February 2022
between the *Client* and the *Consultant*

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 02nd day of July 2019 between the *Client* and the *Consultant* in relation to the Client Support Framework. The entire Agreement and the following schedules are incorporated into this contract by reference
- Schedules 1 through to 14 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference
Asset_Recovery_Mids_ECoW_Scope v2 dated 24/11/2021

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

1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017.

Main
Option

Option E

Option for resolving and
avoiding disputes

W2

Secondary Options

X2: Changes in the law

X9: Transfer of rights

X10: Information modelling

X11: Termination by the *Client*

X18: Limitation of liability

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 *service* is Provision of Environmental Clerk of Works services to support the Asset Recovery (West & East Midlands) 2021/22 programme.

The *Client* is Environment Agency

Address for communications

Address for electronic communications

The *Service Manager* is

Address for communications

Address for electronic communications

The *Scope* is in
Asset_Recovery_Mids_ECoW_Scope v2 dated 24/11/2021

The *language of the contract* is English

The *law of the contract* is
the law of England and Wales, subject to the jurisdiction of the courts of England and Wales

The *period for reply* is 2 weeks

The *period for retention* is 6 years following Completion or earlier termination

The following matters will be included in the Early Warning Register

Early warning meetings are to be held at intervals no longer than 2 weeks

2 The Consultant's main responsibilities

The *key dates* and *conditions* to be met are
condition to be met *key date*
 'none set' 'none set'
 'none set' 'none set'
 'none set' 'none set'

The *Consultant* prepares forecasts of the total Defined Cost plus Fee and *expenses* at intervals no longer than 4 weeks

3 Time

The *starting date* is 01 December 2021

The *Client* provides access to the following persons, places and things
 access *access date*
 Access to the whole of the sites 01 December 2021

The *Consultant* submits revised programmes at intervals no longer than 4 weeks

The *completion date* for the whole of the *service* is 31 March 2022

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

4 Quality management

The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is 4 weeks

The period between Completion of the whole of the *service* and the *defects date* is 26 weeks

5 Payment

The *currency of the contract* is the £ sterling

The *assessment interval* is Monthly

The *expenses* stated by the *Client* are as stated in Schedule 6.

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

The locations for which the *Consultant* provides a charge for the cost of support people and office overhead are All UK Offices

The *exchange rates* are those published in on

6 Compensation events

These are additional compensation events

1. 'not used'
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 and the periods for which the *Consultant* maintains insurance are

EVENT	MINIMUM AMOUNT OF	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE <i>SERVICE</i> OR TERMINATION
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The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the service	£5 million in respect of each claim, without limit to the number of claims	12 years
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the Service	Which ever is the greater of £5m or the amount required by law in respect of each claim, without limit to the number of claims	12 months
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	Which ever is the greater of £5m or the amount required by law in respect of each claim, without limit to the number of claims	For the period required by law
The <i>Consultant's</i> total liability to the <i>Client</i> for all matters arising under or in connection with the contract, other than the excluded matters is limited to	£5 million	

Resolving and avoiding disputes

The <i>tribunal</i> is	litigation in the courts
The <i>Adjudicator</i> is	'to be confirmed'
Address for communications	'to be confirmed'
Address for electronic communications	'to be confirmed'
The <i>Adjudicator nominating body</i> is	The Institution of Civil Engineers

Z Clauses

Z1 Disputes

Delete existing clause W2.1

Z2 Prevention

The text of clause 18 Prevention is deleted.

Delete the text of clause 60.1(12) and replace with:

The *service* is affected by any 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 *Consultant* and sub consultants,
- 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 aerial device or thing dropped from them.

Z3 Disallowed Costs

In second bullet of 11.2 (18) add:

(including compensation events with the Subcontractor, i.e. payment for work that should not have been undertaken).

Add the following additional bullets after 'and the cost of ' :

- Mistakes or delays caused by the *Consultant's* failure to follow standards in Scopes/quality plans.
- Reorganisation of the *Consultant's* project team.
- Additional costs or delays incurred due to *Consultant's* failure to comply with published and known guidance or document formats.
- Exceeding the Scope without prior instruction that leads to abortive cost
- Re-working of documents due to inadequate QA prior to submission, i.e. grammatical, factual arithmetical or design errors.
- Production or preparation of self-promotional material.
- Excessive charges for project management time on a commission for secondments or full time appointments (greater than 5% of commission value)
- Any hours exceeding 8 per day unless with prior written agreement of the *Service Manager*
- Any hours for travel beyond the location of the nearest consultant office to the project unless previously agreed with the *Service Manager*
- Attendance of additional individuals to meetings/ workshops etc who have not been previously invited by the *Service Manager*
- Costs associated with the attendance at additional meetings after programmed Completion, if delay is due to *Consultant* performance.
- Costs associated with rectifications that are due to *Consultant* error or omission.
- Costs associated with the identification of opportunities to improve our processes and procedures for project delivery through the *Consultant's* involvement
- Was incurred due to a breach of safety requirements, or due 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 resulting of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit

