



Engineering and Construction Contract

OPTION E: COST REIMBURSABLE CONTRACT

Contract Data Forms

June 2017
(with amendments January 2023)

Template version history

V1 (as per bidder pack)	Go live template (this document)
V 1.1	

Contract Execution

This agreement is made between the *Client*, the *Contractor* and the Named Suppliers.

Terms in this agreement have the meanings given to them in the contract between the Environment Agency and JT Mackley & Co Ltd. for survey, investigations and design of emergency remedial works at Farlington Marsh flow control structure (the *works*).

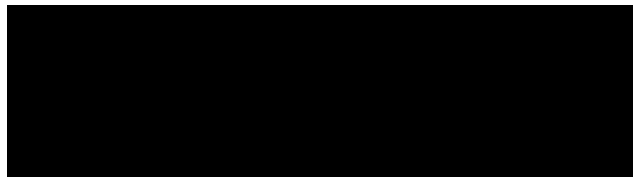
The *Contractor* offers to Provide the Services in accordance with these conditions of contract for an amount to be determined in accordance with these conditions of contract.

The *Contractor* was appointed to the framework and executed the framework agreement (with reference number C19845).

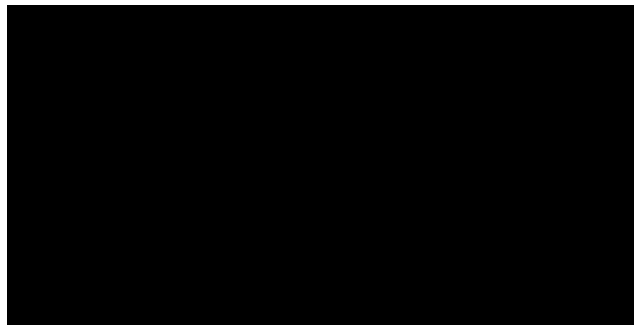
Executed under hand

by

Environment Agency (Client)



JT Mackley and Co Ltd. (Contractor)



Contract Data

PART ONE – DATA PROVIDED BY THE CLIENT

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

1 General

The *conditions of contract* are the core clauses, the clauses for main Option E, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2023)

Main Option	E	Option for resolving and avoiding disputes	W2
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Secondary Options	<div>X2 Changes in the Law X5 Sectional Completion X9 Transfer of Rights X10 Information Modelling X11 Termination by the <i>Client</i> X15 The <i>Contractor's</i> design X16 Retention Not Used X18 Limitation of Liability 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: Additional conditions of contract</div>
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The <i>works</i> are	<div>Survey, investigations and design of emergency remedial works at Farlington Marsh flow control structure. Ancillary works to enable investigations.</div>
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The <i>Client</i> is	
Name	<div>Environment Agency</div>
Address for communications	<div>The Environment Agency Horizon House Deanery Road Bristol BS1 5AH</div>

Address for electronic communications	<div></div>
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The <i>Project Manager</i> is	
Name	<div></div>
Address for communications	<div></div>
Address for electronic communications	<div></div>

The *Supervisor* is

Name

Address for communications

Address for electronic communications

The Scope is in

Farlington Outfall Emergency Works Scope 2024-11-01
CSM reviewed.docx

The Site Information is in

Farlington Outfall Emergency Works Site Information

The *boundaries of the site* are

As per red line site boundary drawing ref:
J5424-JTM-00-00DR-W-0001 rev Po1

The *language of the contract* is

English

The *law of the contract* is the law of

the law of England and Wales, subject to the
jurisdiction of the courts of England and
Wales

The *period for reply* is

1 week

except that

• The *period for reply* for

is

• The *period for reply* for

is

The following matters will be included in the Early Warning Register

The serviceability of the sluice structure is unknown.

