



Engineering and Construction Short Contract

Contract Data Forms

June 2017

(with amendments January 2023)

Template version history

V1 (30/07/2024)	First Draft for DGC review
V1 (19/09/2024)	Comments addressed
V2 (25/11/2024)	Tender return
V3 (26/11/2024)	Amended dates, countersigned, Contract Award

NEC4 Engineering and Construction Short Contract

A contract between	The Environment Agency Horizon House Deanery Road Bristol BS1 5AH
And	Breheny Civil Engineering Limited Flordon Road Creeping St Mary Ipswich Suffolk IP6 8NH
For	Elmer Beach Management – Ground Investigations
	Contract Forms <ul style="list-style-type: none"> - Contract Data - The <i>Contractor's</i> Offer and <i>Client's</i> Acceptance - Price List - Scope - Site Information

The *Client's* Contract Data

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Contract Data

The *Client's* Contract Data

The interest rate on late payment is	0.5%	per complete week of delay.	
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	The Contract Price		
The <i>Client</i> provides this insurance	None		
Insurance Table			
Event	Cover	Cover provided until	
Loss of or damage to the <i>works</i>	Replacement Cost	The <i>Client's</i> certificate of Completion has been issued	
Loss of or damage to Equipment, Plant and Materials	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 <i>works</i>	Minimum Contract Price in respect of every claim without limit to the number of claims	6 years following Completion of the whole of the <i>works</i> 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 (including 2023 amendments) and the following additional conditions	
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 correct 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"> • 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.
Z110	<p>Inflation</p> <p>At the Contract Date the total of the Prices does not include a sum to cover inflation.</p> <p>The total of the Prices [at the Contract Date] shall be adjusted by a fixed number of Price Adjustments.</p> <p>The number of Price Adjustments shall be equal to:</p> <p>The number of months between the Completion Date included at the <i>starting date</i> and the Contract Date.</p> <p>The proportion of Price Adjustment shall be equal to:</p> <p>The total of the Prices at the Contract Date / The number of Price Adjustments</p> <p>Each time the amount due is assessed, the Price Adjustment shall be:</p> <p>The proportion of Price Adjustment x [80% x Construction Output Price Indices (OPIs) New work output prices: Infrastructure Index 1-month rate]</p> <p>The Construction Output Price Indices (OPIs) New work output prices: Infrastructure Index 1-month rate shall be the value determined by the Office of National Statistics for the applicable month of the amount due assessment</p> <p>Provided always that the fixed number of Price Adjustments has NOT been exceeded.</p> <p>The Price Adjustment adjusts the total of the Prices.</p> <p>If a compensation event under this contract omits original Scope covered by the total of the Prices at the Contract Date the Price Adjustments made under this clause shall be corrected accordingly.</p>

Contract Data

The Contractor's Contract Data

	The <i>Contractor</i> is	
Name	Breheny Civil Engineering Limited	
Address for communications	Unit 4, Mill Court The Sawmills Durley Southampton Hampshire SO32 2EJ	
Address for electronic communications	[REDACTED]	
The <i>fee</i> percentage is	As per Framework Agreement	[REDACTED]
The <i>people rates</i> are	As per Framework Agreement	
category of person	unit	rate
	As per Framework Agreement	
The <i>published list of Equipment</i> is		As per Framework Agreement
The <i>percentage for adjustment for Equipment</i> is		As per Framework Agreement

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 £131,350.42

Enter the total of the Prices from the Price List.

Signed on behalf of the *Contractor*

Name

Position

Signature

Date

The *Client* accepts the *Contractor's* Offer to Provide the Works

Signed on behalf of the *Client*

Name

Position

Signature

Date

Price List

Entries in the first four columns in this Price List are made either by the *Client* or the tenderer.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price Column only: the Unit, Quantity and rate columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

Item Number	Description	Unit
1.0	Pre-construction Activities including production of RAMS and CPP and PAS survey	Sum
2.0	Prelims	Sum
3.0	Mobilisation and Site Set Up	Sum
4.0	Site Clearance	Sum
5.0	Borehole Works and 6no. Trial Pits	Sum
6.0	Demobilisation	Sum
7.0	Review Ground Investigation Report	Sum
8.0	Produce As-Builts	Sum
9.0	Produce Health and Safety File	Sum

