

NEC4 Engineering and Construction

Short Contract

FCRM Operational Framework – South East Hub

A contract between

Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

And

Land and Water Services Limited

For

Hardham Flood Embankment, South East Recovery Programme

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	Environment Agency, Guildbourne House, Chatsworth Road, Worthing, West Sussex, BN11 1LD	
Address for electronic communications	[REDACTED]	
The <i>works</i> are	To deliver repair works to Hardham flood embankment, Pulborough	
The <i>site</i> is	Hardham flood embankment Pulborough (as per ENVRECOV014R-JBA-00-30-DR-Z-1000-A5-C04-B1300-EA4-LOD4-LocationPlan)	
The <i>starting date</i> is	02/09/2022	
The <i>completion date</i> is	01/11/2023	
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		
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.
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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
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The <i>Client</i> provides this insurance	None
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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 £500,000 in respect of every claim without limit to the number of claims	6 years following Completion of the whole of the works or earlier termination

The <i>Adjudicator nominating body</i> is	The Institution of Civil Engineers
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The <i>tribunal</i> is	litigation in the courts
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The <i>conditions of contract</i> are the NEC4 Engineering and Construction Short Contract June 2017 and the following additional conditions
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Z1	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	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	Confidentiality & Publicity
Z3.1	The <i>Contractor</i> may publicise the works only with the <i>Client's</i> written agreement.
Z4	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	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	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	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"> • 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	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	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	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	<p>Material Price Volatility</p> <p>The <i>Client</i> recognises the ongoing pricing uncertainty in relation to materials for the period from 1 July 2021 to 30 June 2023 the <i>Client</i> 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%.</p>																																							
Z30.1	<p>Defined terms</p> <p>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.</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 Client shall pay the PVP. PVP is calculated as:</p> <p style="text-align: center;">Assessment x MF x L = PVP</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 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 2023 period compensation event.</p> <table><tr><th>Assessment Date</th><th>Defined Cost?</th><th>Forecasted Cost?</th></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- 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.	Assessment Date	Defined Cost?	Forecasted Cost?	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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31 st May 23	In period costs only	No																																						
30 th Jun 23	In period costs only	Forecasted costs for remainder of contract																																						

Contract Data

The *Contractor's* Contract Data

	The <i>Contractor</i> is	
Name	Land and Water Services Limited	
Address for communications	Land and Water Services Ltd, Weston Yard, Albury, Guildford GU5 9AF	
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
The <i>published list of Equipment</i> is		
The <i>percentage for adjustment for Equipment</i> is		

Contract Data

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:	

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 £129,360.33

Enter the total of the Prices from the Price List.

Signed on behalf of the *Contractor*

Name

Position

Signature

Date 09/09/2022

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

Signed on behalf of the *Client*

Name

Position

Signature

Type text here

Date 12/09/2022

Price List

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

Where 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.

Where 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.

Note: The *Contractor* must satisfy themselves that they have priced for the whole of the scope. It will be assumed that this is the case whether or not the item appears on the Price List. If the *Contractor* is of the view that items do not appear on the Price List they are able to add them below.

Item Number	Description	Unit	Quantity	Rate	Price
1	Pre-condition survey	Sum	1		£203.97
2	FRAP application	Sum	1		£1,617.94
3	Mobilisation (inc. site security)	Sum	1		£13,137.76
4	Vegetation clearance and environmental mitigations	Sum	1		£1,690.00
5	Location 2 Works	Sum	1		£16,898.11
6	Location 3 Works	Sum	1		£22,092.36
7	Location 4 Works	Sum	1		£23,365.93
8	Location 1 Works	Sum	1		£12,454.65
9	Post-condition survey and Reinstatement	Sum	1		£203.97
10	Demobilisation	Sum	1		£13,137.76
11	Health and Safety File	Sum	1		£1,223.82
Other Items needed to meet delivery of the Scope (Contractor to Specify)					
12	[]	Sum	1		£3,932.76
13	[]	Sum	1		£19,401.30
...	...	Sum			
		Sum			
The total of the Prices				£129,360.33	

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

This requirement forms part of the Environment Agency's Asset Recovery Programme, in response to the damage caused to assets by the storms of 2020/21. The South East (SE) Asset Recovery Programme has been created to recover assets to their target condition and have identified mechanical and physical defects resolved, by the end of 2022.

This Scope requires the *Contractor* to undertake the recovery works for the Hardham flood embankment, Pulborough.

The *Contractor* shall:

Vegetation Clearance

From July 2022 undertake bi-weekly environmental grass strimming and associated measures to manage risks associated with nesting birds and reptile activity to the known repair locations and access routes / points, complying with the current environmental surveys / consents. (Prior construction activity)

Pre-condition and Post-condition Surveys: Prior to any mobilisation and demobilisation the *Contractor* will undertake a full site pre-condition photographic survey. A full copy of this shall be provided to the *Client*.

Consents: Prior to commencing the works the *Contractor* shall obtain all necessary consents including a Flood Risk Activity Permit (FRAP).

Initial Works Location No 2, 3 and 4 (shown below and on ENVRECOV014R-JBA-00-30-DR-Z-1102-A5-C01-B1300-EA4-LOD4-GeneralArrangement.)

The *Contractor* shall undertake recovery of the repairs in accordance with the *Scope* (with particular reference to 2. Drawings and 3. Specifications).



Final Embankment Work, location No1 (shown map below and ENVRECOV014R-JBA-00-30-DR-Z-1102-A5-C01-B1300-EA4-LOD4-GeneralArrangement)

The *Contractor* shall undertake recovery of the repairs in accordance with the *Scope* (with particular reference to 2. Drawings and 3. Specifications).



