



Framework: Collaborative Delivery Framework
Supplier: Jeremy Benn Associates Ltd
Company Number: 03246693

Geographical Area: South East
Contract Name: Elmer Beach Management Scheme (Remedial Works)
Project Number: Appraisal and Business Case Update Report
ENVIMSE100376

Contract Type: Professional Service Contract
Option: Option C

Contract Number: C22819

Stage: Other

Revision	Status		Originator		Reviewer		Date

PROFESSIONAL SERVICE CONTRACT under the Collaborative Delivery Framework
CONTRACT DATA

Project Name Elmer Beach Management Scheme (Remedial Works) Appraisal and Business Case Update Report

Project Number ENVIMSE100376

This contract is made on 08 March 2024
between the *Client* and the *Consultant*

This contract is made pursuant to the Framework Agreement (the "Agreement") dated 01st day of April 2019 and Framework Agreement Extension dated 1st April 2023 between the *Client* and the *Consultant* in relation to the Collaborative Delivery Framework. The entire agreement and the following Schedules are incorporated into this Contract by reference

- Schedules 1 to 23 inclusive of the Framework schedules are relied upon within this contract.

The following documents are incorporated into this contract by reference

- LIT 13261 - Scope for Elmer BMS RW an NEC4 PSC SOC-OBC-BCUR Appraisal stage project strike-through CSM 08112023.pdf

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 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 *service* is To deliver the appraisal and Business Case Update Report for the Elmer Remedial Works project, as per the Scope.

The *Client* is Environment Agency
Address for communications Guildbourne House
Chatsworth Road
Worthing
BN11 1LD

Address for electronic communications

The *Service Manager* is
Address for communications

Address for electronic communications

The Scope is in
LIT 13261 - Scope for Elmer BMS RW an NEC4 PSC SOC-OBC-BCUR Appraisal stage project strike-through CSM 08112023.pdf

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
Not used

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

2 The Consultant's main responsibilities

The <i>key dates</i> and <i>conditions</i> to be met are	
<i>conditions</i> to be met	<i>key date</i>
None set	N/A
The <i>Consultant</i> prepares forecasts of the total Defined Cost plus Fee and <i>expenses</i> at intervals no longer than	4 weeks

3 Time

The <i>starting date</i> is	11 March 2024
The <i>Client</i> provides access to the following persons, places and things	
access	<i>access date</i>
FastDraft	18 March 2024
Asite	11 March 2024
Sharepoint	11 March 2024
The <i>Consultant</i> submits revised programmes at intervals no longer than	4 weeks
The <i>completion date</i> for the whole of the <i>service</i> is	21 January 2025
The period after the Contract Date within which the <i>Consultant</i> is to submit a first programme for acceptance is	4 weeks

4 Quality management

The period after the Contract Date within which the <i>Consultant</i> is to submit a quality policy statement and quality plan is	4 weeks
The period between Completion of the whole of the <i>service</i> and the <i>defects date</i> is	26 weeks

5 Payment

The <i>currency of the contract</i> is the £ sterling	
The <i>assessment interval</i> is	Monthly
The <i>Client</i> set total of the Prices is	£227,065.54
The <i>expenses</i> stated by the <i>Client</i> are as stated in Schedule 9	
The <i>interest rate</i> is	2.00% per annum (not less than 2) above the
Base	rate of the Bank of England
The locations for which the <i>Consultant</i> provides a charge for the cost of support people and office overhead are	All UK Offices

If Option C is used	The <i>Consultant's share percentages</i> and the <i>share ranges</i> are:			
	<i>share range</i>		<i>Consultant's share percentage</i>	
	less than	80 %	0 %	
	from	80 %	to	120 %
	greater than	120 %	as set out in Schedule 17	
			as set out in Schedule 17	

6 Compensation events

These are additional compensation events

1. Carbon Methodology - Adherence to and compliance with the Carbon Methodology dated 08 June 2023
2. Provision of ground investigation specification & supporting information pack (Infrastructure conditions of contract ICC spec) and tabulate proposed GI holes, and locations for procuring GI works to enable options appraisal and detailed design. GI Scope Includes environmental review, preparation of EAP and Stage 1 HRA.
3. Provision of a preliminary geotechnical assessment ground model, geotechnical bearing capacity check for placement of the 3-5m high breakwater structure, slope stability for global foundation stability and settlement analyses
4. The scope and cost of ecology, WFD and fisheries requirements beyond: PEA, standard data search, PEA Mapping, HRA stage 1 and Marine Biotope Survey and report, has been postponed to post-BCUR once option is selected at the request of the Client. Therefore, the requirement to undertake associated activities (including but not limited to: Vegetated shingle survey, report & mapping, BNG assessment & calculations, ecological enhancement & mitigation strategy report update and mitigation map, HRA stage, CRoW assessment and WFD assessment) shall be a Compensation Event if required by the Client.

