



Framework: Collaborative Delivery Framework
Supplier: BAM Nuttall Ltd
Company Number: 00305189

Geographical Area: East
Project Name: Felixstowe Ferry Recovery Works
Project Number: ENV0002621C

Contract Type: Engineering Construction Contract
Option: Option C

Contract Number: 35341

Stage: Construction

Revision	Status		Originator		Reviewer		Date

ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework
CONTRACT DATA

Project Name Felixstowe Ferry Recovery Works

Project Number ENV0002621C

This contract is made on 07 October 2022
between the *Client* and the *Contractor*

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 10th day of April 2019 between the *Client* and the *Contractor* in relation to the Collaborative Delivery Framework. The entire agreement and the following Schedules are incorporated into this Contract by reference
- Schedules 1 to 21 inclusive of the Framework schedules are relied upon within this contract
- The following documents are incorporated into this contract by reference
ECC Scope - Option C (BAM) Final (rev 4).doc

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 the secondary Options of the NEC4 Engineering and Construction Contract June 2017

Main Option	Option C	Option for resolving and avoiding disputes	W2
Secondary Options			
X2: Changes in the law			
X7: Delay damages			
X9: Transfer of rights			
X10: Information modelling			
X11: Termination by the <i>Client</i>			
X15: <i>Contractor's</i> design			
X18 Limitation of Liability			
X20: Key Performance Indicators			
Y(UK)1: Project Bank Account			
Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996			
Y(UK)3: The Contracts (Rights of Third Parties) Act 1999			
Z: <i>Additional conditions of contract</i>			

The *works* are

Construction of a new rock revetment along a 120m length (approximately) of existing embankment to provide a short-term flood defence solution with an approximate 1 in 10-year life span

The *Client* is Environment Agency

Address for communications



Address for electronic communications



The *Project Manager* is



Address for communications

Address for electronic communications

The *Supervisor* is

Address for communications

Address for electronic communications

The Scope is in
ECC Scope Option C (BAM) Final (rev 4).doc

The Site Information is in
Felixstowe Ferry - Pre-construction information 27.03.22.docx

The *boundaries of the site* are
shown on:
drawing ENV0002621C-JAC ZZ XX DR PL 0101 Site Location Plan

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 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 Contractor's main responsibilities

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

key date
'none set'
'none set'
'none set'

The *Contractor* prepares forecasts of the total Defined
Cost for the whole of the *works* at intervals no longer
than

4 weeks

3 Time

The *starting date* is

17 October 2022

The *access dates* are

part of the Site
Site
EA personnel and IT systems

date
17 October 2022
17 October 2022

The *Contractor* submits revised programmes at
intervals no longer than

4 weeks

The *Completion Date* for the whole of the *works* is

17 July 2023

The *Client* is willing to take over the *works* before the Completion Date

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

4 weeks

4 Quality management

The period after the Contract Date within which the *Contractor* is to
submit a quality plan is

4 weeks

The period between Completion of the whole of the *works* and the *defects date* is 52 weeks

The *defect correction period* is 2 weeks except that
• The *defect correction period* for a safety issue for the public is 24 hours
• The *defect correction period* for is

5 Payment

The *currency of the contract* is the £ sterling

The *assessment interval* is Monthly

The *Client* set total of the Prices is

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

The *Contractor's share percentages* and the *share ranges* are

	<i>share range</i>	<i>Contractor's share percentage</i>
less than	80 %	0 %
from	80 % to 120 %	as set out in Schedule 17
greater than	120 %	as set out in Schedule 17

6 Compensation events

The place where weather is to be recorded is Wattisham

The *weather measurements* to be recorder for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 09:00 hours GMT

and these measurements:

- 1.
- 2.
- 3.
- 4.
- 5

The *weather measurements* are supplied by Met Office
The *weather data* are the records of past weather measurement for each calendar month
which were recorded at Wattisham
and which are available from Met Office

Assumed values for the ten year weather return *weather data* for each *weather measurement* for each calendar month are

