



Framework:	Collaborative Delivery Framework
Supplier:	BAM Nuttall Ltd
Company Number:	00305189
Geographical Area:	East
Project Name:	Penton Hook Weir Refurbishment – ESE (SOC-OBC)
Project Number:	ENV0003197C
Contract Type:	Engineering Construction Contract
Option:	Option C
Contract Number:	33234

Revision	Status	Originator	Reviewer	Date
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**ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework
CONTRACT DATA****Project Name** Penton Hook Weir Refurbishment -- ESE (SCC-OBC)**Project Number** ENV0003197C

This contract is made on
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
Penton Hook Weir_ECC_ESE_OBC_Scope_BAM_v5_03002:

**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
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Secondary Options

X2: Changes in the law
X7: Delay damages
X9: Transfer of rights
X10: Information modelling
X11: Termination by the *Client*
X15: *Contractor's* design
X18 Limitation of Liability
X20: Key Performance Indicators
Y(UK)3: The Contracts (Rights of Third Parties) Act 1999
Z: *Additional conditions of contract*

The *works* are

The Contractor is required to provide Early Supplier Engagement for Penton Hook Weir Project, delivering the requirements of the Scope. The Contractor

The *Client* is Environment Agency

Address for communications

Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

The *Project Manager* is

Address for communications

Address for electronic communications

The *Supervisor* is

Address for communications

Address for electronic communications

The Scope is in
Penton Hook Weir ECC_ESE_OBC_Scope_BAM_v5_030821

The Site Information is in
PH_Site_Information

The boundaries of the site are
PH_Weir_Site_Boundary

The partner contract is
Not Used

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	key date
'none set'	'none set'
'none set'	'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
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3 Time

The starting date is	23rd August 2021
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The access dates are	date
part of the Site	23rd August 2021
FastDraft	23rd August 2021
Asite	

The Contractor submits revised programmes at intervals no longer than	4 weeks
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The Completion Date for the whole of the works is	31st May 2022
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The Client is not willing to take over the works before the Completion Date	
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The period after the Contract Date within which the Contractor is to submit a first programme for acceptance is	4 weeks
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4 Quality management

The period after the Contract Date within which the Contractor is to submit a quality plan is	4 weeks
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The period between Completion of the whole of the works and the defects date is	52 weeks
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The defect correction period is	2 weeks	except that
• The defect correction period for	Safety issues	is 24 Hours
• The defect correction period for	Meica Issues	is 7 Days

5 Payment

The currency of the contract is the £ sterling

The assessment interval is Monthly

The Client set total of the Prices is £51,621.90

The interest rate is 2.00% per annum (not less than 2) above the
Base rate of the Bank of England

The Contractor's share percentages and the share ranges are

	share range		Contractor's share percentage
less than		80 %	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 Met Office Weather Station at Hampton Water Works

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 Weather Station at Hampton Water Works

The weather data are the records of past weather measurement for each calendar month which were recorded at and which are available from

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. Managing and mitigating the impact of Covid 19 and working in accordance with Public Health England guidance, as may vary from time to time, between 1 July 2021 – 31 August 2021
2. 'not used'
3. 'not used'
4. 'not used'
5. 'not used'

6 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

Not Used

Resolving and avoiding disputes

The *tribunal* is litigation in the courts

The *Senior Representatives of the Client* are

Address for communications

Environment Agency
Riversmeet House
Newtown Industrial Estate
Tewkesbury
GL20 8JG

Address for electronic communications

Name

Address for communications

Environment Agency
Kingsfisher House
Goldhay Way
Peterborough
PE2 5RZ

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*.

Z 2A: Risk transfer: Physical conditions within the Site

Clause 60.1 (12) is deleted from this contract

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..."

Z 4 The Schedule of Cost Components

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

Z 6 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 Aggregated Contractor's share

Delete existing clauses 54 and 93.4 and replace with:

54.7 The *Project Manager* assess the *Contractor's* share of the difference between the Aggregated Total of the Prices and the Aggregated Price for Work Done to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Aggregated Price for Work Done to Date divided by the Aggregated Total of the Prices, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.

54.8 If the Aggregated Price for Work Done to Date is less than the Aggregated Total of the Prices, the *Contractor* is paid its share of the saving. If the Aggregated Price for Work Done to Date is greater than the Aggregated Total of the Prices, the *Contractor* pays its share of the excess.

