

# NEC4 Engineering and Construction Short Contract

[Redacted]	
[Redacted]	
A contract between	The Environment Agency Horizon House Deanery Road Bristol BS1 5AH
And	ESH Construction Ltd
For	Yorkshire Area Minor Works 23/24
	Contract Forms - Contract Data - The <i>Contractor's Offer</i> and <i>Client's Acceptance</i> - Price List - Scope - Site Information

# Contract Data

## The *Client's* Contract Data

	The <i>Client</i> is	
Name	Environment Agency	
Address for communications	Environment Agency Lateral 8 City Walk Leeds LS11 9AT	
Address for electronic communications	[REDACTED]	
The <i>works</i> are	Yorkshire Area Minor Works 23/24	
The <i>site</i> is	Various across Yorkshire Area	
The <i>starting date</i> is	August 2023	
The <i>completion date</i> is	To be determined by the <i>Contractor's</i> programme	
The <i>delay damages</i> are	[REDACTED]	Per day
The <i>period</i> for reply is	[REDACTED]	weeks
The <i>defects date</i> is	[REDACTED]	weeks after Completion
The <i>defects correction period</i> is	[REDACTED]	weeks
The <i>assessment day</i> is	the last working day	of each month
The <i>retention free amount</i> is	[REDACTED]	%
The <i>retention on the remaining amount</i> is	[REDACTED]	%
The United Kingdom Housing Grants, Construction and Regeneration Act (1996) <b>does</b> apply		

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 [REDACTED] % per complete week of delay.

Insert a rate only if a rate [REDACTED] week of delay has been agreed.

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 [REDACTED]

The *Client* 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 [REDACTED] 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 [REDACTED] in [REDACTED]	[REDACTED] 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	
<b>Only enter details here if additional conditions are required.</b>	
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	Payments made 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 works 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 works which the Scope states they are to design.
Z6.3	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.  The <i>Contractor</i> does not proceed with the relevant work until the <i>Client</i> has accepted this design.
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	Delete the text of Clause 60.1(11) and replace by:  The <i>works</i> are affected by any one of the following events <ul style="list-style-type: none"> <li>• War, civil war, rebellion revolution, insurrection, military or usurped power</li> <li>• Strikes, riots and civil commotion not confined to the employees of the <i>Contractor</i> and sub-contractors</li> <li>• Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel</li> </ul>

	<ul style="list-style-type: none"> <li>• Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device</li> <li>• Natural disaster</li> <li>• Fire and explosion</li> <li>• Impact by aircraft or other device or thing dropped from them</li> </ul>
Z8.0	Framework Agreement
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.
Z12.1	For contracts containing packages of projects the Client's Contract Data, Scope and Site Information particular to an individual project is contained within its Site Specific Pack
Z30	<p><b>Material Price Volatility</b></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><b>Defined terms</b></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> <p>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.</p>
Z30.2	<p><b>Price Volatility Provision</b></p> <p>Through a Compensation Event the <i>Client</i> shall pay the PVP. PVP is calculated as:</p> <p style="text-align: center;"><b>Assessment x MF x L = PVP</b></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><b>Price Increase</b></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><b>Compensation Events</b></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 2024 period compensation event.</p> <p>The Defined Cost for compensation events is assessed using 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.</p>



# Contract Data

## The Contractor's Contract Data

The Contractor is		
Name	Esh Construction Limited	
Address for communications		
Esh House, Bowburn North Industrial Estate, Bowburn, Durham, DH6 5PF		
Address for electronic communications		
[REDACTED]		
The fee percentage is		
[REDACTED]		
The people rates are		
[REDACTED]		
category of person	unit	rate
The published list of Equipment is		
[REDACTED]		
The percentage for adjustment for Equipment is		
[REDACTED]		





# Scope

## 1. Description of the *works*

The *Contractor* is not being asked to provide a quotation for any *works* at the tender stage. All works will be added by instruction (compensation event mechanism) following contract award. The Contract award will be for [REDACTED] The *Contractor* is to refer to the individual project Scopes provided post award for a detailed description of the works, in conjunction with the below in order to complete their price.

The *Client*, subject to successful negotiation reserves the right to award the *works* either as one package or on an individual project basis,

In conjunction with the individual Scopes, the *Contractor* will for each of the sites: -