8 Liabilities and insurance

These are additional *Client's* liabilities

1. Not used

The minimum amount of cover and the periods for which the *Consultant* maintains insurance are

EVENT	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE <i>SERVICE</i> OR TERMINATION
The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i>	£5,000,000 in respect of each claim, without limit to the number of claims	12 years after Completion
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	£15,000,000 in respect of each claim, without limit to the number of claims	12 months after Completion
Death of or bodily injury to the employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	<i>Legal minimum</i> in respect of each claim, without limit to the number of claims	<i>For the period required by law</i>
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	£5,000,000	

Resolving and avoiding disputes

The *tribunal* is litigation in the courts

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 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 replaced by:

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

Add the following 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 result of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit

Z4 Share on termination

Delete existing clause 93.3 and 93.4 and replace with:

93.3 In the event of termination in respect of a contract relating to services there is no *Consultant's* share'

Z6 The Schedule of Cost Components

The Schedule of Cost Components are as detailed in the Framework Schedule 9.

Z7 Consultant's share

54.1 The *Service Manager* assess the *Consultant's* share of the difference between the Aggregated Total of the Prices and the Aggregated Price for Service Provided 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 Service Provided to Date divided by the Aggregated Total of the Prices, expressed as a percentage. The *Consultant's* share equals the sum of the products of the increment within each share range and the corresponding *Consultant's* share percentage.

54.2 If the Aggregated Price for Service Provided to Date is less than the Aggregated Total of the Prices, the Consultant is paid its share of the saving. If the Aggregated Price for Service Provided to Date is greater than the Aggregated Total of the Prices, the *Consultant* pays its share of the excess.

54.2A If, prior to Completion of the whole of the service, the Price for Service Done to Date exceeds 111% of the total of the Prices, the amount in excess of 111% of the total of the Prices is retained from the Consultant.

54.3 If, prior to the Completion Date, the Price for Service Provided to Date exceeds 110% of the total of the Prices, the amount in excess of 110% of the total of the Prices is retained from the *Consultant*.

54.4 The *Service Manager* makes a preliminary assessment of the *Consultant's* share at Completion of the Whole of the service using forecasts of the final Aggregated Price for Service Provided to Date and the final Aggregated Total of Prices. This share is included in the amount due following Completion of the whole of the services.

54.5 The *Service Manager* makes a final assessment of the *Consultant's* share, using the final Aggregated Price for Service Provided to Date and the final Aggregated Total of the Prices. This share is included in the final amount due.

93.3 If there is a termination except if Z4 applies, the *Service Manager* assesses the *Consultant's* share after certifying termination. The assessment uses as the Aggregated Price for Service Provided to Date the sum of

- the total of
 - the Defined Cost which the *Consultant* has paid and
 - which it is committed to pay for work done before termination

and

- the total of
 - the Defined Cost which the *Consultant* or *Contractor* has paid and
 - 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

Add:

11.2(25) 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(26) The Aggregated Price for Service Provided to Date is the sum of

- the Price for Service Provided to Date and
- the Price for Service Provided to Date or the Price for Work Done to Date in the *partner contract* .

Z23 Linked contracts

Issues requiring redesign or rework on this contract due to a fault or error of the *Consultant* 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.

Z24 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 *Service Manager's* certificate.

Delete existing clause 51.2 and replace with:

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

Z25 Risks and insurance

The *Consultant* is required to submit insurances annually as Clause Z4 of the Framework Agreement

Z 29 Payment for Service Provided to Date

Delete existing clause 11.2 (21) and replace with:

"11.2 (21) The Price for Service Provided to Date is the total Defined Cost which the *Service Manager* forecasts will have been paid by the *Consultant* before the next assessment date plus the Fee. The Price for Service Provided to Date shall not exceed the forecast for the same as provided under clause 20.5"

Z111 PSC - Fee adjustment for non compliance with Scope

Delete existing 11.2 (8) and replace with the following clause

The Fee is the amount calculated by applying the fee percentage to the amount of the Defined Cost excluding the cost of Subcontractors that have not complied with procurement by best value processes as defined in the Scope. 80% of the fee percentage is applied to the amount of the Defined Cost for Subcontractors that have not complied with procurement by best value processes as defined in the Scope.