When appointing *Consultants* on a secondment basis only:

Add clause 19

19.1 The *Client* will from starting date to Completion Date indemnify the *Consultant* against any and all liabilities, proceedings, costs, losses, claims and demands whatsoever arising directly or indirectly out of the activities of the *Consultant* in providing the services save where such claims, in the reasonable opinion of the *Client*, arise from or are contributed to by:

19.1.1 Misrepresentation or negligence by or on behalf of the *Consultant* ;

or

19.1.2 The *Consultant* has acted contrary to the *Service Manager's* reasonable instructions or wholly outside the scope of the *Consultant's* duties as defined by the *Service Manager* .

Z6 The Schedule of Cost Components

The Schedule of Cost Components are as detailed in the Framework Schedule 6.

Z7 Linked contracts

Issues requiring redesign or rework on this contract due to a fault or error of the *Consultant* under this contract or a previous contract will neither be an allowable cost under this contract or any subsequent contract, nor will it be a Compensation event under this contract or any subsequent contract under this project or programme.

Z8 Requirement for Invoice

Insert the following sentence at 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 *Service Manager's* certificate.

Delete existing clause 51.2 and insert the following:

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 *Service 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

Z9 Conflict of Interest

The *Consultant* immediately notifies the *Client* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* (including without limitation its reputation and standing) and/or the *Client* of which it is aware or which it anticipates may justify the *Client* taking action to protect its interests. Should the Parties be unable to remove the conflict of interest to the satisfaction of the *Client*, the *Client*, in its sole discretion, may terminate this Contract.

Z10 Change in Control

The *Consultant* shall notify the *Client* as soon as reasonably practicable, in writing, of any agreement, proposal or negotiations which will or may result in a *Consultant* Change in Control and shall give further notice to the *Client* when any Change in Control has occurred. The *Client* may terminate this contract with immediate effect by notice in writing and without compensation to the *Consultant* within six (6) months of being notified that a Change of Control has occurred, or, where no notification has been made, the date that the *Client* becomes aware of the Change of Control, but shall not be permitted to terminate where the *Client's* prior written acceptance was granted prior to the Change in Control. A Change of Control is defined as per the Deed of Agreement, Z14.4.

Z11 Rate Increase Provision

Contracts with a duration of less than two years, which are extended over this duration by the *Service Manager* due to *Client* Scope increases, may apply a rate review as follows. The *Consultant* will charge the *Client* the contract staff rates for a minimum of two full years, and at the next annual rate review where a new staff rate list is accepted (as stated in Schedule 6), the new staff rate will apply to the contract as per Schedule 6. No Compensation Event is permitted for this different contract staff rate.

Z12 Waiver

No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party by the Service Manager in writing in accordance with the Contract, and with express reference to Clause Z12. The failure of either party to insist upon strict performance of the Contract, or any failure or delay in exercising any right or remedy shall not constitute a waiver or diminution of the obligations established by the Contract.

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 X10: Information modelling

The period after the Contract Date within which the *Consultant* is to submit a first Information Execution Plan for acceptance is 2 weeks

OPTION X18: Limitation of liability

The *Consultant's* liability to the *Client* for indirect or consequential loss is limited to £1,000,000

The *Consultant's* liability to the *Client* for Defects that are not found until after the *defects date* is limited to

£5,000,000

The *end of liability date* is 6 years after the Completion of the whole of the *service*

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 beneficiary

Part Two - Data provided by the *Consultant*

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

1 General

The *Consultant* is

Name and company number

Address for communications

Capita
65 Gresham St.
London
EC2V 7NQ

Binnies
60 High Street
Redhill
Surrey
RH1 1SH

Address for electronic communications

The *fee percentage* is

Option E

The *key persons* are

Name (1)

Job

Responsibilities

Qualifications

Experience

Environmental Clerk of Works
Undertake Environmental Clerk of Works duties including monitor site set-
BSc Environmental Science, CEnv, AECCW (Full Member), CIEEM (Full Member)
15 years' experience in ecology and nature conservation

The *key persons* are

Name (2)

