

# NEC4 Engineering and Construction

## Short Contract

FCRM Operational Framework – SE Hub

A contract between

The Environment Agency  
Horizon House  
Deanery Road  
Bristol  
BS1 5AH

And

Breheny Civil Engineering Ltd

For

Seapoint Outfall Stop-log Clutch Repairs

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	[REDACTED]	
Address for electronic communications		
The <i>works</i> are	Repairing leaking stop-board clutches at Seapoint Outfall.	
The <i>site</i> is	Seapoint Outfall, Princes Parade, Hythe, Kent, CT21 5RL. TR1883234893	
The <i>starting date</i> is	22 June 2020	
The <i>completion date</i> is	To be determined by the successful Contractor's programme, but no later than the end of February 2021.	
The <i>delay damages</i> are	Nil	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) <b>does</b> 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.
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	£100,000	
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 <i>works</i>	Minimum £1,000,000 in respect of every claim without limit to the number of claims	12 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 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 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> <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>
Z7.2	Additional Compensation Event COVID-19 Managing and mitigating the impact of Covid 19 and working in accordance with Public Health England guidance, as may vary from time to time, until 30 June 2020.
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	Delete the text of Clause 92.3 and replace with: 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.
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.

# Contract Data

## The Contractor's Contract Data

	The Contractor is	
Name	Breheny Civil Engineering Ltd	
Address for communications	Unit B, Endeavour Park, London Road, Addington, Kent ME19 5SH	
Address for electronic communications	[REDACTED]	
The fee percentage is		
The people rates are	As per FCRM Framework agreement	
category of person	unit	Rate
The published list of Equipment is	As per FCRM Framework agreement	
The percentage for adjustment for Equipment is	As per FCRM Framework agreement	

## Proposed sub-contractors

	Name and address of proposed subcontractor	Nature and extent of work
1.	[REDACTED]	
2.		
3.		

# 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



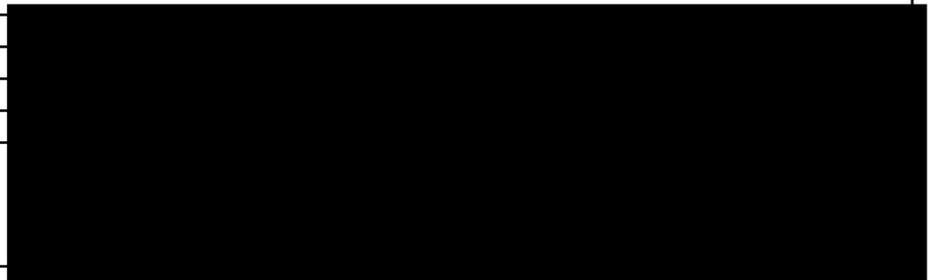
**Enter the total of the Prices from the Price List.**

Signed on behalf of the *Contractor*

Name

Position

Signature



Date 17 June 2020

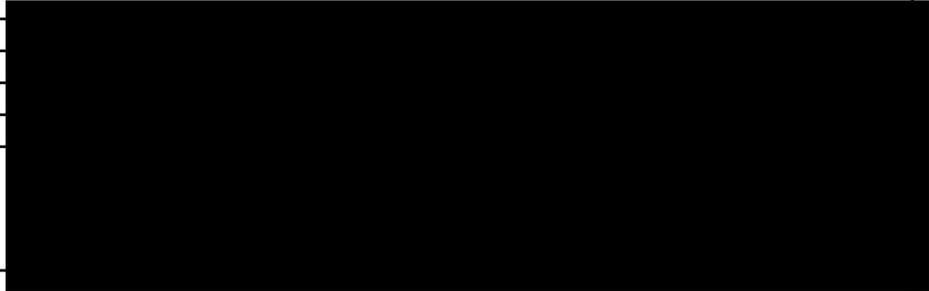
The *Client* accepts the *Contractor's* Offer to Provide the Works

Signed on behalf of the *Client*

Name

Position

Signature



Date 25 June 2020

# Price List

For Items 1-12, 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.

For Item 13, the *Contractor* is to be paid an amount for the item which is adjusted if the quantity of work in the item changes: the tenderer enters the amount in the Rate and Price Column only: the Unit and Quantity being left as stated.

