

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – South West Hub

A contract between

**The Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH**

And

Land & Water Services Ltd

For

The design and construction of MIOS works at Idless Dam

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	Manley House, Kestrel Way, Sowton, Exeter, EX2 7LQ
Address for electronic communications	
The <i>works</i> are	<ul style="list-style-type: none">• Design and construct a bypass culvert around the debris screen on the inlet of Idless Dam culvert. This will require an automated penstock, which is to be operated whilst under flood water from a control panel in the kiosk near Idless Dam access gate. This is the MIOS which will require certification and sign off by the Inspecting Engineer of the Reservoir.• Design of bypass penstock and structure to consider PSRA measures and ensure safety of operatives operating the asset.• Design and flow rate of the bypass culvert to be calculated and agreed in acceptance of the Inspecting Engineer of the Reservoir.• Design and replace both steps from dam crest to upstream headwall.• Design and install a new larger kiosk designed to house the existing and additional instrumentation required. It is anticipated this will require an extension to the existing base.• Repair mill leat offtake training walls (near dam entrance upstream of the dam crest).• Design and install a drainage channel, approximately 50m in length, on the left-hand side of the valley upstream of the dam to control the seepage flows that are emerging from the valley side• Specify and undertake repairs to the culvert floor and joints. See concrete inspection report dated August 2020 in the Site Information.• 3D model build of the dam and associated works to be delivered at the end of the project in the appropriate format.
The <i>site</i> is	Idless Flood Storage Reservoir, Idless, Truro, TR4 9QS SW8228947259
The <i>starting date</i> is	23 February 2023

The <i>completion date</i> is	8 th December 2023 (Completion of works on site by 30 th September 2023)	
The <i>delay damages</i> are	£292.25	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	0.5	% per complete week of delay.
Insert a rate only if a rate less than 0.5% per week of delay has been agreed.		
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	£1,000,000	
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 <i>works</i> , 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	Minimum £2,000,000 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 <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 (unless stated otherwise in the Scope). 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 <i>works</i> 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 <i>works</i> 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	<p>Delete the text of Clause 92.3 and replace with:</p> <p>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.</p>
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	<p>Material Price Volatility</p> <p>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%.</p>
Z30.1	<p>Defined terms</p> <p>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.</p> <p>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.</p>

	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	<p>Price Volatility Provision</p> <p>Through a Compensation Event the <i>Client</i> shall pay the PVP. PVP is calculated as:</p> <p style="text-align: center;">Assessment x MF x L = PVP</p> <p>If an index is changed after it has been used in calculating a PVP, the calculation is not changed and remains based upon the rate issued by the <i>Client</i>. The PVP calculated at the last assessment before 30 June 2023 is used for calculating the price increase after that date.</p>																																																																											
Z30.3	<p>Price Increase</p> <p>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.</p>																																																																											
Z30.4	<p>Compensation Events</p> <p>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.</p> <table><tr><th>Assessment Date</th><th>Defined Cost?</th><th>Forecasted Cost?</th></tr><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><tr><td>31st Jul 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Aug 22</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Sept 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Oct 22</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Nov 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Dec 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Jan 23</td><td>In period costs only</td><td>No</td></tr><tr><td>28th Feb 23</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Mar 23</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Apr 23</td><td>In period costs only</td><td>No</td></tr><tr><td>31st May 23</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Jun 23</td><td>In period costs only</td><td>Forecasted costs for remainder of contract</td></tr></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	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
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	<p>The Defined Cost for compensation events is assessed using</p> <ul style="list-style-type: none"> - 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.
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Contract Data

The *Contractor's* Contract Data

	The <i>Contractor</i> is	
Name	Land & Water Services Ltd	
Address for communications	Weston Yard, Albury, Guildford, Surrey, GU5 9AF	
Address for electronic communications	<div></div> <div></div>	
The <i>fee</i> percentage is	As framework	%
The <i>people rates</i> are	As framework	
category of person	unit	Rate
The <i>published list of Equipment</i> is		As framework
The <i>percentage for adjustment for Equipment</i> 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	£285,085.61
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	Enter the total of the Prices from the Price List.
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Signed on behalf of the *Contractor*

Name	
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Position	Estimator
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Signature	
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Date	12.12.22
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The *Client* accepts the *Contractor's* Offer to Provide the Works