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

2 weeks

2 The Contractor's main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*

The *key dates* and *conditions* to be met are

	<i>condition</i> to be met	Key date
(1)	Not Used	-
(2)		
(3)		

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

Four (4) weeks

3 Time

The *starting date* is

11/11/2024

The *access dates* are

	part of the Site	date
(1)	Whole of the site	18/11/2024
(2)		
(3)	ASite, FastDraft and Sharepoint	18/11/2024

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

Four (4) weeks

If the *Client* has decided the *Completion Date* for the whole of the *works*

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

20/12/2024

Taking over the *works* before the *Completion Date*

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

If no programme is identified in part two of the Contract Data

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

Two (2) weeks

4 Quality management

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

Four (2) weeks

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

One hundred and Four (104) weeks

The *defect correction period* is

2 weeks

except that

- The *defect correction period* for

Defects causing danger to people or environment

is

12 hrs

- The *defect correction period* for

is

5 Payment

The *currency of the contract* is the

GBP Sterling

The *assessment interval* is

1 month

The *interest rate* is 2 % per annum (not less than 2) above the

Base rate (Bank Rate)

rate of the

Bank of England

bank

If the period in which payments are made is not three weeks and Y(UK)2 is not used

The period within which payments are made is

The *Client* will make payment within 14 days of the date of the invoice.

The *exchange rates* are those published in

Financial Times (ft.com)

on the *starting date* (date)

6 Compensation events

The place where weather is to be recorded is

British Met office weather station at
Thorney Island

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

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- 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:

none

The *weather measurements* are supplied by

Met Office

The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at

Thorney Island

and which are available from

Met Office

Where no recorded data
are available

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

N/A

If there are additional
compensation events

These are additional compensation events

Unforeseeable tidal events independent of weather which prevent working or cause damage to existing structures

8 Liabilities and insurance

If there are additional
Client's liabilities

These are additional *Client's* liabilities

- (1)
- (2)
- (3)

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

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

If the *Client* is to provide
Plant and Materials

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

If Option W1 or W2 is used

The *Senior Representatives* of the *Client* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

The *Adjudicator* is

Name

Address for communications

Address for electronic communications

The *Adjudicator nominating body* is

~~X5: Sectional Completion~~ NOT USED

If Option X5 is used

The *Completion Date* for each *section* of the *works* is

section	description	completion date
(1)	Not used	
(2)		
(3)		
(4)		

X10: Information modelling

If no *information execution plan* is identified in part two of the Contract Data

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 the skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim

Value of contract

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

Six (6) years

X15: The *Contractor's* design

If Option X15 is used

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

Six (6) years

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

50% of Contract value

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

Six (6) years

~~X16: Retention~~ NOT USED

If Option X16 is used

The *retention free* amount is

Not used

The *retention percentage* is

NIL

%

Retention bond

~~The *Contractor* may/may not give the *Client* a retention bond (Delete as applicable)~~

X18: Limitation of liability

If Option X18 is used

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

1.2 times the Contract Price

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

50% value of the Contract

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

50% value of the Contract

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

Contract Price

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

Y(UK)1: Project Bank Account NOT USED

Charges made and interest paid by the *project bank*

~~The Contractor is/is not to pay any charges made and to be paid any interest paid by the project bank (Delete as applicable)~~

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

If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due

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

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

If Option Y(UK)3 is used

term

beneficiary

-

-

If Y(UK)3 is used with Y(UK)1 the following entry is added to the table for Y(UK)3