Job

Responsibilities

Qualifications

Experience

Project Manager
Project Manager
BSc Civil Engineering
22 Years

The *key persons* are

Name (3)

Job

Responsibilities

Qualifications

Experience

Project Director
Project Director
BSc C.WEM FCIWEM
18 Years

The *key persons* are

Name (4)

Job

Responsibilities

Qualifications

Experience

Environmental Clerk of Works
Environmental Clerk of Works
MSc Environmental Science, BSc Biology
2 years

The *key persons* are

Name (5)

Job

Responsibilities

Qualifications

Experience

The *key persons* are

Name (6)

Job

Responsibilities

Qualifications

Experience

The *key persons* are

Name (7)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

3 Time

The programme identified in the Contract Data is

Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are

Name (1)
Address for communications

Address for electronic communications

Name (2)
Address for communications

Address for electronic communications

X10: Information Modelling

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

Contract Execution

Client execution

Signed under hand by

for and on behalf of the Environment Agency

SignatureRole

Consultant execution

Signed under hand by

for and on behalf ofCapita (Real Estate & Infrastructure)
Limited

PSC scope template – Environmental Clerk of Works

Project / contract information

Project name	Asset Recovery (West & East Midlands) 2021/22
Project SOP reference	ENV0004285C
Contract reference	project_34348
Date	24/11/2021
Version number	2
Author	

Revision history

Revision date	Summary of changes	Version number
	First issue	1
24/11/2021	Removal of Supervisor role	2

This Scope should be read in conjunction with the version of the Minimum Technical Requirements current at the Contract Date. In the event of conflict, this Scope shall prevail. The *services* are to be compliant with the version of the Minimum Technical Requirements.

1 Objectives of the project (project outcomes)

Objective

Following the subsequent storms Ciara and Dennis and flood events in early 2020 and storm Christoph in early 2021, the *Client* commissioned two of their partners Arup and Jackson Civil Engineering to carry out a programme of asset repairs within the West Midlands.

Those assets that are currently below standard that the asset performance team have identified as requiring further investigation and/or immediate repair are identified below;

1. AR-02-06 Stafford Wall Investigation
2. AR-02-10 Ashleworth Defences
3. AR-02-16 Gloucestershire Wall Repair Package
4. AR-02-19 Hereford Flood Wall
5. AR-02-26 Coleham
6. AR-02-34 Upton
7. AR007 Upper Framilode
8. AR008 Pershore Embankment Repair
9. AR035 Kenwater Flood Embankment

There may be additional sites within the West Midlands programme and/or the East Midlands programme, as the Recovery programme progresses, but these can be added as a compensation event.

2 Project team

- 1 The design consultant is Arup
- 2 The Contractor is Jackson Civil Engineering Ltd
- 3 The Project Manager is (TBC)
- 4 The Contractor will be appointed using the NEC4 Engineering and Construction Contract option C.
- 5 Cost management will be provided by (TBC)
- 6 Principal Designer is [REDACTED] from Mott MacDonald

3 Consultant provides the services

The requirements of the Environmental Clerk of Works (ECoW) services are as follows:

1. Following a screening and determination by the *Client's* NEAS team, the ECoW is to provide support to the programme to ensure that the works are carried out in accordance with the screening determinations.
2. A minimum of 2 visits per project would be expected.
3. The *Consultant* prepares monthly site reports (or as otherwise agreed) and reports on all environmental matters, including monthly monitoring of EAP actions, recording environmental issues/non-conformances, actions taken, and changes to design. Monitoring shall include inspecting the whole of the project working area and non-highway site access routes on a weekly basis. The *Consultant* submits these to the Supervisor for incorporation in the Supervisor's weekly report by the end of the following week. The *Consultant* attends fortnightly progress telecons (Thursdays 09.30 – 10.30), unless otherwise agreed with the *Client*.
4. Also attendance at a fortnightly programme progress meeting is required.

4 Definition of completion and defects

- 1 Completion is only achieved when all of the *services* have been provided and accepted by the *Client*. Population of the *Client's* latest version of the Project Cost Tool, Carbon Tool and provision of BIM information is an absolute requirement of Completion.
- 2 A Defect is any *service* provided which is not in accordance with the Scope, the law or acceptable good practice in the industry. This includes any *service* which is not in accordance with the work practices stated as being employed by the *Consultant* to ensure the quality of their *services* is consistent with their quality plan.

5 Constraints on how the *Consultant* provides the *services*

- 1 The named Environmental Clerk of Works is not to delegate their duties or powers without prior written agreement from the *Client*.

