



Framework: Collaborative Delivery Framework
Supplier: Kier Integrated Services Ltd
Company Number: 00873179

Geographical Area: Wessex
Project Name: Gooseum Reservoir Design ESE ECC C
Project Number: ENV0001200C

Contract Type: Engineering Construction Contract
Option: Option C

Contract Number: 32374

Stage: Other

| Revision | Status | Originator | Reviewer | Date |
|----------|--------|------------|----------|------|
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ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework

CONTRACT DATA

Project Name Gooseum Reservoir Design ESE ECC C

Project Number ENV0001200C

This contract is made on 17 March 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
Gooseum_Kier ECC ESE Scope_v1.03

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
- X9: Transfer of rights
- X10: Information on modelling
- X11: Termination by the *Client*
- X18 Limitation of Liability
- X20: Key Performance Indicators
- 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*

The *works* are

Provision of guidance and advice services to the Client's design consultant and Environment Agency to enable the detailed design for Gooseum Rhyne Reservoir Improvements to be completed and the Full Business Case to be submitted. This will also include undertaking Ground Investigation (GI). Works will meet requirements of the MIOS S10 Notice.

The *Client* is Environment Agency
Address for communications Horizon House
Deanery Road
Bristol
BS1 5TL

Address for electronic communications

The *Project Manager* is Environment Agency
Address for communications Horizon House
Deanery Road
Bristol
BS1 5TL

Address for electronic communications

The *Supervisor* is
Address for communications Atkins
The Hub
500 Park Avenue
Aztec West
Almondsbury
Bristol BS32 4RZ

Address for electronic communications

The *Scope* is in

Gooseum_Kier ECC ESE Scope_v1.03

The *Site Information* is in

ENV0001200C-EA-XX-00-TN-Z-G0300_2-S2-P01-G0300-EA3-LOD3-Site Information

The *boundaries of the site* are

ENV0001200C-EA-XX-00-PL-W-G0300_1-S2-P01-G0300-EA3-LOD3-Red line boundary

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'

'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 March 2022

The *access dates* are

part of the *Site*

date

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

4 weeks

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

16 January 2023

The *Client* is not 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 is
- 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 £91,812.51

The *interest rate* is 2.00% per annum (not less than 2) above the 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 % | to 120 % | 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 Rodney Stoke Location: 51.248, -2.733

The *weather measurements* to be recorded 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 Rodney Stoke Location: 51.248, -2.733

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. 'not used'
2. 'not used'
3. 'not used'
4. 'not used'
5. 'not used'

8 Liabilities and insurance

These are additional *Client's* liabilities

1. 'not used'
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

Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5TL

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..."

Z4 The Schedule of Cost Components

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

Z6 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 c154.2 and before c154.3, 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 time scales will also adversely affect the *Contractor's* opportunities to work on framework contracts.

Z11Y(UK) 3 The Contracts (Rights of Third Parties) Act

The design consultant employed by the *Contractor* is required to fulfil the obligations of the warrantor under the primary contract for design works that they complete. This includes:

Transfer of rights clause Z11

Professional indemnity insurance cover to same cover as that specified for the *Contractor*

Z11.1 The *Client* ('the third party') may in its own right enforce the provisions of this clause, subject to and in accordance with the provisions of the Contracts (Right of Third Parties) Act 1999 and the following provisions:

Z11.1.1 the parties may not rescind or vary any provision(s) of this agreement, including this clause, at any time without the consent of the third party; and

Z11.1.2 each third party's rights against party A under this agreement shall be subject to the same conditions, limitations and exclusions as apply to party B's rights against party A under this agreement.

Z11.2 Except as provided in clause Z11.1, this 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 this clause does not affect any right or remedy of a other party which exists or is available apart from that Act.

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 2022 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:
 $Assessment \times MF \times L = PVP$

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 2022 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 2022 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 | 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 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 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

£7,000,000

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(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 Kier Integrated Services Ltd
Address for communications 81 Fountain Street
Manchester
M2 2EE

Address for electronic communications

The fee percentage is

Option C

The working areas are

The site, Kier offices, and private dwellings of Kier staff.

The key persons are

Name (1) [REDACTED]
Job Project Manager
Responsibilities Project Delivery
Qualifications [REDACTED]
Experience [REDACTED]

The key persons are

Name (2) [REDACTED]
Job Quantity Surveyor
Responsibilities Commercial Support
Qualifications [REDACTED]
Experience [REDACTED]

The key persons are

Name (3) [REDACTED]
Job Engineer
Responsibilities Project Delivery
Qualifications [REDACTED]
Experience [REDACTED]

The key persons are

Name (4) [REDACTED]
Job Senior Planner
Responsibilities Planning Support
Qualifications [REDACTED]
Experience [REDACTED]

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) [REDACTED]
Address for communications Hawthorn House
Emperor Way
Exeter Business Park
Exeter
EX1 3QS

Address for electronic communications

Name (2) [REDACTED]
Address for communications Hawthorn House
Emperor Way
Exeter Business Park
Exeter
EX1 3QS

Address for electronic communications

X10: Information Modelling

The information execution plan identified in the Contract Data is

Contract Execution

Client execution

Signed Underhand by 

for and on behalf of the Environment Agency



17/03/2022

Senior Commercial Officer

Signature

Date

Role

Consultant execution

Signed Underhand by [PRINT NAME]

for and on behalf of

Kier Integrated Services Ltd





10/03/2022

Commercial Director

Signature

Date

Role