



Framework: Collaborative Delivery Framework

Supplier: BAM Nuttall Ltd

Company Number:

Geographical Area: North East

Contract Name: Yorkshire High Risk Trash Screen Replacement Programme E

Project Number:

Contract Type: Engineering Construction Contract

Option: Option C

Contract Number:

Stage: Construction

е

# **ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework CONTRACT DATA**

### **Project Name**

Yorkshire High Risk Trash Screen Replacement Programme ECC Construction Phase

### **Project Number**

This contract is made on between the *Client* and the *Contractor* 

Address for electronic communications

The *Project Manager* is

Address for communications

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 10th day of April 2019 and Framework Agreement Extension dated and signed 1st April 2023 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 23 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference Yorkshire Trash Screen Replacement Programme V4.0

### 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 res	solving and avoiding disputes	W2		
Secondary	Secondary Options				
	X2: Changes in the law				
	X7: Delay damages				
	X9: Transfer of rights				
	X10: Information modelling				
	X11: Termination by the <i>Client</i>				
	X15: Contractor's design				
	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 ar					
Construction	Construction Phase contract for the replacement and removal of high risk debris screens in the Yorkshire and North East area				
The <i>Client</i> is		Environment Agency			
Address for c	ommunications	E			

Environment Agency

<del>-</del>	
Address for electronic communications	
The Supervisor is	
Address for communications	
<del>-</del>	
Address for electronic communications	
The Scope is in	
The Site Information is in	
The boundaries of the site are	
The Inneuron of the contract is English	
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
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
The starting date is	01 July 2024
The access dates are	
part of the Site	date 4
<u> </u>	*
The Contractor submits revised programmes at intervals	
no longer than	4 weeks
The Completion Date for the whole of the works is	

The Client is willing to take over the works before the Completion Date

2 The Contractor's

3 Time

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

- The defect correction period for
- The defect correction period for
- 2 weeks

Monthly

any issue in relation to health and safety

except that

is 24 Hours

5 Payment

The currency of the contract is the £ sterling

The assessment interval is



### 6 Compensation events

The place where weather is to be recorded is

Nearest MET Office Station to Site Location

The  $\ensuremath{\textit{weather measurements}}$  to be recorder for each calendar month are

- the cumulative rainfall (mm)
- $\bullet\,$  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

GMT

and these measurements:

- the cumulative rainfall (mm) the number of days with rainfall more than 2.
- the number of days with minimum air temp
- 4.

5.

Met Office The weather measurements are supplied by

The weather data are the records of past weather measurement for each calendar month

which were recorded at Geographically nearest in proximity MET Office Station to each Site location 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

Jul
Au
Sep
Oct
No
De

These are additional compensation events

- 1.

- 'not used'
- 4 'not used'
- '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

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

Address for electronic communications

Name

Address for communications

The Adjudicator is

Address for communications

The Adjudicator is 'to be confirmed'

Address for electronic communications

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.

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*.

21.2 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 pricing for, or providing the *works*).

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

Delete 'The' At start of clause 63.1 and replace with:

 $^{\circ}$ 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. In all instances and circumstances the Price for Work Done to Date shall not exceed the forecast for the same as provided under clause 20.4.

#### Z7 Contractor's share

After cl54.2 and before cl54.3, 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

The Contractor will use the NEC4 contract on all subcontracts for works unless another alternative and appropriate form is proposed and agreed in accordance with clause 26.3. Payment to subcontractors will be 28 days from the assessment date.

If the Contractor does not achieve payments within these timescales then the Client reserves the right to delay payments to the Contractor in respect of subcontracted work,

Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the Contractor's opportunities to work on framework contracts

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

Z11.1 The Contractor warrants all design complies with the contract whether undertaken by the Contractor or by sub-contractors.
Z11.2 All contracts for design employed by the Contractor must include:

• Y(UK)3 The Contracts Rights of Third Parties) Act 1999

- A requirement for the Contractor's sub-contractor to hold Professional indemnity insurance to the same level as the cover specified for the Contractor in this Call-off contract
- A clause to give the Client (the Environment Agency) the right to enforce the provisions of the Contracts (Right of Third Parties) Act 1999,
   A clause to ensure that neither the Contractor nor their sub-contractor can alter the provisions of their sub-contract without the consent of the Client
- A clause to ensure that the Client's rights against the sub-contractor under this agreement shall be subject to the same conditions, limitations and exclusions as apply to the Contractor's rights against the design consultant under this agreement
   A clause to state that except as provided in clause Z11.1, the 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 the clause does not affect any right or remedy of any 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

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 pay 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).

### **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 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,

Z30.2 Price Volatility Provision

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 2023 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.



### Z31 ECC - Price Adjustment for Inflation

The Client recognises the ongoing pricing uncertainty with regards to inflation. The Client will mitigate this uncertainty through this clause.