Jan	Jul
Feb	Aug
Mar	Sep
Apr	Oct
May	Nov
Jun	Dec

These are additional compensation events

1. The Contractor is required (whether as a result of a Project Manager's instruction or otherwise) to:
 - i) stop the works, or any part of the works;
 - ii) alter or adopt a new method of working other than:
 - a. that set out in the accepted method statement; and/ or
 - b. due to Scope restraints; and/or
 - iii) carry out additional works, as a result of any structural issues and/or any other damage becoming apparent as being at risk of occurring, or as having occurred, to the adjacent buildings PROVIDED the Contractor has carried out the works in accordance with the Scope and the accepted method statement
2. A change to KML quotation ref. KML-10431-RAQ-01 revised 2nd August 2022 which is made prior to placing of the order to KML to supply the rock, provided the Contractor has used all reasonable endeavours to mitigate such change. The amount for price increase calculated in accordance with clause Z30 Material Price Volatility shall be adjusted as necessary so as to eliminate any duplication in the amount assessed for price increases.
3. 'not used'
4. 'not used'
5. 'not used'

8 Liabilities and insurance

These are additional *Client's* liabilities

- 1 Claims and proceedings from any of the owners of existing structures and compensation and costs payable to the same, which arise from the Contractor carrying out the works are considered a client liability as per clause 80.1 provided the Contractor has worked in accordance with the Scope and the accepted method statement.

For the avoidance of doubt:

i) Negligence or accidental damage caused by the Contractor remains a contractor liability.

ii) Any direct consequential costs which the Contractor incurs as a result of any direct claims and/or direct proceedings from, or has paid or will pay to, the owners of the Adjacent Building, as a consequence of a Client's liability, shall be treated as a cost payable under clause 82.2 by the Client.

- 2 'not used'
- 3 'not used'

The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is

£15,000,000

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

not less than the amount required by law

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

Resolving and avoiding disputes

The *tribunal* is litigation in the courts

The *Senior Representatives* of the *Client* are

Address for communications

Address for electronic communications

Name

Address for communications

Address for electronic communications

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 Correctness of Site Information and other documents

Z1 1 Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the *Client*, but is not warranted correct. Clause 60.3 does not apply to such Site Information and the *Contractor* is responsible for checking the correctness of any such Site Information they rely on for the purpose of pricing for or providing the *works*.
Z1 2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the *Client* but are not warranted correct (except for the purpose of promoting high standards of health and safety) and the *Contractor* is responsible for checking the correctness of any such information they rely on for the purpose of pricing for, or providing the *works*.

Z3 Prevention: No change to prices

Delete first sentence of clause 62.2 and replace with:

"Quotations for compensation events except for the compensation event described in 60.1(19) comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. Quotations for the compensation event described in 60.1(19) comprise any delay to the Completion Date and Key Dates assessed by the *Contractor*."

Delete 'The' At start of clause 63.1 and replace with:

"For the compensation event described in 60.1(19) the Prices are not changed. For other compensation events the "

Z 4 The Schedule of Cost Components

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

Z 6 Payment for Work

Delete existing clause 11.2 (31) and replace with:

"11.2 (31) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee, not exceeding the forecast provided under clause 20.4 and accepted by the *Client*."

Z7 Contractor's share

After cl54.2 and before cl54.3, insert the following additional clause:

54.2A If, prior to Completion of the whole of the works, the Price for Work 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 Contractor.

Z10 Payments to subcontractors, sub consultants and

Subcontractors

The *Contractor* will use the NEC4 contract on all subcontracts for works. Payment to subcontractors will be 28 days from the assessment date.

If the *Contractor* does not achieve payments within these time scales then the *Client* reserves the right to delay payments to the *Contractor* in respect of subcontracted work, services and supplies.

Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the *Contractor's* opportunities to work on framework contracts.

Z16 Disallowed Costs

Add the following bullets to clause 11.2 (26) Disallowed costs

- was incurred due to a breach of safety requirements, or due to 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.

Z19 Linked contracts

Delays and additional cost on this contract resulting from the *Contractor's* fault or error on a previous contract on this project or programme will be a Disallowable cost under this contract and not be a Compensation event under this contract.