Signed on behalf of the *Client*

Name	
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Position	Senior Commercial Officer
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Signature	
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Date	23.02.2023
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Price List

Item Number	Description	Unit	Quantity	Rate	Price
	Precommencement phase	1	Sum		
1	Pre-construction management	1	Sum		
2	Surveys	1	Sum		
3	Develop detailed design	1	Sum		
4	Licenses and permits	1	Sum		
5	Placement of order for materials prior to commencement on site	1	Sum		
	Site Works				
6	Mobilisation	1	Sum		
7	Temporary works	1	Sum		
8	Site Management / supervision and welfare provision, inc. Security (8 weeks)	1	Sum		
9	Construct bypass culvert around debris screen with automated penstock	1	Sum		
10	Remove existing steps and install 2 no. new stairways from dam crest to upstream headwall	1	Sum		
11	Install new larger kiosk to house additional instrumentation, including base extension	1	Sum		
12	Repair mill leat offtake training walls	1	Sum		
13	Install drainage channel, approx. 50m in length on the left side of the valley	1	Sum		
14	Specify and undertake repairs to the culvert floor and joints	1	Sum		
15	Reinstatement	1	Sum		
16	All surplus wastes generated by the works to be disposed of off-site in accordance with the current Waste Management Regulations	1	Sum		
17	Demobilisation	1	Sum		
	Post site completion works				
18	Prepare 3d model of dam and associated works, and submit BIM / ASite / Adoddle information as per EIR / IDP	1	Sum		
19	Health and Safety File / As built drawings / Operation and Maintenance Manual	1	Sum		
The total of the Prices				£285,085.61	

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

For the scope please refer to 'Idless Dam MIOS – Scope v1.3'

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 works consist of:

- Design and construct a bypass culvert around the debris screen on the inlet of Idless Dam culvert. This will require an automated penstock, which is to be operated whilst under flood water from a control panel in the kiosk near Idless Dam access gate. This is the MIOS which will require certification and sign off by the Inspecting Engineer of the Reservoir
- Design of bypass penstock and structure to consider PSRA measures and ensure safety of operatives operating the asset.
- Design and flow rate of the bypass culvert to be calculated and agreed in acceptance of the Inspecting Engineer of the Reservoir.
- Design and replace both steps from dam crest to upstream headwall.
- Design and install a new larger kiosk designed to house the existing and additional instrumentation required. It is anticipated this will require an extension to the existing base.
- Repair mill leat offtake training walls (near dam entrance upstream of the dam crest).
- Design and install a drainage channel, approximately 50m in length, on the left-hand side of the valley upstream of the dam to control the seepage flows that are emerging from the valley side
- Specify and undertake repairs to the culvert floor and joints. See concrete inspection report dated August 2020 in the Site Information.
- 3D model build of the dam and associated works to be delivered at the end of the project in the appropriate format.

2. Drawings

List the drawings that apply to the contract.

Please refer to 'Idless Dam MIOS – Scope v1.3'

Drawing Number	Revision	Title

3. Specifications

List the specifications which apply to the contract.

Title	Date or Revision	Tick if publicly available
Environment Agency Blockage Management Guide (Gov.uk)	25/02/21	Yes
Latest Ciria Guidance: Culvert, screen and outfall manual - New CIRIA guidance	12/2019	Yes
Please refer to 'Idless Dam MIOS – Scope v1.3' for further details		

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*.

Please refer to 'Idless Dam MIOS – Scope v1.3'

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

Please refer to 'Idless Dam MIOS – Scope v1.3'

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

Please refer to 'Idless Dam MIOS – Scope' v1.3'

Item	Date by which it will be provided

Site Information

Please refer to 'Site Information – Idless Dam MIOS v1.3'

Proposed sub-contractors

	Name and address of proposed subcontractor	Nature and extent of work
1.	Tony Gee & Partners, 8 th Floor, International House, Dover Place, Ashford, Kent TN23 1HU Form of Contract: NEC4 PSC	Design of permanent and temporary works
2.	Diamond Drilling Services South West, 2 Wadham Road, Liskeard, Cornwall, PL14 3BD Form of Contract: NEC4 Short	Diamond drilling / sawcutting to concrete walls
3.	SouthWest Concrete Repairs Reynolds Park, Bell Close, Plympton, Plymouth, PL7 4FE Form of Contract: NEC4 Short	Repairs to concrete culvert