The total of the Prices £131,350.42

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

1. Description of the works

- 1.1 The objective of the *works* is to gather ground investigation information for the Elmer Beach Management capital Flood and Coastal Erosion Risk Management (FCERM) project.
- 1.2 The works are formed of two parts:
- 1.2.1 Ground investigation boreholes and associated samples, tests and results, in line with ENVIMSE10037-JBA-00-00-TN-GT-0001-S4-P03-B1500-EA1-LOD0-GI_Scope.docx and
- 1.2.2 Trial pit excavation adjacent to an existing concrete encased drainage outfall pipe to determine foundation details, if present.
- 1.3 Where there is ambiguity between the ENVIMSE10037-JBA-00-00-TN-GT-0001-S4-P03-B1500-EA1-LOD0-GI_Scope.docx and this ECSC document, this ECSC document prevails.

2. Drawings

Not used

3. Specifications

Title	Date or Revision	Tick if publicly available
ENVIMSE10037-JBA-00-00-TN-GT-0002-S3-P03-B1500-EA1-LOD0-GI_Scope (Appendix A).	22/04/2024 Rev P03	No
Lot 1 - Spec supplementary clauses - General.pdf	09/07/2024	No
Lot 1 & Lot 3 - Supply Chain Passport Template.xlsx	22/03/2024	No
Safety, Health, Environment, and Wellbeing (SHEW) Code of Practice	September 2023	No

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

Access

- 4.1 No access to the Site is to be made by the *Contractor* without written approval of the *Client*.
- 4.2 Levelling of the foreshore and use of protective (e.g. track) matting may be required if ground conditions are not suitable for movement of plant during site mobilisation, set-up and demobilisation. Only site won shingle material from the foreshore may be used. There shall be no excavations to the earth embankment to the rear of the foreshore.
- 4.3 Minor vegetation clearance may be required along the concrete access track leading to the Site. Any vegetation clearance in this, or any other, location shall be undertaken by the *Contractor* under the supervision of the *Client* appointed Environmental Clerk of Works (ECoW).
- 4.4 The *Contractor* shall ensure that, when not in use, the gates to the north and south of the compound area remain locked. The key(s) shall be returned to the *Client* at the end of all site-based activities.

Environmental

- 4.5 The *Contractor* shall follow the requirements of the Environmental Action Plan (EAP "[ECSC App B - ENVIMSE100376-JBA-XX-XX-RP-EN-0001-S3-P01-C0600-EA2-LOD0-Elmer OBC GI EAP](#)"), which includes environmental mitigation measures and is appended to this Scope (Appendix B). The EAP is to be reviewed and updated by the *Contractor* in conjunction with the ECoW and as when required. The *Contractor* shall inform other members of the project team whose EAP actions impact their works. The *Contractor* shall prioritise and plan their work to be in accordance with the EAP in full consideration of any sensitivities thereby identified.
- 4.6 Parts of the Working Area is intertidal. No Equipment shall be left on the foreshore so that it comes in contact with tidal waters

Other assets

- 4.7 The *Contractor* shall not damage river structures, highways, roads, slipways, properties, land, trees, roots, crops, boundaries and any other features, and the apparatus of Statutory undertakers, the Highways Authority and others. The *Contractor* provides protection to such items as appropriate. The *Contractor* is responsible for repairing any damage caused by their operations.
- 4.7.1 For Plant movements, the *Contractor* shall access the two western-most boreholes via the foreshore. Use of the slipway to the north of the beach shall only be used in an emergency situation, or if access to the two western-most boreholes via the foreshore is unpracticable. The slipway shall be protected by the *Contractor* if used to avoid damage.
- 4.7.2 The *Contractor* shall not place Plant or materials on the Elmer Rife outfall structure.

Stakeholders

- 4.8 No working shall take place on Sunday or on a Public or Bank Holiday unless agreed with the *Project Manager*.
- 4.9 The *Contractor* will be permitted to work between 7.30am and 6.00pm except with prior written agreement with the *Client*.
- 4.10 It is extremely important to the *Client* that good public relations are established and maintained throughout the course of the contract and thereafter. Public relations include keeping the public informed; publicising the project and the work of the Environment Agency in general; liaising with local residents, businesses, recreational clubs and landowners; dealing with complaints; and dealing with the press and media. The *Contractor* shall notify the *Project Manager* of any requests for meetings, or other enquiries from third parties so that the *Project Manager* has the option to attend or send a representative.