General

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

- Undertake on-site mobilisation, including provision of compound and welfare facilities as needed.
- Undertake supply and delivery to site of all materials required in the delivery of the project, including any temporary works.
- Put appropriate measures in place to ensure safety of public, including any footpath, Public Right of Way (PROW) or permissive path closures needed to undertake the *works*
- Implement biosecurity protocols, including Check-Clean-Dry
- Comply with the Environment Agency's Pollution Prevention Guidelines
- Comply with Environmental Permit
- Apply appropriate security measures to keep the site safe and secure (including plant and equipment)
- Fulfil the duties of the Principal Contractor in terms of the CDM 2015 regulations.
- Develop a Construction Phase Plan (CPP) in accordance with the Environmental Action Plan.

The *Contractor* shall be responsible for any necessary:

- Footpath closures
- Highway traffic management / closures
- Site traffic management

If the *Contractor* suspects water voles are present, work must stop immediately and the *Client* informed. Works must not continue until mitigation measures are in place, which will be the subject of a compensation event.

The *works* are not expected to require the removal of any trees. If this changes, the trees will require assessing for their potential to support roosting bats. The *Contractor* shall notify the *Client* if any tree removal is required, with assessment, mitigation and removal to be managed as a Compensation Event.

Completion

The *Contractor* shall reinstate all areas of the site impacted by the works in accordance with the condition within the pre-condition survey following the works.

The *Contractor* shall provide the *Client* with a Health & Safety file within 2 weeks of works on site being completed.

2. Drawings

Drawing Number	Revision	Title
ENVRECOV014R-JBA-00-30-DR-Z-1000-A5-C04-B1300-EA4-LOD4-LocationPlan	C04	Location Plan
ENVRECOV014R-JBA-00-30-DR-Z-1102-A5-C01-B1300-EA4-LOD4-GeneralArrangement	C01	General Arrangement
ENVRECOV014R-JBA-00-30-DR-C-1302-A5-C01-B1300-EA4-LOD4-SectionSheet1	C01	Sections Sheet 1
ENVRECOV014R-JBA-00-30-DR-C-1303-A5-C01-B1300-EA4-LOD4-SectionsSheet2	C01	Sections Sheet 2

3. Specifications

Title	Date or Revision	Tick if publicly available
ENVRECOV014R-JBA-00-30-SP-C-0001-S4-C02-B0200-EA4-LOD4-SPEC_30	16/09/2020	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*.

1. No works should commence after 19th September.
2. Landowners haul / access route off the A29 through the site shall not be blocked nor plant, materials stored at any time so to restrict site access.
3. No plant or material, nor turning of plant shall be either stored or operated, turned upon the landowners newly constructed flood embankment.
4. All access gates shall remain closed, during the working day (unless accepting deliveries) and at the end of the working day.

The Notice of Intended Entry served by the Environment Agency (NOIE) upon the landowner for the duration of the works DO NOT restrict the landowner / tenant or any contractors employed by them.

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* shall provide a programme aligning with the Contract Data, showing:

- (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
Provision of supporting FRAP documentation specific to the <i>site</i> for the <i>Contractor</i> to use where they see fit in securing the FRAP.	Upon contract <i>start date</i> .

Site Information

Service Searches – February 2022

ENVRECOV014R-JBA-00-30-MS-Z-0001-A3-C01-B0700-EA4-LOD4-Buildability_Statement

ENVRECOV014R-JBA-00-30-MS-Z-0001-S2-P01-B1300-EA4-LOD4-PAS128_Service_Search_Risk_Assessment

ENVRECOV014R-JBA-00-30-PL-EN-0001-S3-P03----River_Arun_Environmental_Action_Plan

ENVRECOV014R-JBA-00-30-RA-Z-0001-S4-C03-K1000-EA4-LOD4-RAG_List

ENVRECOV014R-JBA-00-30-RP-Z-0001-S3-P04-K0200-EA4-LOD4-30_River_Arun_Hardham_Pre_Construction_Information

ENVRECOV014R-JBA-00-30-RR-Z-0001-S4-C03-K0500-EA4-LOD4-DRR

Clarification number	Date sent	Question	Response	Document revised(Yes or No)	Summary of change	Date response submitted received
1	02/09/22	<p>With reference to the Scope, Vegetation Clearance (on p.10 of NEC4), we request the following amendment:</p> <p>For 3 months prior to subsequent works on site, the Contractor shall undertake bi-weekly environmental grass strimming and associated measures to manage risks associated with nesting birds and reptile activity to the known repair locations and access routes / points, complying with the current environmental surveys / consents. (Prior construction activity)</p>	Agreed			

2	02/09/22	<p>Pre-condition and Post-condition Surveys (p.10 of the NEC4) – we request the following amendment:</p> <p>The survey should be a series of photos (every 10m as a minimum) to cover on site access ways, compound areas and work areas. The purpose of the survey is to demonstrate the impact of the works on these areas and to provide evidence to support the assessment of any later claims made against the works. Videos are also an acceptable means of evidence. Files should be presented in commonly available and open-sourced formats (i.e. jpeg or mp4). Information provided should be clearly referenced so as to locate the evidence provided. The surveys should provide greater detail in covering any damaged areas.</p>	Agreed			
3	02/09/22	<p>Section 4, Constraints (p. 12 of NEC4), we request the following amendment:</p> <p>No works shall be undertaken on site between 10 October 2022 and 24 Feb 2023 unless otherwise agreed with the Client.</p>	Agreed			

