

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – Central Hub

A contract between

The Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

And

Stonbury Limited

For

WMD Asset Recondition Works 2022

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	[REDACTED]	
The <i>works</i> are	Improvement works to 6 no. assets within the West Midlands Area.	
The <i>site</i> is	Various Locations as detailed in the Scope (titled "WMD Asset Recondition Works_Scope_2022").	
The <i>starting date</i> is	To be determined by the successful Contractor's programme, but no earlier than 1 st December 2022	
The <i>completion date</i> is	To be determined by the successful Contractor's programme, but no later than 31 st March 2023	
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) does apply? No		
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	2	% 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 works, 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 works	Minimum £100,000 in respect of every claim without limit to the number of claims	12 years following Completion of the whole of the works 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 works 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	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.
Z12.0	Packaging
Z12.1	For contracts containing packages of projects the <i>Client's</i> Contract Data, Scope and Site Information particular to an individual project is contained within its Site Specific Pack
Z30.0	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	<p>Defined terms</p> <p>a) The Latest Index (L) is the latest index as issued by the <i>Client</i>. The L, which is at the discretion of the <i>Client</i>, is based upon the issued consumer price index ((CPI) based upon the 12-month rate) before the date of assessment of an amount due.</p> <p>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.</p> <p>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.</p>																																																																											
Z30.2	<p>Price Volatility Provision</p> <p>Through a Compensation Event the <i>Client</i> shall pay the PVP. PVP is calculated as:</p> <p style="text-align: center;">Assessment x MF x L = PVP</p> <p>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 <i>Client</i>. The PVP calculated at the last assessment before 30 June 2023 is used for calculating the price increase after that date.</p>																																																																											
Z30.3	<p>Price Increase</p> <p>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.</p>																																																																											
Z30.4	<p>Compensation Events</p> <p>The <i>Contractor</i> 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.</p> <table><tr><th>Assessment Date</th><th>Defined Cost?</th><th>Forecasted Cost?</th></tr><tr><td>31st Jul 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Aug 21</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Sept 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Oct 21</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Nov 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Dec 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Jan 22</td><td>In period costs only</td><td>No</td></tr><tr><td>28th Feb 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Mar 22</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Apr 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31st May 22</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Jun 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Jul 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Aug 22</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Sept 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Oct 22</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Nov 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Dec 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Jan 23</td><td>In period costs only</td><td>No</td></tr><tr><td>28th Feb 23</td><td>In period costs only</td><td>No</td></tr><tr><td>31st Mar 23</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Apr 23</td><td>In period costs only</td><td>No</td></tr><tr><td>31st May 23</td><td>In period costs only</td><td>No</td></tr><tr><td>30th Jun 23</td><td>In period costs only</td><td>Forecasted costs for remainder of contract</td></tr></table> <p>The Defined Cost for compensation events is assessed using</p> <ul style="list-style-type: none">- the Defined Cost at base date levels for amounts calculated from rates stated in the Contract Data for People and Equipment and	Assessment Date	Defined Cost?	Forecasted Cost?	31 st Jul 21	In period costs only	No	31 st Aug 21	In period costs only	No	30 th Sept 21	In period costs only	No	31 st Oct 21	In period costs only	No	30 th Nov 21	In period costs only	No	31 st Dec 21	In period costs only	No	31 st Jan 22	In period costs only	No	28 th Feb 22	In period costs only	No	31 st Mar 22	In period costs only	No	30 th Apr 22	In period costs only	No	31 st May 22	In period costs only	No	30 th Jun 22	In period costs only	No	31 st Jul 22	In period costs only	No	31 st Aug 22	In period costs only	No	30 th Sept 22	In period costs only	No	31 st Oct 22	In period costs only	No	30 th Nov 22	In period costs only	No	31 st Dec 22	In period costs only	No	31 st Jan 23	In period costs only	No	28 th Feb 23	In period costs only	No	31 st Mar 23	In period costs only	No	30 th Apr 23	In period costs only	No	31 st May 23	In period costs only	No	30 th Jun 23	In period costs only	Forecasted costs for remainder of contract
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- 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.

Contract Data

The Contractor's Contract Data

The Contractor is		
Name		
Address for communications		
Address for electronic communications		
The fee percentage is	As submitted in the Lot 1 Price Workbook	
The people rates are		
category of person	unit	rate
The published list of Equipment is		
The percentage for adjustment for Equipment is		As submitted in the Lot 1 Price Workbook

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 [REDACTED] the Prices from the Price List.

Signed on behalf of the *Contractor*

Name

Position

Signature

Date 12/01/2023

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

Signed on behalf of the *Client*

Name

Position

Signature

Date 14/02/2023

Price List

Kidderminster Canal Embankment

Item Number	Description	Unit	Quantity
1	Project Management	1	Sum
2	Services Search	1	Sum
3	Construction (As per scope)	1	Sum
4	Provision of data for H&S file	1	Sum

Sub-total for Kidderminster Canal Embankment

Hamstead Gabion Repair

Item Number	Description	Unit	Quantity
5	Project Management	1	Sum
6	Services Search & Detailed Design	1	Sum
7	Construction (As per scope)	1	Sum
8	Provision of data for H&S file	1	Sum

Sub-total for Hamstead Gabion Repair

Rocester Embankment

Item Number	Description	Unit	Quantity
9	Project Management	1	Sum
10	Services Search & Detailed Design	1	Sum
11	Construction (As per scope)	1	Sum
12	Provision of data for H&S file	1	Sum