Health, Safety and Wellbeing

- 4.11 Procedures and policies as outlined in the Environment Agency 'Safety, Health, Environment, and Wellbeing (SHEW)' Code of Practice (September 2023). Constructing a better environment' document shall be applied throughout the Contract.
- 4.12.1 The Construction (Design and Management) Regulations 2015 (the CDM Regulations) apply to the works.
- 4.12.2 The Principal Designer is to be appointed by the *Client*.
- 4.12.3 The *Contractor* is the 'Principal Contractor' under the CDM Regulations.
- 4.12.4 The CDM Pre-construction Information is to be provided by the *Client*.
- 4.12.5 The *Contractor* copies to the *Project Manager* all correspondence with the Principal Designer.

5. Requirements for the programme

- 5.1 The *Contractor* shall provide one initial programme showing pre-commencement activities and delivery of the *works* giving consideration to tides and daylight hours. Amendments to the programme may be required but are not expected.
- 5.2 Completion shall be when the Site has been cleared to the satisfaction of the *Project Manager* and all test results and subsequent information has been delivered to the *Client*.

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

Item	Date by which it will be provided
6.1 The <i>Client</i> shall obtain a Marine Management Organisation (MMO) Marine License through the self-exemption online platform. See Appendix C & D (ECSC App C - MMO Decision Letter - Elmer GI ; ECSC App D - MMO Marine Licence - Elmer GI)	starting date
6.3 The <i>Client</i> shall issue statutory Notices of Entry for all private land within the Site at least 7 days before the access date and arranges access for the <i>Contractor</i> .	At least 7 days before the access date
6.4 The <i>Client</i> shall provide keys to the compound access gates.	access date
6.5 The <i>Client</i> shall provide access to the project's Sharepoint site for uploading of all deliverables	access date
6.6 The <i>Client</i> shall provide a purchase order number for invoicing purposes.	Within two weeks of contract award.

Site Information

Site Information is provide for information only and does not form part of the ECSC Scope. Also see ECSC Supplementary Clause Z4.

Site Information provided:

- ENVIMSE100376-JBA-XX-00-TN-GT-0001-S3-P01-E1400-EA2-LOD0-Elmer_OBC_GeoTech_Risk_Register
- [ENVIMSE10037-JBA-XX-00-RP-GT-0002-S4-P01-B1500-EA2-LOD2-Geotechnical Desk Top Study](#)
- [A0700-1 P8244-18-R1-A ZeticaUXO Desk Study Elmer Beach](#)
- [20240906 SL-SH RE Elmer Rife Outfall ECI No FRAP required.msg](#)

Including historic information

original 1991 proposal (Arun district council, 1991)

undertaken by Royal HaskoningDHV involving 14 trial pits dug along Elmer 1 beach (20190226 GI Plan).

Subsequent soil contamination and soil laboratory tests were undertaken (Elmer test results, 2019)

(JBA, Elmer (2003))

PAS128 Level D survey report 31440_07_00 dated April 2024 prepared by Centara

Pre-construction Information

- Elmer Beach Management Scheme Pre-Construction Information DRAFT_v2

Proposed sub-contractors

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

APPENDICES

CONTRACT DOCUMENTS

ECSC App A - ENVIMSE10037-JBA-00-00-TN-GT-0002-S3-P03-B1500-EA1-LOD0-GI_Scope

ECSC App B - ENVIMSE100376-JBA-XX-XX-RP-EN-0001-S3-P01-C0600-EA2-LOD0-Elmer_OBC_GI_EAP

ECSC App C - MMO Decision Letter - Elmer GI

ECSC App D - MMO Marine Licence - Elmer GI

SITE INFORMATION

ENVIMSE100376-JBA-XX-00-TN-GT-0001-S3-P01-E1400-EA2-LOD0-Elmer_OBC_GeoTech_Risk_Register

ENVIMSE10037-JBA-XX-00-RP-GT-0002-S4-P01-B1500-EA2-LOD2-Geotechnical_Desk_Top_Study

A0700-1 P8244-18-R1-A ZeticaUXO Desk Study Elmer Beach

20240906_SL-SH_RE Elmer Rife Outfall ECI_No FRAP required.msg

Elmer Beach Management Scheme Pre-construction Information DRAFT_v2

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