

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – South West Hub

A contract between

The Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

And

Land and Water Services Limited

For

Minehead Seafront Blockwall

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 | Rivershouse, East Quay, Bridgwater, Somerset, TA6 4YS | |
| | | |
| Address for electronic communications | | |
| | | |
| The <i>works</i> are | Blockwall design and construction | |
| | | |
| The <i>site</i> is | Minehead Seawall, Warren Road Golf Club Car Park. | |
| | | |
| The <i>starting date</i> is | 8 th November 2021 | |
| | | |
| The <i>completion date</i> is | 31 st March 2022 | |
| | | |
| 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 | | |
| | | |
| 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

% per complete week of delay.

Insert a rate only if a rate less than 0.5% per week of delay has been agreed.

For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client's* property is limited to £100,000

The *Client* 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 works | Minimum £1,000,000..... in respect of every claim without limit to the number of claims | 5 years following Completion of the whole of the works or earlier termination |

The *Adjudicator nominating body* is

The Institution of Civil Engineers

The *tribunal* 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 | |
| Only enter details here if additional conditions are required. | |
| 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. |
| 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 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: $\text{Assessment} \times \text{MF} \times \text{L} = \text{PVP}$ |
| 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 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 | 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.

Contract Data

The *Contractor's* Contract Data

| | | |
|---|---------------------------------|------------------|
| | | |
| | The <i>Contractor</i> is | |
| Name | Land and Water Services Limited | |
| | | |
| Address for communications | [REDACTED] | |
| | | |
| Address for electronic communications | [REDACTED] | |
| | | |
| The <i>fee</i> percentage is | As Per Framework | % |
| | | |
| The <i>people rates</i> are | As Per Framework | |
| | | |
| category of person | unit | rate |
| | | |
| | As Per Framework | As Per Framework |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| The <i>published list of Equipment</i> is | | As Per Framework |
| | | |
| The <i>percentage for adjustment for Equipment</i> is | | As Per Framework |
| | | |

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 £99,428.32

Enter the total of the Prices from the Price List.

Signed on behalf of the *Contractor*

Name

Position

Estimator

Signature

Date

05/11/21

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

Signed on behalf of the *Client*

Name

Position

Senior Category Officer

Signature

| | |
|------|--|
| Date | |
| | |

Price List

Entries in the first four columns in this Price List are made either by the *Client* or the tenderer.

If 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.

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

| Item Number | Description | Unit | Quantity | | |
|-------------|--|------|----------|--|--|
| 1 | Topographic Survey | sum | 1 | | |
| 2 | Design task associated with all temporary and 'semi-permanent/temporary works' | sum | 1 | | |
| 3 | Site clearance and rubbish removal | sum | 1 | | |
| 4 | Accumulated Sand tested and returned to the beach (allowance for no. 3 sample tests) | sum | 1 | | |
| 5 | Moving container (location agree with golf club) | sum | 1 | | |
| 6 | Construction tasks (all other) | sum | 1 | | |
| 7 | As-constructed drawing | sum | 1 | | |
| 8 | Health and Safety File including de-construction | sum | 1 | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

| | |
|--------------------------------|------------|
| | |
| The total of the Prices | £99,428.32 |

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

The **Scope** should be a complete and precise statement of the *Client's* requirements. If it is incomplete or imprecise there is a risk that the *Contractor* will interpret it differently from the *Client's* intention.

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 *Contractor* shall complete a design and undertake construction task related to semi-permanent construction on Minehead Sea Defences. The *Contractor* is to develop the pre-existing concept designs that have been formed by Jacobs, these drawing are provided as Site Information only.

A FRAP (Flood Risk Activity Permit) is NOT required as part of this project however should this change the *Client* will support a fast tracking of the application. Nor is an MMO (Maritime) Management Organisation permission required.

The proposed work is separated into two phases Design and Construction.

Design Tasks:

The *Contractor* shall complete the outstanding design tasks that the *Client* has identified in the schedule below that develop the 'concept design' detailed with the Site Information drawings issued on this contract to a full design, the designer will complete a designers risk assessment and all other task required by CDM designer duty holders.