term

beneficiary

~~The provisions of Options Y(UK)4~~

~~Named Suppliers~~

Z: Additional conditions of contract

If Option Z is used

The additional conditions of contract are

Z1 Correctness of Site Information and other documents
<p>Z1.1 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. Clause 60.3 does not apply to such Site Information and the <i>Contractor</i> is responsible for checking the correctness of any such Site Information they rely on for the purpose of pricing for or providing the <i>works</i>.</p> <p>Z1.2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the <i>Client</i> but are not warranted correct (except for the purpose of promoting high standards of health and safety) and the <i>Contractor</i> is responsible for checking the correctness of any such information they rely on for the purpose of pricing for, or providing the <i>works</i>.</p>
Z2A: Risk transfer: Physical conditions within the Site
NOT USED
Z2B: Water levels: Contractor's risk
Clause 60.1 (12) second bullet point is amended to: "are not weather conditions or floods and"
Z3 Prevention: No change to prices
<p>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 <i>Completion Date</i> and Key Dates assessed by the <i>Contractor</i>. Quotations for the compensation event described in 60.1(19) comprise any delay to the <i>Completion Date</i> and Key Dates assessed by the <i>Contractor</i>."</p> <p>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..."</p>
Z 4 Schedule of Cost Components and Prices (Option C and E)
<p>Z4.1 Where a rate is included in the Framework Pricing Schedule, the Defined Cost is the rate in the Activity Schedule which should be used in assessing the Price for Work Done to Date.</p> <p>Z4.2 Where there is no rate in the Framework Pricing Schedule the Schedule of Cost Components in the NEC4 ECC should be used.</p>
Z6 Payment for Work
<p>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 <i>Project Manager</i> forecasts will have been paid by the <i>Contractor</i> before the next assessment date plus the Fee, not exceeding the forecast provided under clause 20.4 and accepted by the <i>Client</i>."</p>
Z7 Contractor's share
<p>After clause 54.2 and before clause 54.3, insert the following additional clause: 54.2A If, prior to Completion of the whole of the <i>works</i>, 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 <i>Contractor</i>.</p>
Z10 Payments to subcontractors, sub consultants and Subcontractors
<p>Subcontractors The <i>Contractor</i> will use the NEC4 contract on all subcontracts for <i>works</i> unless another alternative and appropriate form is proposed and agreed in accordance with clause 26.3. Payment to subcontractors will be 28 days from the assessment date. If the <i>Contractor</i> does not achieve payments within these timescales then the <i>Client</i> reserves the right to delay payments to the <i>Contractor</i> in respect of subcontracted work, services or goods. Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the <i>Contractor's</i> opportunities to work on framework contracts.</p>
Z11 Y(UK)3 The Contracts (Rights of Third Parties) Act 1999
<p>Z11.1 The <i>Contractor</i> warrants all design complies with the contract whether undertaken by the <i>Contractor</i> or by sub-contractors.</p> <p>Z11.2 All contracts for design employed by the <i>Contractor</i> must include:</p> <ul style="list-style-type: none"> • Y(UK)3 The Contracts Rights of Third Parties) Act 1999 • A requirement for the <i>Contractor's</i> sub-contractor to hold Professional indemnity insurance to the same level as the cover specified for the <i>Contractor</i> in this Call-off contract • A clause to give the <i>Client</i> (the Environment Agency) the right to enforce the provisions of the Contracts (Right of Third Parties) Act 1999, • A clause to ensure that neither the <i>Contractor</i> nor their sub-contractor can alter the provisions of their sub-contract without the consent of the <i>Client</i> • A clause to ensure that the <i>Client's</i> rights against the sub-contractor under this agreement shall be subject to the same conditions, limitations and exclusions as apply to the <i>Contractor's</i> rights against the design consultant under this agreement • A clause to state that except as provided in clause Z11.1, the agreement does not create any right enforceable by any person who is not a party to it (Other Party) under the Contracts (Rights of Third Parties) Act 1999, but the clause does not affect any right or remedy of any other party which exists or is available apart from that Act.