54.9 If, prior to the Completion Date, the Aggregated Price for Work Done to Date exceeds 110% of the Aggregated Total of the Prices, the amount in excess of 110% of the Aggregated Total of the Prices is retained from the *Contractor*.

54.10 The *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the Whole of the works using forecasts of the final Aggregated Price for Work Done to Date and the final Aggregated Total of Prices. This share is included in the amount due following Completion of the whole of the works.

54.11 The *Project Manager* makes a final assessment of the *Contractor's* share, using the final Aggregated Price for Work Done to Date and the final Aggregated Total of the Prices. This share is included in the final amount due.

93.4 If there is a termination, the *Project Manager* assesses the *Contractor's* share after certifying termination. The assessment uses as the Aggregated Price for Work Done to Date the sum of

- the total of
- o the Defined Cost which the *Contractor* has paid and
- o which it is committed to pay for work done before termination

and

- the total of
- o the Defined Cost which the *Contractor* has paid and
- o which it is committed to pay

in the *partner contract* before the date the termination certificate is issued under this contract.

The assessment uses as the Aggregated Total of the Prices the sum of

- the total of
- the lump sum price for each activity which has been completed and
- a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed

and

- the total of
- the lump sum price for each activity which has been completed and
- a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed

in the *partner contract* before the date the termination certificate is issued under this contract.

Add:

11.2(37) The Aggregated Total of the Prices is sum of

- the total of the Prices and
- the total of the Prices in the *partner contract*

11.2(38) The Aggregated Price for Work Done to Date is the sum of

- the Price for Work Done to Date and/
- the Price for Service Provided to Date in the *partner contract*.

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 times scales will also adversely affect the *Contractor's* opportunities to work on framework contracts

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.

Z18 Payment of pain/gainshare and programme incentivisation

Delete existing clause 54.3 and replace with:

54.3 The *Project Manager* makes regular assessments of the *Contractor's* share until the Completion Date using forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due in the following assessment. The *Project Manager* shall be entitled to take the *Contractor's share* percentage into account when assessing amounts in clause 50 and clause 51 due for payment at each assessment date thereafter. The *Project Manager* shall not assess any amount greater than the amount due when the forecast reaches the top *share range* in the Contract Data Part 1 (120% of the total of the Prices).

Delete existing clause 54.4 and replace with:

54.4 If clause 54.3 does not occur during the works, the *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the Whole of the works using forecasts of the final Price for Work Done to Date and the final total of Prices. This share is included in the amount due following Completion of the whole of the work

Insert the following new clause 54.5:

54.5 If clause 54.3 does not occur during the works, the *Project Manager* makes a final assessment of the *Contractor's* share, using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.

Insert the following new clause 54.6:

Programme Payments will be made under the Framework in accordance with Schedule 17

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 : with the following

Insurance certificates are to be submitted to the *Client* on an annual basis.

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 X7: Delay damages**X7 only**

Delay damages for Completion of the whole of the *works* are

56.01 per day per day

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 X15: The Contractor's design

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

6 years

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 professionals designing works similar to the *works* is, in respect of each claim

£1,000,000.00

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

£1,000,000.00

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

£3,000,000.00

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

6 years after the

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

Not Used

Not Used

Not Used

Not Used

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 BAM Nuttall Ltd
Address for communications St James House
Knoll Road
Camberley
Surrey
GU15 3XW

Address for electronic communications

The fee percentage is

Option C

The working areas are

The site, all BAM and EA offices and premises either temporary or permanent, as well as BAM employees home residences

The key persons are

Name (1)
Job

Senior Contracts Manager

Responsibilities
Qualifications
Experience

Overall responsibility for delivery of projects under the framework

The key persons are

Name (2)
Job
Responsibilities
Qualifications
Experience

Project Manager
Project delivery

The key persons are

Name (3)
Job
Responsibilities
Qualifications
Experience

Commercial Manager
Commercial Management of project

The key persons are

Name (4)
Job
Responsibilities
Qualifications
Experience

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
The Airfield
Shipdham
Thetford
IP25 7SP

Address for electronic communications
[REDACTED]

Name (2) [REDACTED]
Address for communications
St. James House
Knoll Road
Camberley
Surrey
GU15 3XW

Address for electronic communications
[REDACTED]

X10: Information Modelling

The *information execution plan* identified in the Contract Data is

Contract Execution

Client execution

Signed under hand by

for and on behalf of the Environment Agency



Signature



Role

Contractor execution

Consultant execution

Signed under hand by

for and on behalf of

BAM Nuttall Ltd



Signature

11/08/21



Role