6 Standards to be achieved

6.1 Health and safety

Health, safety and welfare is of paramount importance to the *Client* and one of the objectives for the contract is that the works should be undertaken in a manner that achieves highest possible standards. Health, safety and welfare provisions must be seen as integral parts of carrying out the works and not as stand-alone considerations. The *Project Manager* will take reasonable steps, when considering documents supplied to him by the Contractor, that the **management arrangements** adopted by the Contractor for safety are suitable.

The contract requires the Contractor to produce a schedule of activities for which risk assessments and method statements must be prepared. The schedule and method statements will meet the dual requirements of the Construction Design and Management Regulations and the requirements of sub-clause 31.2 of the contract.

The Contractor will be free to add to the schedule as the work progresses. Prior to the start of construction work, and again after any revisions prior to implementation of the revisions, the Contractor must forward the schedule to you, with the programme for acceptance.

The level of detail required will depend on the activity. As a minimum the Contractor must ensure that risk assessments and method statements are prepared and submitted for review in accordance with the Scope covering:

- full, timing and sequence of construction including the use and design of temporary works, materials, plant and equipment proposed by the Contractor;
- Indication of activities that represent a higher than normal level of health and safety risk.

Some additional information may be required in respect of compliance with the Environmental Action Plan and the minimisation of environmental impacts of the activities.

Method statements supplied in support of the Scope are to be formatted for the benefit of those personnel undertaking the works, and contain language and detail appropriate for those individuals. They shall take account of experience, to ensure that account is taken of the matters identified above

6.2 Co-operation with the Principal Designer

There will be a Principal Designer for this scheme. The Principal Designer duties will include for a review of any site based works and notifying the HSE of these, as well as a review of the design. The Principal Designer will comment and include for any work required following review. The *Consultant* will co-operate with the Principal Designer.

7 Requirements of the programme

7.1 Programme

The *Consultant* shall provide a detailed project plan in Microsoft project format version X meeting all requirements of Cl.31 of the *Conditions of Contract*. A baseline plan shall be provided for the project start up meeting and this will be updated monthly for progress meetings with actual and forecast progress against the baseline.

The programme shall cover all the activities to be undertaken by the *Consultant* and other members of the project team. Include all major project milestones from commencement to the end of the reporting, consultation and approvals stage.

There is the *Contractor's* plan for the programme of works which is included (Appendix B – Western Repair Programme Rev 10, 31.07.20). This can be used for the *Consultant's* plan and to help with their submission.

8 Services and other things provided by the Client

8.1 Data and information management and intellectual property rights

All of the data listed as being supplied to the supplier as part of this study remains the Intellectual Property of the *Client*.

8.2 Data custodianship

The data custodian for project deliverables from this commission will be the area PSO team.

8.3 Licensing information

Licences for LiDAR Data, Ordnance Survey mapping, model, survey, hydrometric and historical data will be provided to the *Consultant* upon award of this commission.

8.4 Metadata

The *Client* populates a metadata database called the Information Asset Register (IAR). It is a requirement that all information produced by modelling work is appropriately tagged with metadata. The *Service Manager* will supply an IAR spreadsheet (and any supplementary local metadata requirements if appropriate) where all relevant metadata can be recorded and handed over on project completion.

8.5 Data security

All model and survey information will be provided to the supplier in an encrypted format (using WinZip 128 bit encryption) according to *Client* data security policy. It is expected that once the commission is completed, all the original data sent to the supplier, which is classed as commercially sensitive, is returned in an encrypted format using WinZip 128 bit encryption.

Project deliverables such as model files, survey data or anything of a personal nature such as questionnaires or address data must also be returned in an encrypted format using WinZip 128 bit encryption.

Further details regarding security measures will be discussed at the start-up meeting for this commission

8.6 Timesheets

Timesheets as normally utilised by the *Consultant* shall be submitted with fee notes unless otherwise agreed with the *Service Manager*. Electronic submissions would be acceptable.

8.9 Payment procedure

Payment is subject to the procedure agreed in or under the framework

8.10 Quality

The quality management system complies with the requirements of ISO9001 and ISO14001.

Please detail any other requirements of the Quality Plan

Appendices

Appendix 1 BIM Protocol – Production and Delivery Table

All *Client* issued information referenced within the Information Delivery Plan requires verifying by the *Consultant* unless it is referenced elsewhere within the *Scope*.

www.Pow.bim4.info

You need google chrome for this link to work. Once the table is completed it should be printed for issue in the tender document, so that the correct baseline position can be seen by supplier

Appendix 2 – Project Details

The following schedules contain the details of the projects.

- WMD Recovery Projects CDF
- EMD Recovery Projects CDF