### Z31.1 Defined terms:

### Z31.2 Application rules.

The provisions of this clause [Z31] shall apply provided that:

a) The Price for Work Done to Date is less than or equal to the total of the Prices and b) Inflation remains positive i.e. L is greater than B.

### Z31.3 Price Adjustment Factor.

If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the Completion Date for the whole of the works is used for calculating an amount for price adjustment after that date.

Z31.4 Price adjustment Options A and B.

### NOT USED

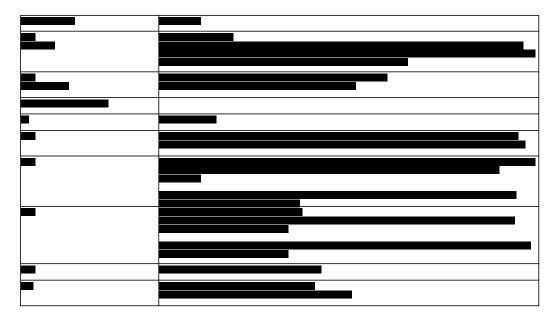
Z31.5 Price adjustment Options C and D.

Each time the amount due is assessed, an amount for price adjustment is added to the total of the Prices which is

Z111 ECC - Fee adjustment for non compliance with Scope

The Fee is the amount calculated by applying the fee percentage to the Defined Cost excluding the cost of Sub-contractors that have not complied with procurement by best value processes as defined in the Scope. 80% of the fee percentage is applied to the amount of the Defined Cost for Sub-contractors that have not complied with procurement by best value processes as defined in the Scope.

### Z120 ECC - Carbon reduction



### **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

### **OPTION X7: Delay damages**

**X7 only** Delay damages for Completion of the whole of the works are

### **OPTION X10: Information modelling**

The period after the Contract Date within which the  ${\it Contractor}$  is to submit a first Information Execution Plan for acceptance is

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

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

### OPTION X15: The Contractor's design

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

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

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

### **OPTION X18: Limitation of liability**

The Contractor's liability to the Client for indirect or consequential loss is limited to

For any one event, the Contractor's liability to the Client for loss or damage to the Client's property is limited to

The Contractor's liability for Defects due to its design which are not listed on the Defects Certificate is limited to

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

after the

The *end of liability date is*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

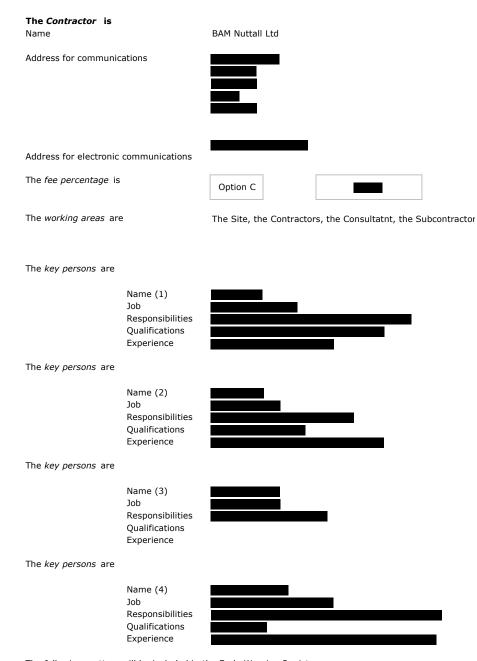
term beneficiary

No terms under this contract No beneficiaries under this contract

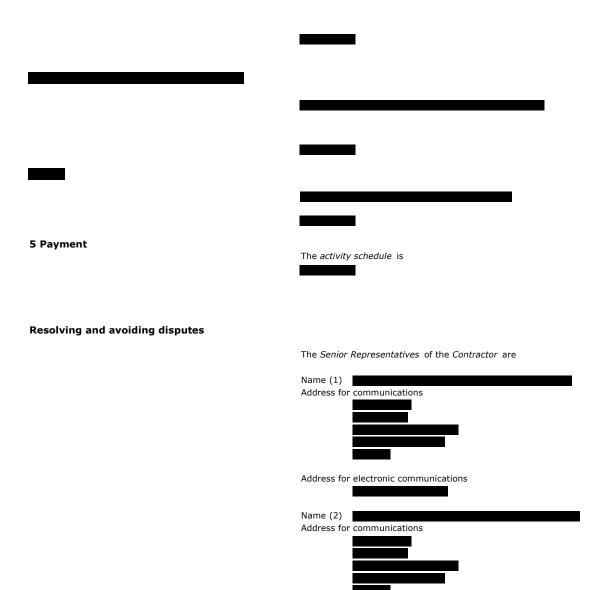
### Part Two - Data provided by the Contractor

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

### 1 General



The following matters will be included in the Early Warning Register



X10: Information Modelling

The  $\it information\ execution\ plan\ identified\ in\ the\ Contract\ Data\ is$ 

Address for electronic communications