- 1) Topographic Survey to capture existing wall detail including location of cracks in the current wall
- 2) Design measures to address Public Safety Risk Assessment issues identified in the October Assessment.
- 3) Design the interface with the existing block wall to facilitate easy dismantling in the future.
- 4) Design a concrete slab to adequately support dead and imposed loads. (note the existing design assumes that the imposed loads from wave action are managed by the rock armour and dune in front of the existing masonry wall). It shall be assumed by the *Contractor* that the concrete ground bearing slab will remain in-situ
- 5) The *Contractor* shall state the assumptions made on the footings of the existing wall.
- 6) Design appropriate reflective warnings to avoid vehicles driving into the wall.
- 7) Develop in brief procedure instruction to allow the safe dismantling of the wall and any measures to safeguard future workers such as person exclusion zones and necessary footpath diversions.
- 8) Ensure that all final drawings issued to the client include a 'SHE Box'
- 9) Produce a health and safety file and as-constructed drawing in pdf and CAD format.

Construction Tasks:

The *Contractor* shall carryout all necessary construction task to allow the temporary wall to be constructed as per the concept design formed on drawings issued 'for review' and with inclusion of all other element identified by the *Client* . The *Contractor* shall be responsible for testing the ground conditions as deemed necessary. The *Contractor* shall be responsible for the signage and management temporary diversion of the adjacent footpath during the construction phase and shall be responsible for any subsequent re-instatement of the footpath on completion.

The *Contractor* shall test the accumulated sand in the car-park area prior to returning the sand to the beach.

The *Contractor* shall make a final recommendation to the *Client* in consideration of the ground bearing slab and wall interface prior to construction. The *Contractor* shall be responsible for all element of the construction including the storage and re-positioning of the container on the site. The *Contractor* shall be responsible for any re-instatement required to the carpark area as informed by our Environment Agency Estates Officer who will have undertaken a pre-condition inspection.

The *Contractor* shall install a timber post and rail fence line improvements on the coastal path where these have failed.

Carbon Reduction

The *Client* encourages the use of low carbon concrete blocks or use of low carbon concrete in the permanent ground-bearing slab. The *Client* shall approve the performance of these alternatives prior to their use.

2. Drawings

List the drawings that apply to the contract.

| Drawing Number | Revision | Title |
|----------------|----------|-------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

3. Specifications

List the specifications which apply to the contract.

| Title | Date or Revision | Tick if publicly available |
|---|------------------|----------------------------|
| Environment Agency Blockage Management Guide (Gov.uk) | 12/2019 | yes |

| | | |
|--|---------|----|
| PSRA assessment (issued with contract) | 15/2021 | no |
| | | |
| | | |
| | | |

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

State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Client*.

Mobilisation for construction shall not mobilise till after 1st November 2021

SHEW document works processes

High tides. Programme the works and consider any high tides that that will mean beach access ramp might be closed.

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 full design and construction task shall be completed as part of Environment Agency Winter Readiness and completion no later than 15th December is required. The earliest opportunity to complete the task after 1st November 2021 is preferred.

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

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*

Describe what the *Client* will provide, such as services (including water and electricity) and “free issue” Plant and Materials and equipment.

| Item | Date by which it will be provided |
|--|-----------------------------------|
| PCI document (issued by client by 22 nd October 2021) | 5 th November 2021 |
| Estates Support (in relation to pre-condition inspection, footpath diversion, access to compound areas). | (in place) |
| Ecology and Environmental Support and advice | 5 th November 2021 |
| Application to divert the Public Right of Way | 5 th November 2021 |
| | |

Site Information

ENV001922C-CH2-000-M10-DR-C-0001 SEA WALL IMPROVEMENTS SITE PLAN

ENV001922C-CH2-000-M10-DR-C-0002 SEA WALL IMPROVEMENTS GENERAL ARRANGEMENT

ENV001922C-CH2-000-M10-DR-C-0003 SEA WALL IMPROVEMENTS SECTIONS

ENV001922C-CH2-000-M10-DR-C-0004 SEA WALL IMPROVEMENTS PRECAST CONCRETE BLOCK LAYOUT

TIDE TABLES FOR MINEHEAD

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: | |