Sub-total for Rocester Embankment

Perry Fields Reservoir

Item Number	Description	Unit	Quantity
13	Project Management	1	Sum
14	Services Search & Detailed Design	1	Sum
15	Provision of data for H&S file	1	Sum

Sub-total for Perry Fields Reservoir

Nether Whitacre Embankment

Item Number	Description	Unit	Quantity
16	Project Management	1	Sum

17	Services Search	1	Sum	
18	Construction (As per scope)	1	Sum	
19	Provision of data for H&S file	1	Sum	
Sub-total for Nether Whitacre Embankment				
Barkers Lane Trash Screen				
Item Number	Description	Unit	Quantity	
20	Project Management	1	Sum	
21	Services Search & Detailed Design	1	Sum	
22	Construction (As per scope)	1	Sum	
23	Provision of data for H&S file	1	Sum	
Sub-total for Barkers Lane Trash Screen				
The TOTAL of the Prices				

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

Give a detailed description of what the *Contractor* is required to do and of any work the *Contractor* is to design.

The whole project will address the need for asset improvement works at 6 No. separate sites (6 No. assets) within the West Midlands Area.

A full description of the works at each site and the specification are provided within the Scope document 'WMD Asset Recondition Works_Scope_2022' (Environment Agency, October 2022).

Please note that under the FCERM Operations Framework the contract will be let on a Short Form Contract Option A. There are some recognised uncertainties over the exact detail of the civils work but for pricing please use the assumptions stated in the Scope document and pricing list so that prices are comparable. If, during the tender return period, assumptions made are considered inappropriate these will be addressed ahead of contract award (please explain in your return if that is the case at any of the sites).

Contractor shall provide information for inclusion in the Health and Safety file for each asset.

Contractor is required to liaise with the Client's CDM Principal Designer.

2. Drawings

List the drawings that apply to the contract.

Drawing Number	Revision	Title
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N/A		
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3. Specifications

List the specifications which apply to the contract.

Title	Date or Revision	Tick if publicly available
Civil Engineering Specification for the Water Industry	7 th Edition	Yes
Lot 1 Specification Supplementary clauses	V1	No
Lot 1 Specification Supplementary clauses for culvert works	V1	No
CIRIA C786	2019	Yes

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

1. The *Contractor* shall not commence any work on the *site* until the *Client*, or their representative, has accepted the method statements and risk assessments related to this contract
2. The *Contractor* is to prepare, for the *Client's* acceptance, the Construction Phase Plan (CPP) and the Environmental Action Plan (EAP) prior to starting the works
3. The *Contractor* is responsible for obtaining an Environmental Permit (where necessary) prior to commencement of works.
4. The *Contractor* is responsible for the security of the site and of vehicles and pedestrians entering and leaving the site.
5. The *Contractor* ensures that the site is left properly secured at the end of each working day.
6. The *Contractor* adequately fences the site and erects fencing and gates before other work starts in that part of the site. The *Contractor* regularly inspects and maintains all site fencing and gates, and promptly repairs defects.
7. The location and layout of compound areas are to be agreed in conjunction with the *Client* or the *Client's* Delegate.
8. Compound areas will be reinstated to a standard no less than that recorded in the pre-condition survey.
9. Except as may be otherwise required by the contract, the *Contractor* designs, constructs, maintains, and afterwards removes and reinstates temporary accommodation, services, compounds, storage areas, site roads and accesses required for the works.

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

The *Contractor* submits his programme with the *Contractor's* Offer for acceptance. The *Contractor* shows on each programme which he submits for acceptance (in 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

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

Item	Date by which it will be provided
None	

7. Site Information

Ground Conditions

° There is no *site* investigation information available for the *sites*. Due to the nature of the site, it is not thought to be necessary for the purposes of design or construction unless stated.

Topographic Surveys

° There is no topographic survey information available for the *sites*. Due to the nature of the *works*, it is not thought to be necessary for the purposes of design or construction unless stated.

Confined Spaces

° It is not anticipated that any *works* in confined space will be required.

Access Routes and Site Boundaries

° Potential access routes have been identified on the drawings listed in the Scope. The *Contractor* shall agree the access routes and site boundaries with the relevant landowners and obtain all permission for the *works* under this contract.

River Levels

° Rivers can be subject to periodic flash floods, where water levels increase significantly and quickly following heavy rainfall. Areas prone to flooding can be identified on the Environment Agency's flood map (<http://watermaps.environment-agency.gov.uk/wiyby/wiyby.aspx?topic=floodmap#x=357683&y=355134&scale=2>).

Existing Site Services

° Desk top services information has not been ascertained at this stage.

Existing Structures

- ° There are no as built drawings for the assets included as part of the contract. Environmental
- ° There are no environmental notes or reports available for the sites.

Emergency Access

° Operations staff from the Environment Agency may require emergency access to their respective assets throughout the period of the works. The *Contractor* shall facilitate this access at any point if requested.

A full description of the sites is provided within the Works Information document 'WMD Asset Recondition Works_Scope_2022' (Environment Agency, October 2022).

Proposed sub-contractors		
	Name and address of proposed subcontractor	Nature and extent of work
1.	Form of Contract:	
2.	Form of Contract:	
3.	Form of Contract:	
4.	Form of Contract:	