- For all projects, the *Contractor* is required to liaise with the *Client's* CDM Principal Designer throughout the Detailed Design and Construction phases.
- Carry out relevant duties of Designer under the CDM Regulations 2015.
- The *Contractor* will produce a detailed design for each site for the *Clients* acceptance prior to starting any construction work at the relevant site. The *Contractor* will address all comments provided by the *Client*, and the *Contractor* will allow for this in their submission for each Compensation Event
- Work collaboratively with the *Client* to carry out an optioneering process to consider a variety of options and produce an Outline Design of the preferred option. This will include the *Contractor* and their selected *Designer* to attend an optioneering workshop with the *Client* and relevant stakeholders for each project.
- Specify and carry out relevant surveys to assist in the completion of the detailed design, including topographic surveys and ground investigation.
- Following the approval of the preferred option by the *Client*, produce a design input statement and carry out the detailed design of the option.
- Provide a construction cost price breakdown.
- Identify efficiency savings and provide a narrative and cost as evidence to support efficiency.
- Identify carbon savings and provide a narrative, cost and tonnage (CO2) saved through use of the carbon calculator
- Remove vegetation (including trees, after discussion with EA) as required to allow access to carry out the *works*.
- Produce a silt management plan, including control measures, prior to the commencement of *works* on site – see constraints section for further information. The Silt management plan and control measures are to be agreed by the EA prior to *works* commencing. All control measures must be in place for the duration of the *works*.
- Obtain all utilities information where needed and carry out appropriate checks before any work is commenced.
- Provide necessary onsite welfare facilities. The welfare facilities must include adequate first aid facilities.
- Provide a Construction Phase Plan and Risk Assessed Method Statements for each site for approval prior to commencement of *works*.
- Obtain a Flood Risk Activity Permit where required.
- Manage the people-plant interface to prevent public access as the public-plant interface likelihood is high
- Provide a site waste management plan for approval before works commence and dispose of all waste at an approved/licensed location.
- Carry out reinstatements as required to restore the site area to the pre-commencement condition.
- Provide As-Built drawings for all *works* in an electronic format compatible with EA systems. To be agreed with the *Client*.
- Provide a Health and Safety File for each project where one is identified as being required.
- Undertake biosecurity measures where SSSI's are located near the site. Biosecurity measures need to be in place for the duration of the *works* and strictly adhered to by all site operatives. As a minimum the Check

Clean and Dry campaign should be followed. Further information on biosecurity can be found at the following link <https://secure.fera.defra.gov.uk/nonnativespecies/checkcleandry/index.cfm>

1. Check your equipment and clothing for live organisms - particularly in areas that are damp or hard to inspect.
2. Clean and wash all equipment, footwear and clothing thoroughly. If you do come across any organisms, leave them at the water body where you found them.
3. Dry all equipment and clothing - some species can live for many days in moist conditions. Make sure you don't transfer water elsewhere.

In addition to the above. Where any CCTV works are required, the *Contractor* will:-

- For each site the *Contractor* shall undertake a pre-survey walkover with attendance from the EA Project Manager and any relevant sub contractor to produce a pre-survey walkover report and quote for each site visited (using the framework rates). The pre-survey report is to meet the requirements set out in the survey specification and is to be supplied within 2 weeks of the site walkover.
- On *Client* acceptance of the quote, a compensation event for each location(s) will be issued and the *Contractor* shall undertake inspections of the culverts identified and agreed by the *Client* (including pre-cleansing works if required).
- Where entry to the culvert is required using a man entry method, a Risk Assessed Method Statement shall be provided to the *Client* at least 2 weeks before work begins.
- Surveys will establish any defects and the overall condition grade of each culvert. The overall condition grade must be established using the Environment Agency's Condition Assessment Manual.
- The *Contractor* must be in supply of a variety of survey equipment that is able to pass through minor debris and silt within the culvert. The appropriate survey method will be outlined in the pre-survey walkover report.
- It is the *Contractor's* responsibility to arrange safe access and egress to each location identified, including inspection chambers along the route of the culvert. The removal and reinstatement of any fences, screens, inspection chambers or similar and the design of any temporary works falls under the *Contractor's* obligation.
- If cleansing works are required prior to inspection, the *Contractor* must provide the *Client* with photographic evidence that silt / debris has been removed, including any equipment or machinery used. The *Contractor* must ensure adequate silt control measures are used to prevent a pollution or ecological incident. Approval must be obtained from the Fisheries Biodiversity & Geomorphology Officer that the measures are acceptable.
- If silt or debris is removed from the culvert, the *Contractor* must dispose of it at an approved/licenced location and provide waste consignment notices. WAC testing of silt to be removed is also to be carried out.
- The *Contractor* shall produce a detailed survey report to include the details outlined in the survey specification. An example survey report has been provided. This report must be supplied within 4 weeks of the inspection.
- The *Contractor* shall submit the survey reports electronically to the Project Manager via CD / Sharefile system upon completion of each survey. The *Contractor* shall supply the *Client* with Final costings sheets upon work completion (prior to Invoicing).

## 2. Drawings

Drawing Number	Revision	Title
N/A	N/A	N/A

To be provided as part of the Scope should any be available.

## 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
Civil Engineering Specification for the Water Industry	7 <sup>th</sup> Edition	yes
Constructing a Better Environment	Jan 2023	no
FCRM Asset Maintenance Standards	2021	yes
Minimum Technical Requirements	N/A	no
Conditions Assessment Manual (CAM) Manual 166_03_SD01		no
Culvert Survey Specification	V5	no

List the Appendices applying to this contract.