Item Number	Description	Unit	Quantity	Rate	Price
1	Commissioning an archaeological survey, including obtaining assent from Historic England for the survey.	Sum			
2	Obtaining assent from Historic England to deliver the project.	Sum			
3	Obtaining the Flood Risk Activity Permit for the project, including temporary works.	Sum			
4	Fabrication of cofferdam	Sum			
5	On-site mobilisation, including provision of compound and welfare facilities	Sum			
6	Delivery to site of coffer dam components	Sum			
7	Delivering works to repair the leaking stop-board clutches, including temporary works and tree work	Sum			
8	Testing the repair by inserting the stop log at low water.	Sum			
9	Conveying the coffer dam components to Environment Agency's Willop Depot	Sum			
10	Demobilisation	Sum			
11	Production of H&S file	Sum			
12	Pre and post works condition survey	Sum			
13	Over-pumping from the Royal Military Canal into the Seapoint Outfall sluice structures	Per week			
14	Other (Contractor to specify)	Sum			
<b>The total of the Prices</b>					

The method and rules used to compile the Price List are

Civil Engineering Standard Method of Measurement 4<sup>th</sup> edition (CESMM4) as per the Framework Price Workbook.

# Scope

## 1. Description of the *works*

The outcome of the *works* is to repair the leaking stop-board clutches at Seapoint Outfall, such that the board/clutches will not leak more than 2 litres per minute per linear meter through the submerged parts of the stop board/clutches. The repair should be resilient to deployment of the boards once a year for a period of 10 years. In delivering the *works*, the *Contractor* shall:

1. Prior to undertaking any further activity, commission an archaeological survey, including obtaining assent from Historic England for the survey. The survey will take the form of core samples of the canal bed, through engineered layers to the underlying geology, wherever the *Contractor* proposes to penetrate the bed of the canal in delivering the project. The cores taken would then need to be analysed by an archaeological consultant and the results passed to Historic England. Historic England will evaluate the results and use as a basis for the decision to assent the temporary works.
2. Obtain assent from Historic England to deliver the project, including temporary works.
3. Obtain the Flood Risk Activity Permit for the project, including temporary works.
4. Design and supply/fabricate all elements required to dewater the area in front of the trash screen/clutches to facilitate delivery of the project. All designs must be submitted to the *Client* for approval before fabrication/construction is commenced.
5. Undertake a photographic pre-condition survey and report of the above ground site and access route, to be shared with the *Client*.
6. Undertake on-site mobilisation, including provision of compound and welfare facilities.
7. Undertake supply and delivery to site of all materials required in the delivery of the project, including temporary works.
8. Repair the leaking stop board clutches. The repair must be resilient to deployment of the boards once a year for a period of 10 years to dewater the subterranean sluice structures to facilitate maintenance activities. The *Contractor* must install the stop log at low water following repair of the clutches, to test the performance of the repair. The *Client* will accept maximum leakage of 2 litres per minute per linear meter through the submerged parts of the stop board/clutches structures. To include all temporary works as may be required to deliver the project.
9. Convey any fabricated coffer dam components to the *Client's* Willop Depot, Hythe Road, Dymchurch, Kent TN29 0HU at the end of the project.
10. Leave the Seapoint Outfall in functioning condition at the end of the project, including making good any damage caused to EA property (including the ground), or neighbouring property.
11. Undertake a photographic post-condition survey and report of the above ground site and access route, to be shared with the *Client*.
12. Produce an H&S file under the guidance of the Principal Designer.

In delivering the *works*, the *Contractor* shall:

- Liaise with the *Client* and the Principal Designer on matters relating to the delivery of the project, compliance with the CDM regulations, flood risk management, regulatory compliance, ecological stewardship and the programme.
- Provide all pumping facilities as required to deliver the project. This will include over pumping from the Royal Military Canal into the outfall (via the access chamber lids), should flood risk management demand it.
- Assist the *Client* in maintaining levels within the Royal Military Canal at between 2mAOD and 2.1mAOD.
- Register with the Environment Agency's flood warning systems for flood alerts and flood warnings.
- Respond to the flood alerts and warnings in management of water levels within the Royal Military Canal.
- Fulfil the duties of both Principal Contractor and Designer in terms of the CDM 2015 regulations. Duties will include, but are not limited to, producing the buildability statement, designer's risk assessment, temporary works schedule, completing the RAG list and liaising with the *Client* and Principal Designer.
- The *Contractor* shall manage the presence of Floating Pennywort and other invasive species in accordance with the Framework Agreement and Minimum Technical Requirements, including but not limited to use of Check, Clean, Dry protocol.
- The *Contractor* shall undertake measures to minimise silt mobilisation, including monitoring dissolved oxygen levels.
- The *Contractor* shall implement fish kill prevention measures including but not limited to the use of fish friendly pumps or fish screens, active monitoring and fish rescue.

**General requirements:**

The Royal Military Canal is a public amenity. The *Contractor* must act as an ambassador for the Environment Agency and maintain good relations with canal users. The area around the site can be busy with walkers and boaters, so the *Contractor* must secure the site and erect information/warning signage. The *Client* will manage communications and consultations with local groups, neighbours and canal users.

The *Contractor* shall undertake any local tree and shrub reduction works as they deem necessary to facilitate delivery of the project.

## 2. Drawings

List the drawings and documents that apply to the contract.