Z21 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 *Project Manager's* certificate

Delete existing clause 51.2:

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 *Project 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

Z22 Resolving Disputes

Delete W2.1

Z23 Risks and insurance

Replace clause 84.1 with the following

Insurance certificates are to be submitted to the Client on an annual basis

Z30 Material Price Volatility

The *Client* recognises the ongoing pricing uncertainty in relation to materials for the period from 1 July 2021 to 30 June 2023 the *Client* 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%

Z30.1 Defined terms

- a) The Latest Index (L) is the latest index as issued by the *Client*. The L, which is at the discretion of the Client, is based upon the issued consumer price index ((CPI) based upon the 12-month rate) before the date of assessment of an amount due.
- 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.
- 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 Price Volatility Provision

Through a Compensation Event the *Client* shall pay the PVP. PVP is calculated as:

$$\text{Assessment} \times \text{MF} \times \text{L} = \text{PVP}$$

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 *Client*. The PVP calculated at the last assessment before 30 June 2023 is used for calculating the price increase after that date.

Z30.3 Price Increase

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.

Z30.4 Compensation Events

The *Contractor* 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

Assessment Date	Defined Cost?	Forecasted Cost?
31 July 2021	In period costs only	No
31 August 2021	In period costs only	No
30 September 2021	In period costs only	No

31 October 2021	In period costs only	No
30 November 2021	In period costs only	No
31 December 2021	In period costs only	No
31 January 2022	In period costs only	No
28 February 2022	In period costs only	No
31 March 2022	In period costs only	No
30 April 2022	In period costs only	No
31 May 2022	In period costs only	No
30 June 2022	In period costs only	No
31 July 2022	In period costs only	No
31 August 2022	In period costs only	No
30 September 2022	In period costs only	No
31 October 2022	In period costs only	No
30 November 2022	In period costs only	No
31 December 2022	In period costs only	No
31 January 2023	In period costs only	No
28 February 2023	In period costs only	No
31 March 2023	In period costs only	No
30 April 2023	In period costs only	No
31 May 2023	In period costs only	No
30 June 2023	In period costs only	Forecasted costs for remainder of contract

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.

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 *works* are £189.14 per day

OPTION X10: Information modelling

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

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use skill and care normally used by professional providing information similar to the Project Information is, in respect of each claim £5,000,000

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is 6 years

OPTION X15: The *Contractor's* design

The *period for retention* following Completion of the whole of the *works* or earlier termination is 6 years

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim £5,000,000.00

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is 6 years

OPTION X18: Limitation of liability

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

For any one event, the *Contractor's* liability to the *Client* for loss or damage to the *Client's* property is limited to

£1,000,000
The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to £5,000,000

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters, is limited to £5,000,000.00

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

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)1:Project Bank Account

The Contractor is to pay any bank charges made and to be paid any interest paid by the
project bank

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 Contractor

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

1 General

The Contractor is

Name

BAM Nuttall Ltd

Address for communications



Address for electronic communications



The fee percentage is

Option C



The working areas are

The site and all locations at which work is undertaken for the benefit of the project, including but not limited to all BAM & Client's offices and premises either temporary or permanent

The key persons are

Name (1)



Job

Senior Contracts Manager

Responsibilities

Overall responsibility of projects under the framework

Qualifications

Experience

The key persons are

Name (2)



Job

Project Manager

Responsibilities

Project Delivery

Qualifications

Experience

The key persons are

Name (3)



Job

Managing Quantity Surveyor

Responsibilities

Commercial Management of project

Qualifications

Experience

The key persons are

Name (4)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

2 The Contractor's main responsibilities

The Scope provided by the *Contractor* for its design is in

3 Time


The programme identified in the Contract Data is

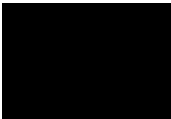
5 Payment


The *activity schedule* is

Resolving and avoiding disputes

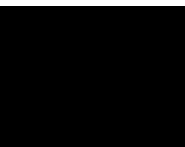
The *Senior Representatives* of the *Contractor* are


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 Underhand by [PRINT NAME] for and on behalf of the Environment Agency

SignatureDateRole

Contractor execution

Signed Underhand by [PRINT NAME] for and on behalf of BAM Nuttall Ltd

SignatureDateRole