Works Info Appendix	Title
A	Conditions Assessment Manual (CAM) Manual 166_03_SD01
B	Culvert Survey Specification
C	Example Report

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

The *Contractor* is to refer to the Scope (awarded as a compensation event) for site specific constraints.

### General Constraints

#### Working times

The *Contractor* will be permitted to work between 7.30am and 6.00pm on weekdays (Monday to Friday)

The *Contractor* shall not commence any work on the *site* until the *Client*, or their representative, has accepted the method statements and risk assessments related to this contract.

The *Contractor* is to prepare, for the *Client's* acceptance, the Construction Phase Plan (CPP) and the Environmental Action Plan (EAP) 2 weeks prior to starting the *works*.

#### Invasive plants

The invasive species Japanese Knotweed, Himalayan Balsam and Giant Hogweed may be present in the vicinity of any of the proposed working areas or within the actual working area. **Bio-security measures need to be agreed with the FBG Officer before works commence and be in place for the duration of the works and**

**strictly adhered to by all site operatives.** As a minimum the Check, Clean and Dry campaign must be followed as identified in the Scope.

**Vegetation Removal**

Vegetation removal (including trees) may be required on some of the sites to allow safe access into the watercourse or to the working area.

**Protected trees**

Some protected trees may be present in the working areas of all sites. Any vegetation (tree) removal necessary to carry out the *works* will require prior consultation and agreement from the EA. No damage is to occur to the limbs or roots of any protected trees. Trees are also to be fenced off to provide a 6m radius around zone of influence of tree trunk. The *Contractor* is required to make contact with the FBG officer is to ensure their method statement addresses this issue.

**Silt**

The *Contractor* shall produce a mitigation plan for the control of silt prior to commencement of any *works* in channel. The plan is to be agreed in consultation with the appropriate EA Fisheries & Biodiversity officer and shall be put into place and strictly adhered to and monitored by all site operatives. This is because the watercourses can have low flows/low dilution – any release of silt could lead to low oxygen levels resulting in serious issues for invertebrate and fish populations.

**River Flow and Levels**

*Works* will be undertaken over the late summer/ autumn and winter months and the *Contractor* should allow for and expect variable water levels. During heavy rainfall the channels can be completely inundated. *Contractor* to contact EA to discuss signing up to receive flood alerts.

**Landowners**

The *Client* will issue Notices of Entry when needed. The *Contractor* will work within the period and parameters set out in the Notice. Security clearance may be required at certain sites for access and working arrangements. *Client* to identify in the *Scope* and *Contractor* to obtain where required. The *Client* will accompany the *Contractor* on the initial site walkover and shall liaise with landowners beforehand if necessary.

**Public / Plant interface**

Manage the people plant interface to prevent public access as the plant / people interface likelihood is high at all sites.

**Weight Limits**

Any *works* added will require assessment by the *Contractor* to ensure any weight limits are not exceeded.

**Telemetry and CCTV Equipment**

Telemetry and CCTV equipment may exist at each site. This will require assessment by the *Contractor* to ensure the *works* do not interfere with the operation of this equipment, during and post construction.

**Flood Risk Activity Permits**

The *Contractor* is to apply for these as required.

For CCTV Surveys, access constraints may apply at certain sites e.g. landowner / tide times. This would be identified at the pre-survey stage.

For CCTV Surveys, further restrictions may apply around designations (e.g SSSI, AONB). These would be identified at the pre-survey stage

**5. Requirements for the programme**

The *Contractor* submits his programme with the *Contractor's Offer* for acceptance. The *Contractor* shows on each programme which he submits 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) Planned Completion
- (f) Completion date
- (g) Contractor's Float

The *Contractor* submits a revised programme to the Client for acceptance monthly

The *Contractor* shows on each revised programme:

- The actual progress achieved on each task and its effect upon the timing of the remaining work.
- The effects of implemented compensation events.
- How the *Contractor* plans to deal with any delays and to correct notified Defects
- Any other change proposed by the *Contractor* to the accepted programme

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

Item	Date by which it will be provided
Notices of Entry	TBC
Pre – Construction Information including relevant services search	TBC
CCTV survey letter templates will be supplied by the <i>Client</i> . These should be issued to any interested parties whilst planning/working on the site.	At start-up meeting
The <i>Client</i> will provide the Incident Hotline number to the <i>Contractor</i> to be used in the event any pollution or environmental incidents which are identified on the <i>site</i> . Such incidents are not to be rectified by the <i>Contractor</i> .	At start-up meeting

## Site Information

This will be provided as part of the Pre – Construction Information for each site.

# Proposed sub-contractors

	Name and address of proposed subcontractor	Nature and extent of work
1.	Form of Contract:	
2.	Form of Contract:	
3.	Form of Contract:	
4.	Form of Contract:	