Drawing/Doc. #	Revision	Title
32/112/10-AC01-07	0	Royal Military Canal Outfall Chamber As Constructed Drawings
6642-1-10 RA	A	Seabrook Stop-log/Frame and Debris Screen GA

## 3. Specifications

Title	Date or Revision	Tick if publicly available
Minimum Technical Requirements	As per the SE FCRM Operations Framework	

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

The Royal Military Canal is a Scheduled Ancient Monument. Assent from Historic England is required for works within the canal footprint. Historic England have refused to assent invasive temporary works designs, such as sheet piled coffer dams. Their chief objection is works that entail extensive penetrations of the canal bed. Previous failed methodologies (use of inflatable tube-type barrier / use of temporary flood-defence type barrier / use of divers instead of de-watering) are not to be used in delivering this contract.

An archaeological survey of the canal bed within the footprint of the temporary works will be required.

The works, including temporary works and the archaeological survey will require assent from Historic England. It may be assumed that the period for reply to an application for assent is 2 months.

The works, including temporary works, will require a Flood Risk Activity Permit (FRAP). The statutory period for reply is 8 weeks. The Contractor is responsible for obtaining the FRAP, and allowing sufficient time with their Programme to do so.

The Contractor must develop a Construction Phase Plan (CPP) in accordance with the Environment Plan included within the Pre-Contract Information. The CPP must be offered for review by the Client and the Principal Designer

In wet weather, it will be necessary to over-pump from the Royal Military Canal into the outfall structures that can be accessed via inspection hatches over the subterranean elements of the sluice. It is anticipated that one 8" portable pump should suffice.

The Contractor shall not undertake any purchasing of goods, plant or material nor commence any work on site until the Client, or their representative, has approved all designs associated with the works related to this contract and all necessary assents and permissions are in place.

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

The Hythe section of the Royal Military Canal (RMC) is fed by 3 streams from the chalk downs. Rain on high ground can bring levels up within the canal quickly. Levels within the RMC should be maintained at between 2mAOD and 2.1mAOD. Above 2.2mAOD, the canal start to flow out-of-bank. Conversely, if the canal levels drop below 2mAOD before the end on the autumn, the boating interests on the canal experience difficulties. Below 1.8mOAD environmental harm may arise.

The Contractor's confined space entry RAMS must be approved by an Environment Agency specialist before such works may proceed.

The Client will undertake all negotiations and consultations with our site neighbours and the wider community.

#### **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**

**State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.**

**State what the use of the works is intended to be at their Completion as defined in clause 11.2(1).**

The Contractor submits their programme with the Contractor's Offer for acceptance. The Contractor shows on each programme which they submit for acceptance (in the 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) Completion date

The programme must be updated at least monthly and shared with the Client at each revision.

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

Item	Date by which it will be provided
Flood warnings and alerts	As soon as the <i>Contractor</i> registers
The <i>Client</i> has the ability to pass water through the opposite end of the Hythe section of the Royal Military Canal at West Hythe Dam. This will assist in managing levels within the watercourse whilst the temporary works are in place. However, it is unlikely to remove the need to over-pump at Seapoint Outfall, particularly following heavy rainfall or prolonged wet weather. The <i>Client</i> shall operate the West Hythe Dam sluice in close cooperation with the <i>Contractor's</i> water level control at Seapoint Outfall.	As soon as the project commences.
The <i>Client</i> will liaise with the landowner and neighbours.	Ongoing

## Site Information

The <i>Client</i> commissioned an ESE report into a temporary works design that Historic England would be prepared to accept. The report and associated design drawings are included within the tender pack.
<b>Pre-Contract Information</b> (including the Environment Plan) included within the tender pack.
<b>Public Safety Risk Assessment</b> included within the tender pack.
<b>Service Plans</b> included within the tender pack.
<b>Condition Survey</b> - Royal Military Canal, Outfall Hythe. (Jacobs) October 2009. Included within the tender pack.
<b>EA FCERM Hythe Canal Early Supplier Engagement Report</b> included within the tender pack. - A120017-TGEE-M0-XX-RP-C-0001
<b>Flood Risk Activity Permit (FRAP)</b> - The <i>Contractor</i> should allow at least 4 weeks for obtaining the FRAP, whilst noting that the statutory response period is 8 weeks.
<b>Temporary Works Design Check Certificate</b> included within the tender pack. - Document No: A120017-TGEE-M0-XX-CC-C-0001
<b>TEMPORARY DEWATERING PLAN AND DETAILS</b> included within the tender pack. - A120017-TGEE-ZZ-XX-DR-C-0002
<b>TEMPORARY DEWATERING DETAILS</b> included within the tender pack. - A120017-TGEE-ZZ-XX-DR-C-0003
<b>Water level within the Hythe section of the Royal Military Canal is maintained at between 2.00mAOD to 2.1mAOD</b>
<b>Copy of email exchange with Historic England</b>