Z120 PSC – Carbon reduction

Ref. (Clause No.)	Clause words
11.2 Definitions	Add as Clause 11.2(36) (36) The Performance Table states the targets the <i>Consultant</i> is to achieve in Providing the Service and sets out the adjustment to payment if a measured performance is higher, the same or lower than its target. The Performance Table is the <i>performance table</i> unless later changed in accordance with the contract.
15.1 Early Warning	In Clause 15.1 add as a new bullet between the second and third bullet: • result in a target in the Performance Table not being met.
42.2 Accepting Defects	Delete Clause 42.2 and replace with: 'If the <i>Consultant</i> and the <i>Service Manager</i> are prepared to consider the change, the <i>Consultant</i> submits a quotation to the <i>Service Manager</i> for acceptance including any combination of: • reduced Prices • an earlier Completion Date • a revised programme • changes to the Performance Table If the quotation is accepted, the <i>Service Manager</i> changes the Scope, the Prices, the Completion Date and the Performance Table accordingly and accepts the revised programme.
Performance Measurements	
57	Add as Clause 57:
57.1	From the starting date until the Completion Date, the <i>Consultant</i> reports to the <i>Service Manager</i> its performance against the targets in the Performance Table. Reports are provided at the intervals stated in the Performance Table.
57.2	If the <i>Consultant's</i> performance against a target in the Performance Table is not achieving or is forecast not to achieve the performance target stated, it submits to the <i>Service Manager</i> for acceptance its proposals for improving performance. A reason for not accepting the proposals is that they will not provide the improvement in performance needed to achieve the target in the Performance Table.
57.3	At the dates stated in the Performance Table, • if the relevant performance does not meet the target stated in the Performance Table, the <i>Consultant</i> pays the amount stated in the Performance Table, • if the relevant performance exceeds or meets the target stated in the Performance Table, the <i>Consultant</i> is paid the amount stated in the Performance Table.
57.4	Information in the Performance Table is not Scope.

The *performance table* is [PSC-carbon-performance-table.xlsx](#)

the Performance Table for this contract type [form, Partner, Stage] as set out in the Carbon Methodology dated 08 June 2023

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 *service* are £214.59 per day

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*

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(UK)2: The Housing Grants, Construction and Regeneration Act 1996

The period for payment is 14 days after the date on which payment becomes due

Y(UK)3: The Contracts (Rights of Third Parties Act) 1999

term	<i>beneficiary</i>
N/A	N/A

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

Jeremy Benn Associates Ltd

Address for communications

1 Broughton Park Old Lane North
Broughton
Skipton
North Yorkshire
BD23 3FD

Address for electronic communications

The *fee percentage* is

Option C

The *key persons* are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

Name (3)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

3 Time

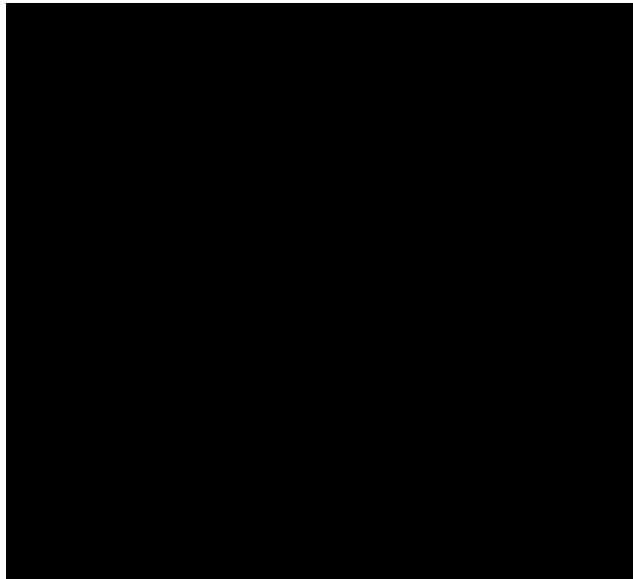
The programme identified in the Contract Data is
TBC

5 Payment

The *activity schedule* is

Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are



X10: Information Modelling

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

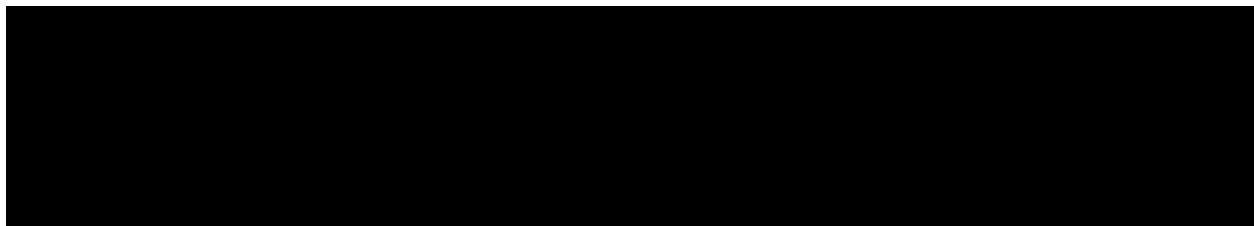
TBC

Contract Execution

Client execution

Signed Underhand by **[PRINT NAME]**

for and on behalf of the Environment Agency



Consultant execution

Signed Underhand by **[PRINT NAME]**

for and on behalf of

Jeremy Benn Associates