Z16 Disallowed Costs
<p>Add the following bullets to clause 11.2 (26) Disallowed costs.</p> <ul style="list-style-type: none"> • 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 <i>Client</i> 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
<p>Delays and additional cost on this contract resulting from the <i>Contractor's</i> 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.</p>
Z20 Defect Dates for Sections
<p>Where a section of the <i>works</i> is defined and is located in a separate area of the Site, the time to the <i>defects date</i> for that section is the defined period after the Completion of that section, and is defined in the Contract Data.</p>
Z21 Requirement for Invoice
<p>Add the following sentence to the end of clause 51.1:</p> <p>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 <i>Project Manager's</i> certificate. Delete existing clause 51.2:</p> <p>51.2 Each certified payment is made by the later of</p> <ul style="list-style-type: none"> • 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. <p>If a certified payment is late, or if a payment is late because the <i>Project Manager</i> 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</p>
Z22 Resolving Disputes
<p>Delete W2.1</p>
Z23 Risks and insurance
<p>Replace clause 84.1 with the following</p> <p>Insurance certificates are to be submitted to the <i>Client</i> on an annual basis.</p>
Z31 ECC – Price Adjustment for Inflation
<p>The <i>Client</i> recognises the ongoing pricing uncertainty with regards to inflation. The <i>Client</i> will mitigate this uncertainty through this clause.</p> <p>Z31.1 Defined terms:</p> <ol style="list-style-type: none"> The index is Office for National Statistics (ONS) Average Weekly Earnings index (Construction)(AWE) 1 – month rate. The Base Date Index (B) is the latest available index published by ONS prior to the Contract Date. The Latest Index (L) is the latest available index published by ONS before the date of assessment of an amount due. The Price Adjustment Factor (PAF) at each date of assessment of an amount due is $0.9((L-B)/B)$. <p>Z31.2 Application rules.</p> <p>The provisions of this clause [Z31] shall apply provided that:</p> <ol style="list-style-type: none"> The Price for Work Done to Date is less than or equal to the total of the Prices and Inflation remains positive i.e. L is greater than B. <p>Z31.3 Price Adjustment Factor.</p> <p>If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the <i>Completion Date</i> for the whole of the <i>works</i> is used for calculating an amount for price adjustment after that date.</p> <p>Z31.4 Price adjustment Options A and B NOT USED</p> <p>Z31.5 Price adjustment Options C and D NOT USED</p> <p>Each time the amount due is assessed, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by $(PAF/(1+PAF))$.</p> <p>Z31.6 Compensation events.</p> <p>NOT USED</p>
Z111 ECC - Fee adjustment for non-compliance with Scope
<p>Delete existing 11.2 (10) and replace with the following clause</p> <p>The Fee is the amount calculated by applying the fee percentage to the Defined Cost excluding the cost of Sub-contractors 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 Sub-contractors that have not complied with procurement by best value processes as defined in the Scope.</p>

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

JT Mackley & Co Ltd.

Address for communications

Bankside House
Henfield Road
Small Dole
West Sussex, BN5 9XQ

Address for electronic communications

The *fee percentage* is

The *working areas* are

Defined in the Scope documents

The *key persons* are

Name (1)

Job

Responsibilities

Qualification

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warming Register

--

2 The *Contractor's* main responsibilities

If the *Contractor* is to provide Scope for its design

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

N/A

3 Time

If a programme is to be identified in the Contract Data

The programme identified in the Contract Data is

FPRA-5424 R3.pdf

4 Payment

The first forecast of the total Defined Cost of the works is

£166,325.61

Resolving and avoiding disputes

If Option W1 or W2 is used

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

~~Y(UK)1: Project Bank Account~~ NOT USED

If Option Y(UK)1 is used

The *project bank* is

Not Used

named suppliers are

Data for the Schedule of Cost Components

The listed items of Equipment purchased for work on the contract, with an on cost charge, are

Equipment	Time-related on cost charge	Per time period
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

The rates for special Equipment are

Equipment	rate
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The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the *Contractor* are

category of person	rate
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

The rates for Defined Cost of design outside the Working Areas are

category of person	rate
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

The categories of design people whose travelling expenses to and from the Working Areas are included as a cost of design of the *works* and Equipment done outside the Working Areas are